

1 identify the party responsible for implementing the  
2 mitigation measures identified in the final mitigation  
3 plan no later than July 26th, 2013.

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

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

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

24 Both water board and the California Department  
25 of Fish and Wildlife require financial security to

1 ensure performance of the mitigation requirements. TCA  
2 has prepared draft escrow agreements for the mitigation  
3 sites. These agreement will be reviewed and approved by  
4 the water board once the mitigation plan has been  
5 finalized.

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

9 Finally, I would like to clarify an issue that  
10 occurred during a presentation at the March board  
11 meeting. During the Save San Onofre Coalition  
12 consultant's presentation, a representative showed a  
13 figure incorrectly showing that the Tesoro Extension  
14 Project impacting Wagon Wheel Creek and its headwaters.  
15 The consultant confirmed that they erroneously labeled  
16 drain A1 as Wagon Wheel Creek in their presentation.

17 This is the original figure shown at the March  
18 hearing misidentifying drainage A1 as Wagon Wheel Creek.  
19 As you will see in the next slide, Wagon Wheel Creek is  
20 north of the area shown in this image.

21 So as you can see, this would be the proposed  
22 area for the Tesoro Extension Project. This is drainage  
23 A1. And you can see it's labeled as Wagon Wheel Creek.  
24 So again, that's drainage A1. Wagon Wheel Creek is  
25 actually further north, and you will see it on the next

1 slide.

2 This slide correctly shows the area of the  
3 project, the location of Wagon Wheel Creek and drainage  
4 A1. So here's the study area for the Tesoro Extension  
5 Project. Here's the actual location of Wagon Wheel  
6 Creek. And you can see there is a ridge line that goes  
7 through here that separates the project from Wagon Wheel  
8 Creek.

9 However drainage A1 is down here. And so the  
10 potential impact would be to drainage A1 and not Wagon  
11 Wheel Creek.

12 Please note the study area is the area of  
13 potential impact for the project. Although drainage A1  
14 is within the study area, it will not be filled as part  
15 of the Tesoro Project.

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

23 Project impacts to nonfederal waters of the  
24 state have been avoided and minimized to the maximum  
25 extent practical. All remaining impacts to water will

1 be mitigated at a very high ratio to establishment and  
2 restoration projects consistent with and exceeding water  
3 board standards.

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

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

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

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

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

21 There are pollutants that will come off the  
22 cars as a result of using the road certainly. They  
23 have -- they have designed post and construction  
24 management practices, such as Austin sand filters,  
25 bioswales, biofiltration. And they're using a porous

1 friction course, I believe it's called, that also helps  
2 remove car pollutants prior to discharge of water to the  
3 state.

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

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

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

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

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

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

21 MR. ABARANEL: It's up the chair.

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

1 haven't heard what we need to.

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

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

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

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

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

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

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

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

1 Tesoro extension on April 18.

2 MR. MORALES: Okay. So then, by them having  
3 done that, does that essentially take care of questions  
4 2 and 3?

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

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

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

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

14 MR. MORALES: Okay. Thanks. Thank you.

15 Next up I believe is --

16 MS. DORSEY: Chair? Kelly Dorsey over here.

17 MR. MORALES: Oh, hi, Kelly.

18 MS. DORSEY: Hi. How are you?

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

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

1 correct me.

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

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

7 MS. DORSEY: Exactly.

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

10 MS. DORSEY: Project --

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

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

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

17 MS. DORSEY uh-huh.

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

22 MS. DORSEY: Yes.

23 MR. ABARANEL: If at some point in the future  
24 there is a request for an additional extension of  
25 highway 241 that is different from project A, I assume

1 there will have to be an additional EIR.

2 Will that include the present project?

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

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

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

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

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

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

25 The EIR was prepared for a project of which

1 this is a subproject.

2 MS. HAGAN: The --

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

5 MS. HAGAN: Yes.

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

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

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

16 MR. ABARANEL: Because the original project was  
17 larger -- I have two questions -- is there any  
18 implication whatsoever that, by accepting the EIR from  
19 2006, that we are accepting the EIR for the full  
20 proposed project from 2006?

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

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

1 alone?

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

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

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

12 MS. HAGAN: Essentially we --  
13 (Microphone feedback noise.)

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

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

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

25 MR. ABARANEL: But their determination assessed

1 by you to be adequate is a recommendation to the board?

2 MS. HAGAN: Essentially --

3 (Microphone feedback noise.)

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

6 Essentially under CEQA the lead agency drives  
7 the process. And as a responsible agency, we are bound  
8 by the lead agency's document even if litigation is  
9 filed challenging the lead agency's approval.

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

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

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

24 MS. HAGAN: If we felt that their document was  
25 not adequate in its treatment of impacts to water

1 quality or water resources, we have the discretion under  
2 CEQA, and we have the independent authority to  
3 condition, approve, deny the project.

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

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

8 MS. HAGAN: Yes.

9 MR. ABARANEL: Thank you.

10 MR. MORALES: Any other questions?

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

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

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

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

24 But, you know, maybe you addressed this, but  
25 are we satisfied -- it's funded by one of these

1 nonprofits. Is this not going to go away? How do we  
2 know that the mitigation goes on, that it doesn't just  
3 sort of slide away as other things happen.

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

6 MR. BRADFORD: Sure.

7 MR. MORALES: Yeah. And --

8 (Microphone feedback noise.)

9 MR. MORALES: Okay. I'll just be really loud.  
10 And before you answer that question, I just  
11 sort of had follow-up. Because at the last --

12 (Microphone feedback noise.)

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

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

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

25 And just a quick comment on -- on the CEQA. My

1 understanding -- and correct me if I'm wrong -- at the  
2 last meeting our concern was with the fact that there  
3 was no NOD filed, which potentially would have meant  
4 that we would be the, quote, lead agency for CEQA  
5 purposes or could be considered that.

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

12 Is that correct?

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

17 And that -- that was their determination and  
18 their approval when they approved the design for this  
19 5.5 mile extension.

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

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

24 MR. MORALES: Okay.

25 MR. ABARANEL: If I may comment to Sharon.

1 I will later make a suggestion for us to  
2 consider that addresses the issue of mitigation and in  
3 particular failed mitigation.

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

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

8 MR. MORALES: Talk to us about mitigation.

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

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

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

23 In terms of the financial assurances, they are  
24 required by the order to provide that for us in --  
25 within six months of adoption of the order. So they've

1 given us draft documents regarding that that we've  
2 turned over to counsel. And within six months we'll  
3 have to approve the financial assurances for the  
4 project.

5 MS. KALEMKIARIAN: That's helpful.

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

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

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

20 MS. KALEMKIARIAN: Okay.

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

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

25 What if this board doesn't like who is

1 designated? Does that nullify any action that we take  
2 today?

3 MR. BRADFORD: Does it nullify --

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

7 MS. DORSEY: It's Kelly Dorsey again.

8 MR. ABARANEL: Hi.

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

11 MR. ABARANEL: That's fine.

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

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

21 Generally, you know, with the other property  
22 it's Rancho Mission Viejo Trust, which is a non-profit,  
23 and they generally, you know, use agencies that are  
24 nonprofits that -- so that we can separate the  
25 responsibility and the money in escrow and financial

1           assurances away from, you know, the parties that are  
2           doing the project.

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

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

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

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

24                    But before they're actually out there shovels  
25          into the ground, this all has to be dealt with?

1 MS. DORSEY: Correct. If the board adopts the  
2 item today, then TCA will be required to get us their --  
3 their final HMMP, including all of the requirements in  
4 the order, by the end of July.

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

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

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

18 MR. ABARANEL: Okay. I have another question.  
19 On Page 120 out of 443 --

20 MS. DORSEY: Of which document?

21 MR. ABARANEL: Well, I put them all together so  
22 I could search them better. Document No. 6. Supporting  
23 document No. 6. There's a table, environmental issue  
24 and so forth. It's -- I'm sorry. It was much easier to  
25 search when I put them all together.

1 MS. DORSEY: Page 100 -- oh, wait. Are you  
2 talking about the addendum to the --

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

5 MS. DORSEY: Okay.

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

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

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

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

21 MR. ABARANEL: Yes, I am.

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

24 MR. ABARANEL: So we have no position on  
25 whether that is correct.

1 MS. DORSEY: I don't see the table that you're  
2 referring to --

3 MR. SMITH: 324.

4 MS. DORSEY: -- on the pages that are --  
5 The document is only 98 pages, James.

6 MR. SMITH: 3-24.

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

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

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

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

17 MR. SMITH: Air quality starting with  
18 construction emissions.

19 MR. ABARANEL: 3-24.

20 MS. DORSEY: Which section? At the bottom?

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

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

25 MR. ABARANEL: Again, this is an EIR. The EIR

1 was certified by the discharger and we agreed was okay.

2 Do we know if this is okay?

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

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

11 MR. ABARANEL: Okay. Thank you.

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

15 We're at Coalition now. 30 minutes.

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

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

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

25 MR. STRAWN: I'm sorry. How much time do you

1 want to reserve for.

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

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

7 MS. FELDMAN: We have number of people  
8 testifying. So were going to take about 20 minutes now  
9 and about ten later.

10 MR. STRAWN: Okay.

11 MS. FELDMAN: So starting again quickly.

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

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

22 Together our groups represent over a million  
23 citizens in California. Our members have stood together  
24 many times to protect and defend San Onofre State Beach  
25 from this destructive toll road.

1                   Approximately a thousand people attended the  
2 California State Park and Recreation Commission's toll  
3 road hearing in San Clemente in 2005. And over 3,000  
4 attended the 2008 California Coastal Commission hearing  
5 in Del Mar. 3,000 more were at the Department of  
6 Commerce hearing later the same year.

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

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

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

24                   First and very importantly, we will discuss the  
25 proper segmentation of the toll road and its impact on

1 the larger project and the surrounding area. Next we  
2 will talk about protection of beneficial uses. And last  
3 we will be addressing the procedural issues.

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

7 MR. ABARANEL: Can I ask you a question?

8 MS. FELDMAN: Yes. Of course.

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

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

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

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

24 MR. ABARANEL: Okay.

25 MR. WHITE: NOTE: Good afternoon, Chairman

1 Morales and board members.

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

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

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

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

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

25 And every step along the way TCA has re

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

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

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

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

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

1 required.

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

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

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

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

23 The first of those is the board's independent  
24 authority under CEQA to make findings prior to approval  
25 of a project.

1                   Now, CEQA requires that all responsible  
2 agencies, before they approve a project, have to make  
3 certain findings. They have -- and these findings have  
4 to be made with respect to every significant impact that  
5 has been identified for the project, whether it's been  
6 mitigated or not.

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

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

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

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

25                   And that EIR concludes, for all its flaws,

1 which are being challenged in court as well -- but on  
2 its face it concludes that there are numerous  
3 significant impacts of the toll road, many of which --  
4 very many of which relate to water quality, water  
5 resource, things that are within your jurisdiction.

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

13 But this addendum itself doesn't tell you what  
14 the significant impacts of the Tesoro extension as a  
15 standalone project are. All it does is say that the  
16 project doesn't change the analysis that was done in the  
17 2006 EIR. And the 2006 EIR, as I mentioned, identifies  
18 numerous significant impacts.

19 So the board is going to -- the board doesn't  
20 have any other documentation on which to make its CEQA  
21 findings other than the significant impacts identified  
22 in the 2006 EIR. So you need to make findings with  
23 respect to all of those impacts. And you need to be  
24 able to find the mitigation proposed for those impacts  
25 is adequate.

1                   Now, in 2008 you looked at this question, and  
2                   so did the Coastal Commission. And separately,  
3                   independently, both of those agencies concluded that the  
4                   TCA had not provided enough evidence to show that there  
5                   would not -- that the significant water quality impacts  
6                   of this project would be mitigated.

7                   Nothing has changed since then. So we urge you  
8                   to use your independent CEQA authority to find that the  
9                   mitigation measures for the project, which is the only  
10                  project you have before you, is what's described in the  
11                  2006 EIR -- that the mitigations for that project are  
12                  not adequate.

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

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

23                  What's very interesting is that the TCA, in  
24                  approving the Tesoro extension recently, did not make  
25                  new findings of overriding consideration. Findings of

1 overriding consideration basically say, notwithstanding  
2 significant impacts of a project, there are other  
3 important policy considerations at play which justify  
4 approving a project with significant impacts.

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

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

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

22 The second area of authority that would justify  
23 you denying this project today is the Porter-Cologne  
24 Act. The board's authority under the Porter-Cologne Act  
25 is completely separate and independent from CEQA. You

1 owe no deference at all to the TCA's conclusions in the  
2 CEQA documents.

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

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

14 Now --

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

17 MR. WHITE: Okay. Thank you.

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

23 And finally, very quickly, just -- others will  
24 touch on this -- the more narrow issue, the proposed  
25 order -- we appreciate that it now requires that the

1 TCA's R&P comply with the hydromodification requirements  
2 of Harsh County.

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

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

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

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

24 Thank you very much.

25 MR. MORALES: Okay. Question.

1 MR. WHITE: Sure.

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

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

7 MR. WHITE: That's right.

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

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

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

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

24 MR. MORALES: Okay. I'll look to Mr. Thornton  
25 to enlighten me.

1 MR. WHITE: Thank you.

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

5 MR. WHITE: Yes.

6 MR. ABARANEL: And maybe this could clarify the  
7 confusion -- the morass -- the CEQA morass.

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

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

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

22 But separate from that, it's true that there's  
23 a couple of places like the place that you mentioned,  
24 maybe one or two other impacts, where the TCA in the  
25 text says these impacts only occur south of Cow Camp

1 Road, and they're not.

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

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

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

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

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

23 Any other questions? Thank you, board members.

24 MS. SECACHEQUIN: Good afternoon, board  
25 members. My name is Stephanie Secachequin. I'm the

1 California policy manager for the headquarters of the  
2 Surfrider Foundation.

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

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

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

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

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

21 The HMP that was concluded in 2011 was equally  
22 forward thinking and carefully crafted by you, your  
23 staff. What you did during that process is that you  
24 required dischargers to prove how they would protect  
25 beneficial resources before, during and after the

1 project. That was a huge milestone for both of those  
2 things to go forward.

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

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

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

14 --

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

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

20 MR. MORALES: Whoa, folks.

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

25 MR. MORALES: If you're going to speak, can you

1 give him the microphone.

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

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

8 MR. MORALES: That's correct.

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

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

17 MS. SECACHEQUIN: If I could finish my --

18 MR. THORNTON: -- required testimony.

19 I've got a point of order pending here.

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

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

25 Because the tentative order has not

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

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

10                    MR. MORALES:  So noted.

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

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

17                    MR. MORALES:  And --

18                    MS. SECACHEQUIN:  It's the same thing.

19                    MR. MORALES:  And I understand that, ma'am.  
20           But with respect to the hydromodification, it is  
21           correct, I believe, to some extent that was addressed in  
22           March.  And, you know, we were fairly clear.  And, you  
23           know, when I stated --

24                    MS. SECACHEQUIN:  The tentative order for this  
25           time, sir, about the HMP and their hydromodification

1 analysis is exactly the same as it was in March. And so  
2 therefore -- another board member is agreeing with me.

3 I sorry. I just want to point that out.

4 And because it's the same --

5 MR. ABARANEL: Ma'am, shaking my head does not  
6 mean I'm agreeing with you.

7 MS. SECACHEQUIN: Well, I mean --

8 MR. ABARANEL: I just -- let me -- then I have  
9 to explain what I'm shaking my head about.

10 Those issues are going to -- we're going to  
11 take into consideration when we make our final  
12 determination. We've already heard them. We're  
13 considering them. And they are part of how I will make  
14 my decision.

15 MS. SECACHEQUIN: Fair enough. But they don't  
16 have to produce documentation until October of 2013 --

17 MR. MORALES: Okay.

18 MS. SECACHEQUIN: -- about how they comply with  
19 the HMP. That was not the case in March. That's --  
20 that's part of the new tentative order.

21 But I'll continue. We don't need to talk about  
22 them submitting after-the-fact documentation because I  
23 think that's fundamentally important for this board to  
24 realize that you can't issue a permit by accepting  
25 after-the-fact documentation. It's putting the cart

1 before the horse, is the final point with that.

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

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

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

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

15 MR. MORALES: Thank you.

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

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

24 The second prong of that analysis is to avoid  
25 significant bed material in the site design. Obviously,

1 if you approve a particular design and then require the  
2 analysis, the design is part of the permit. You can't  
3 go back and unbreak that egg.

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

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

16 Thank you very much.

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

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

23 To keep -- once again, to keep it really short,  
24 the -- you know, they're required to revise a runoff  
25 management plan. That revision is required after --

1 after this permit, after the consideration of approval.

2 That's putting the cart before the horse. We  
3 need to see the revised runoff management plan and then  
4 review it and make a decision afterwards. So you  
5 shouldn't approve the permit today just because of that.

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

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

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

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

22 MR. NAGAMI: Good afternoon, board members.  
23 Damon Nagami. I'm a senior attorney with the Natural  
24 Resources Defense Council. I'm just here to wrap up  
25 quickly.

1 Another important reason to deny the permit is  
2 that the public has been denied adequate review of the  
3 project. TCA has gone to great lengths to evade public  
4 input rather than facilitate it.

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

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

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

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

23 MR. MORALES: The questions and answers did not  
24 eat into your time. We stopped the timer, and they  
25 didn't count against you.

1 MR. AGAMI: When you said that we had gone 20  
2 minutes, we had actually gone 15. So I don't know which  
3 kind of timer you were using, but I think we were timing  
4 exactly. So I'm going to submit that for the record.

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

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

14 MR. MORALES: Please take your seats.

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

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

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

25 But for the members of the public, as I stated

1 at the beginning, the purpose of this proceeding is not  
2 just to open it up as a free-for-all. We did want to  
3 hear about very specific issues, and those generally  
4 pertain to any changes to our tentative order and decoy  
5 issues. And I believe the CEQA issues will primarily be  
6 dealt with by staff and the designated parties.

7 So with that, Mr. Thornton.

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

10 Robert Thornton on behalf of the Foothill  
11 Eastern Transportation --

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

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

20 But just to remind everyone, we are only  
21 talking about the five-mile extension of state route  
22 241. Specifically the responsibility of this agency is  
23 with regard to impacts to state waters. We're talking  
24 about permitted impacts of this project of four-tenths  
25 of an acre in impact.

1           We have mitigation proposed for this project of  
2           15 to one what your staff referred to in the last  
3           hearing as meeting a gold standard for mitigation.

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

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

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

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

22          We will -- we are responsible to fully mitigate  
23          any permanent and temporary impacts by creating,  
24          restoring, enhancing and revegetating per the HMMP. We  
25          have detailed performance standards that have been

1 established with success criteria. We're overseen by  
2 both the U.S. Fish and Wildlife Service and the  
3 California Department of Fish and Game with regard to  
4 the achievement of those performance standards.

5 And now, because of your jurisdiction, we'll be  
6 overseen by your agency with regard to accomplishment of  
7 the success criterias of the -- of the mitigation  
8 program.

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

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

22 Next slide.

23 There are two specific mitigation sites that  
24 have been identified as the mitigation areas for the  
25 WDR. One is the -- referred to as mitigation area A

1 south of Tesoro High School. There's already a funding  
2 mechanism in place for this site already approved by the  
3 U.S. Fish and Wildlife service pursuant to the Rancho  
4 Mission Viejo habitat conservation plan.

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

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

19 Next slide.

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

1 Fish and Wildlife were proposing mitigation in that  
2 area.

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

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

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

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

24 Next slide.

25 There's been discussion of Cow Camp Road. And

1 I believe some statements have been made in the press  
2 and some comments were made by the opponents about  
3 connecting to a dirt road.

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

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

16 Next slide.

17 As has already been noted --

18 MR. ABARANEL: Can I ask a question?

19 MR. THORNTON: Sure.

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

22 Can you go back one slide.

23 The lower-left looks like road second.

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

1 Orange policy of roads first.

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

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

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

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

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

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

24 MR. THORNTON: The development is coming. Now,  
25 those homes aren't open yet. But the development has

1           been initiated. And that's why it's so critical that we  
2           proceed with the segment.

3                       Next slide.

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

6                       Next slide.

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

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

16                      Next slide.

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

22                      This board should be applauded for the  
23          extent -- the extent of public involvement. It  
24          obviously had a day-long hearing before. You posted on  
25          your website the addendum three weeks before the March

1 hearing. Obviously the opponents submitted extensive  
2 comments.

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

7 Next slide.

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

12 And this is a quote from your staff report:  
13 The water board must presume the EIR prepared by the  
14 lead agency to be adequate.

15 That's the California Environment Quality Act.

16 Next slide.

17 There's no grounds to require additional  
18 environmental documentation.

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

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

25 Next slide.

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

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

11                   Next slide.

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

20                   Next slide.

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

24                   The TCA board has made no decision as to  
25 whether or how to proceed south of Cow Camp Road. We

1 will continue the dialogue with the community on that.  
2 Indeed, we spent two years in detailed direct  
3 proceedings with the Save San Onofre Coalition  
4 discussing that very issue, and we're committed to  
5 continuing that dialogue.

6 Next slide.

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

10 Go to the next slide.

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

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

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

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

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

6 MR. THORNTON: That's correct.

7 MS. KALEMKIARIAN: Okay. So --

8 MR. THORNTON: Let me modify, that's not just  
9 the TCA, I mean that's the regional transportation  
10 industry.

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

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

23 MS. KALEMKIARIAN: Okay. So would it be worth  
24 the investment you're prepared to commit on the --  
25 behalf of TCA, that if the future you were not permitted

1 to continue, for any reason, whether it was money or  
2 environmental impact or anything else, that the  
3 investment now in this one extension would be worth  
4 doing.

5 AUDIENCE MEMBER: You're under oath.

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

14 MS. KALEMKIARIAN: I understand.

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

19 AUDIENCE MEMBER: That's not the question.

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

24 MS. KALEMKIARIAN: Your answer -- I understand  
25 there's lots of moving parts and the bond market may

1 have to decide. Maybe it won't get built because you  
2 won't raise the money. But I guess the problem I have  
3 with the concept is on the one hand -- and I get this  
4 problem. On the one hand we have a segment of a larger  
5 project which is being described and is being described  
6 as a segment to the bond market, I would assume; right?  
7 You're telling them that this is the first part of a  
8 longer project we hope to eventually build?

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

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

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

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

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

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

25 MR. THORNTON: There will be very few investors

1 that would expect revenue from future facilities that  
2 are not yet permitted.

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

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

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

24 MR. THORNTON: Correct.

25 MS. KALEMKIARIAN: Assuming you get the

1 funding.

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

5 AUDIENCE MEMBER: He didn't have respect.

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

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

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

1 of California surface waters.

2 Orange County has a very aggressive water  
3 quality monitoring program. Indeed there are over 50  
4 water quality monitoring sights in San Juan Creek  
5 immediately downstream of this project. So there's  
6 extensive existing baseline data consistent with the  
7 baseline plan. I want to make a point here about the  
8 consistency of the MS4 permit. This project, because  
9 your staff has required -- your staff has required to us  
10 comply with the standards of the MS4 permit. Moreover,  
11 they have required us to comply with the standards in  
12 the Orange County water quality management plan, which  
13 no other state highway has been required to comply with.  
14 So it's fair to say that no state highway in the state  
15 has been required to comply with the water quality  
16 standards imposed by your staff or recommended by your  
17 staff in the tentative order that is before you. Now in  
18 response to board member Abarbnel's question about  
19 pollutants, what's in the pollutants, and what is the  
20 effectiveness of the treatment. I think that was the  
21 question. The pollutants of concern from highways,  
22 included heavy metals, total suspended solids, trash and  
23 total hydrocarbons, the TCA proposes to use and your  
24 tentative order would require, vegetated swales, Austin  
25 sand filters, which I don't think any other highway

1 project is using, and permeable overlay asphalt, which I  
2 think you saw a graphic of last time, to remove  
3 pollutants of concern, this, the studies indicate  
4 removes 90 percent of those pollutants. And this is  
5 before the water passes through the sand filters, which  
6 are also proven to be about 90 percent effective.

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

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

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

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

23 MR. THORNTON: Where are we on time?

24 MR. STRAWN: You have about 16 minutes left,  
25 close to 17.

1 MR. THORNTON: Thank you.

2 MR. STRAWN: 16.45.

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

18 MR. THORNTON: I would refer Mr. Chairman you  
19 use CEQA guideline section 15042, which I think speaks  
20 directly to this point. And let me just read it because  
21 it can do a better job than I can do at trying to  
22 describe it. And it describes the distinction between  
23 lead agency and responsible agency. And so it says --  
24 for example, first it says a lead agency has broader  
25 authority to disapprove a project than does a

1 responsible agency. Then it goes on to say, quote, for  
2 example, an air quality management district acting as a  
3 responsible agency would not have the authority to  
4 disapprove a project for water pollution effects that  
5 were unrelated to air quality aspects of the project  
6 regulated by the district, close quote.

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

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

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

24 MR. STRAWN: Next we have Lesa Heebner.

25 MS. HEEBNER: Good afternoon, I'm Lesa Heebner,

1 Council Member of the City of Solana Beach. First, I  
2 must state that I am stunned that we are here again  
3 talking about the Toll Road. I attended the Coastal  
4 Commission hearings back in '08. I opposed the Toll  
5 Road then and I'm here to today to oppose it again in  
6 it's repackaged mini-road format.

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

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

22 First, it is common knowledge that CEQA does  
23 not allow a project to be piecemealed, but what is  
24 before you is a short five-mile segment of a piece of a  
25 larger project, obviously as this five-mile stretch does

1 go nowhere. Were you to approve this, not only would it  
2 be to approve a project that violates CEQA, giving a  
3 project momentum to be built in its entirety without it  
4 being reviewed in its entirety --

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

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

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

20 Second, it is my understanding the San Juan  
21 Creek Watershed is already degraded. Would not approval  
22 of this five-mile stretch, which would pave the way to  
23 the entire 16-mile Toll Road project, previously  
24 rejected, violate your own policies, including HMP and  
25 MS4, written to ensure beneficial uses of waterways?

1                   Finally, how will additional erosion within the  
2 San Juan Creek Watershed impact the coast where it meets  
3 the ocean? Another area of water quality board  
4 responsibility.

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

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

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

17                   MR. ABARBNEL: Yes.

18                   MR. STRAWN: Go ahead with that?

19                   MR. ABARBNEL: Yes.

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

22                   MS. HEEBNER: She says that as an elected  
23 official who cares about natural resources, water  
24 quality and recreational opportunities in the greater  
25 San Diego region, I'm concerned that the construction of

1 this first section of road is simply an attempt to  
2 circumvent the prior rejection by the Coastal  
3 Commission, US Secretary of Commerce and CEQA, which  
4 prohibits piecemealing of projects to avoid  
5 environmental review.

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

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

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

19 MR. STRAWN: Donna, you're next. Donna Frye.  
20 And then Sam Allevato from -- the mayor from San Juan  
21 Capistrano will be next.

22 MS. FRYE: Thank you. I want to thank this  
23 board for sitting so long. I feel your pain. I'm  
24 feeling it right now. This difference is I can leave.  
25 You can't.

1 I don't want to repeat the other speakers, but  
2 I do want to bring to your attention some of the things  
3 that I'm -- I'm wondering because I -- I ask a lot of  
4 questions and I wonder things. And you have to base  
5 your decision based today on who do you believe is  
6 giving you the most reliable and the most adequate  
7 information. And so you have a number of issues to  
8 weigh in that regard.

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

19 The other question is, is they're saying it's a  
20 project, but I was looking at some of their information  
21 related to this project and they say that the board only  
22 approved the conceptual design, the conceptual design.  
23 So they're coming before you saying they want you to  
24 make final decisions on a conceptual design and they say  
25 it's not the final decision of the project; they're

1 going to take a whole lot of other actions. In other  
2 words, they are saying in their own documentation they  
3 don't even know if it's a project.

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

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

24 And specifically the one that sort of drew my  
25 attention was this particular statement. It said, "A

1 decision to increase leverage to support the Foothill  
2 South protect without commensurate financial mitigants."  
3 I take that to mean that TCA absolutely plans to go  
4 forward with this project, that they will go through  
5 this project in its entirety and that they are  
6 representing to other entities in order to get money,  
7 they are telling them that they will be building these  
8 projects.

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

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

20 MR. ALLEVATO: Good afternoon. Good afternoon,  
21 Chairman Morales and board members. I'm Sam Allevato.  
22 I'm the Mayor Pro Tem for the City of San Juan  
23 Capistrano. I'm also director of the San Juan  
24 Capistrano Water District, which is a member agency of  
25 the San Juan -- San Juan basin authority. As well as

1 the director on the board of the Foothill/Eastern TCA.  
2 My city is the one that has been disparaged, as nowhere  
3 by the California attorney general when she says the  
4 Tesoro Extension is the road to nowhere.

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

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

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

1 protect this resource.

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

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

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

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

19 My constituents use the 241 toll road  
20 frequently and as a result, it was very important to  
21 them that I made the trip to San Diego to emphasize the  
22 importance of this extension project. Today if one  
23 wishes to go to San Diego from Tustin, the only one  
24 route is the I-5 freeway. You're fortunate in San Diego  
25 that you have several east/west alternatives and

1 north/south alternatives. In north -- north San Diego  
2 County, you've got the 76, the 78 which goes east and  
3 west, you've got the 52, you've got the 8, you've got  
4 the 94 and the 54. You've also got I-15 north and the  
5 I-5. Those are very important in case of emergencies.

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

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

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

24 Next will be Lisa Bartlett and then Francine  
25 Hubbard.

1 MS. BARTLETT: Good afternoon, Chairman Morales  
2 and board members. My name is Lisa Bartlett, and I'm  
3 the Mayor Pro Tem of Dana Point and I also serve as  
4 chairwoman of the Foothill/Eastern Board of Directors  
5 and Transportation Corridor Agency.

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

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

25 With regards to mitigation, TCA is proposing a

1 mitigation ratio of 20 to one, whereas the average  
2 project of this scope is about three to one. So we're  
3 going over and before what is necessary.

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

10 Thank you very much for your time and  
11 consideration today.

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

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

1 traffic relief and mobility.

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

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

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

24 The 241 toll road was placed on the master plan  
25 of arterial highways in 1981. In the 32 years that have

1 passed, TCA Cal Trans and the County of Orange have  
2 prepared, analyzed and certified no less than three  
3 environment impact reports. The most recent certified  
4 EIR was certified in 2006. It studied 38 alternatives  
5 to extend 241 south of its current determinant at Oso  
6 Parkway, including several alignments that stopped short  
7 of connecting directly to the I-5 freeway. The fact  
8 that in 2006 the Coastal Commission rejected one of  
9 those 38 alternatives does not invalidate the other 37  
10 alternatives that were also certified in the EIR.

11 The proposed Tesoro extension is the 5.5 mile  
12 road that serves as an independent utility and will  
13 relieve traffic and provide an alternative -- alternate  
14 route from hundreds of thousands of commuters with  
15 40,000 homes and five million square feet of commercial  
16 space on construction in Mission Viejo. This is an  
17 important and essential piece of the infrastructure  
18 puzzle in south Orange County.

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

1 construction.

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

9 Thank you very much.

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

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

21 The Tesoro extension is crucial for not only  
22 traffic relief, but as an emergency route and also for  
23 good movement throughout the region. This project has  
24 undergone three EIRs over the past 30 years, all three  
25 of which were certified. Our board approved an addendum

1 to the most recent CEQA document and we look forward to  
2 your approval of the water discharge permit so we can  
3 continue down the regulatory process toward the eventual  
4 construction of the five and a half mile extension that  
5 has been decades in the making.

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

16 MR. ABARANEL: May I ask you a question?

17 MS. KRING: Sure. I went too fast?

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

21 MS. KRING: Oh, my goodness. Well, personally,  
22 I don't think -- I'll give you -- all honesty, I live in  
23 the flats of Anaheim. Anaheim is a very long city.  
24 It's 20 -- it's 50 square miles. It's 23 miles long.  
25 And we're a narrow city, so my side of the city, we go

1 down the 5. The east side of the city, they have the  
2 241. And all honesty, I do not use the toll roads  
3 because I hardly ever leave Anaheim since I'm a  
4 councilwoman there and try to do all my shopping and  
5 business there.

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

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

22 Basically, they have done all the mitigation,  
23 the standard of water quality is gold standard, they  
24 have gone to much, much more level than anybody has  
25 requested. That's the way TCA does things. They do it

1 to the best that they can and always above what they're  
2 requested to do.

3 MR. ABARANEL: Thank you.

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

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

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

22 And I'm not an engineer. I'm not a lawyer.  
23 But it seems to me this project has met every hurdle  
24 that has been asked of it in terms of water quality and  
25 what it needs to do to protect the environment. Whether

1 or not the five-mile extension makes sense as a business  
2 decision of the corridor and basically that's their  
3 call. And bond holders will decide whether they made a  
4 good investment or not, but it does seem it's a  
5 stand-alone project.

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

15 MR. ABARANEL: Can I ask you a question?

16 MR. FELIEN: Yes.

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

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

21 MR. ABARANEL: Yes, it is.

22 MR. FELIEN: Well, I certainly support the  
23 whole project and always have, but the issue of whether  
24 or not it's incremental and should be or shouldn't be.  
25 That's a lawyer's decision and I'm certainly not

1 qualified to answer that question. But whether or not  
2 it's a stand-alone, you know, business decision and it  
3 meets the legal requirements seems to me that the rest  
4 the bait is for another day.

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

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

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

25 And I just want to tell you that as Mayor of

1 Mission Viejo, I have to look at things from a very  
2 realistic perspective. I cannot -- I cannot think about  
3 what my personal preferences are. I have to look at  
4 things -- everything from a broader perspective. I got  
5 95,000 residents and so that's why I'm here today. All  
6 right.

7 Our residents are strongly supportive of the  
8 241 extension, the Tesoro extension. 71 percent. I  
9 just checked with our latest survey. 71 percent of the  
10 residents in Mission Viejo support the Tesoro extension  
11 and that's all we're going down to is Cow Camp Road.  
12 There is no other alignment, so we can't go any further  
13 than that at this point and I understand what the  
14 concerns are.

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

23 This project sets a new gold standard for water  
24 quality protection. It will have Austin sand filters.  
25 I have seen pictures of those. I don't know -- I

1 haven't seen them in -- in -- I can't touch them, and  
2 vegetative swales -- I know what a swale is -- to hold  
3 and treat the water close litter to control the rate of  
4 runoff flow and porous pavement. Now, that's an  
5 interesting concept and it's actually reality. That is  
6 designed to filter the rain water prior to runoff.  
7 These are all water quality issues. I wish all roads  
8 could be this environmentally sensitive.

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

12 MR. STRAWN: Your time is up.

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

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

23 MR. SWAIN: Good afternoon, Mr. Chairman,  
24 members of the board. My name is Mark Swain. I'm on my  
25 17th year as a member of the Yorba Linda council. I've

1 served four of those years as mayor. I'm also a --  
2 Yorba Linda's representative to the transportation  
3 corridor agency, Foothill/Eastern crew.

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

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

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

20 MR. TURNER: Good afternoon, Chairman Morales  
21 and board members. My name is Jeff Turner and I  
22 represent the associated general contractors as their  
23 2013 president. I'm also a third generation Southern  
24 California resident and out of San Diego. I'm here  
25 today to -- to advocate for Tesoro Extension Project on

1 a number of bases.

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

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

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

16 MR. MORALES: Construction because you  
17 represent them.

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

24 MR. ANDERSON: And I think the analysis that  
25 has 16,000 jobs, too many.

1 MR. MORALES: That would be the construction of  
2 the development and all of that --

3 MR. TURNER: Right.

4 MR. ANDERSON: Am I wrong on that?

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

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

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

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

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

23 MS. BAEZ: Good afternoon, Chairman Morales and  
24 board members. My name is Heather Baez and I represent  
25 Senator Mark Wyland who represents the 38th district.

1 Our district includes South Orange County, Coto de Caza,  
2 Dana Point, and Ladera Ranch, Mission Viejo, Rancho.  
3 And North San Diego County including Carlsbad and  
4 Encinitas, Escondido, San Marcos, Palm Beach and Vista.

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

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

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

25 On behalf of Senator Wyland and those of who

1 live and work in the 38th district, I urge you to  
2 approve the TCAs waste discharge requirement application  
3 and to enhance mobility through our region. Thank you.

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

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

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

22 These 14,000 homes that are on the list to be  
23 built in the eastern region of Orange County. There are  
24 families that are living in an urban interface area that  
25 need to -- that may need to get out in an event of a

1 fire. And unfortunately, those routes are very limited  
2 right now and it is critically important that this  
3 extension get through there on a public safety basis  
4 alone.

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

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

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

25 The supervisor is extremely proud of the

1 extensive transportation infrastructure improvements  
2 that have been built and planned in South Orange County  
3 under her watch, not only for the traffic congestion  
4 relief that they provide, but for the way they have  
5 addressed environmental mitigation as part of the  
6 planning and construction process.

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

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

24 On behalf of Orange County Supervisor Pat  
25 Bates, please approve this permit so the roadway

1 infrastructure project can be built. And, again, thank  
2 you for your time.

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

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

7 MR. MORALES: It's right here.

8 MS. SANCHEZ: Okay. Thank you.

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

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

25 This continues to be a self-certifying

1 development inducing project with significant  
2 unmitigable impact. There is no way that the developer  
3 can recreate the same or similar unique and precious  
4 water-based resource, including five significant native  
5 American culture and archeological sacred sites.

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

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

21 It is certainly alarming that most if not all  
22 toll roads have filed for bankruptcy protection, pushing  
23 the cost to our taxpayers. The first segment on its own  
24 has no independent use, yet it will have unequivocal  
25 environmental impact to the San Juan Creek watershed.

1 In 2005, the Army Corps of Engineers concluded that  
2 additional degradation such as this is project will  
3 cause failure of existing water and sewer lines and  
4 disappear of the watershed altogether.

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

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

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

1 241 project. Thank you.

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

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

11 MR. STRAWN: When we come back, it will be  
12 Brett Robertson, Penny Maynard.

13 (Recess.)

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

17 MS. MAYNARD: Good afternoon, Chairman Morales,  
18 also board members. My name is Penny Maynard and I  
19 represent the San Clemente Chamber of Commerce. There  
20 seems to be misinformation circulating about CEQA  
21 compliance, so that's what I'll focus my comments. The  
22 Tesoro extension is an independent stand-alone project  
23 and this segment alone will reduce traffic congestion.

24 TCA has gone above and beyond to follow  
25 alternatives in possible environment impacts and to

1 encourage public participation in every level. EIRs for  
2 the entire project were completed and evaluated 38  
3 alternatives to extend 241 toll road south of Oso  
4 Parkway, including alignment that stopped short of I-5.

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

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

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

1 road extension. Sorry about that.

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

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

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

24 "The Tesoro extension changes the prior diamond  
25 interchange at Cow Camp Road to a simpler T-intersection

1 configuration and includes shift to minimize impact to  
2 surface waters and to avoid an existing reservoir used  
3 for Rancho Mission Viejo ranch operations. The Tesoro  
4 extension avoids impacts to the Corporation of  
5 Engineers' jurisdictional wetlands and limits permanent  
6 impacts to waters of the state to four-tenths of an  
7 acre.

8 "I also want to clarify any misunderstanding  
9 related to the claim of piecemeal evaluation of the  
10 extension of the 241. The TCA did not piecemeal the  
11 analysis of the potential environment impact of the  
12 future extensions of the 241. During the CEQA process  
13 leading the certification of the 2006 final subsequent  
14 EIR, the TCA evaluated 38 alternatives for extending the  
15 241 south of Oso Parkway.

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

21 "Thus, the environmental impacts of both short  
22 and full-length extension of the 241 have been evaluated  
23 and disclosed to the public as required by CEQA. The  
24 Foothill/Eastern TCA is going above and beyond to ensure  
25 that this roadway is built to the highest environmental

1 standards while providing the needed regional mobility  
2 and traffic relief that is required for residents and  
3 businesses throughout Southern California.

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

10 "Sincerely, Anthony Beall."

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

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

21 MR. MORALES: Much appreciated.

22 MR. BODENHAMER: Absolutely. My name is Mark  
23 Bodenhamer. I'm here representing the San Juan  
24 Capistrano Chamber of Commerce where I served as CEO. I  
25 want to point out that earlier a speaker asked you to

1     decide which side is being more forthright today. I  
2     would ask you to do opposite, actually. I don't think  
3     that that's something that you guys can fairly  
4     determine.

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

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

23            Some proponents have great concerns about  
24    whether TCA followed CEQA guidelines and allowed  
25    sufficient opportunity for public review. I can tell

1 you in my role, I've been involved in many public  
2 meetings and hearings that were conducted to inform and  
3 engage the surrounding communities. There have been  
4 plenty of opportunities for the public to learn about  
5 this project, ask questions and raise those concerns.  
6 Now is the time for action.

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

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

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

20 So I am also speaking on behalf of the South  
21 Orange County Economic Coalition this afternoon. And  
22 the Coalition was formed to study and support when  
23 appropriate infrastructure projects that will enhance  
24 economic growth and the quality of life in the region.  
25 So we look at both things. Our board of directors which

1 is made up of many of the top business leaders in  
2 Southern California encourages your support for the TCA  
3 waste discharge requirement permit application.

4 While the benefits of the Tesoro extension are  
5 extensive, I would like to focus my comments  
6 specifically on the CEQA compliance portion of it. The  
7 opposition claims that since the 5.5 mile extension is  
8 shorter than the extension approved by the TCA in 2006,  
9 that the TCA required to prepare a supplement to the  
10 2006 final subsequent EIR. We heard that quite a bit  
11 today. This is completely false. Since the Tesoro  
12 extension is a modification of the project described in  
13 the 2006 final subsequent EIR, CEQA prohibits the  
14 agencies from preparing a subsequent or a supplemental  
15 to a previously-certified EIR unless changes to the  
16 project or changed circumstances will result in  
17 significant new environmental effects.

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

25 Two of the many recent examples include the

1 California High Speed Rail Project and the Exposition  
2 Quarter Light Rail Project in Los Angeles. On behalf of  
3 the South Orange County Economic Coalition as well as  
4 people that I would ask at this point to please rise and  
5 -- that are in support of this, the staff's  
6 recommendation.

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

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

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

22 We are here to voice our strong opposition to  
23 the project before you today. Please refer to our  
24 written comments submitted Friday, July -- June 7th,  
25 2013 for more detailed information on our position. In

1 summary, you see UCPP urges the board to deny this  
2 project on the following grounds:

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

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

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

23 State and federal policies and procedures  
24 regarding Native American sacred places and cultural  
25 resources have substantially changed since the 2006

1 Environmental Impact Report that the TCA relies on for  
2 this project. The addendum does not address these  
3 changes. TCA as a lead agency must comply with the  
4 these changes in policy and procedure before moving  
5 forward.

6 Panhe, which is located in State parks, is  
7 9,000-year-old Acjachemen Village, sacred place and  
8 burial grounds. It is one of the few remaining  
9 Acjachemen sacred sites where our community can gather  
10 and for ceremonial and culture practices. The proposed  
11 toll road would destroy our sacred site. The project  
12 must be denied. Every one of the cities supporting this  
13 project have talked about the end result, the end result  
14 being that it links up to the 5 south of this project.  
15 That's what they're talking about. We're talking about  
16 our indigent impact in this area. We ask you to deny  
17 it. Thank you.

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

21 MR. ACUNA: There are archaeological sites.  
22 There are along -- in that area where it was referenced,  
23 and I'm going to refer to you, board member Henry, where  
24 we're talking about in A-1, where they were talking  
25 about the wheel -- the creek along that area and they're

1 located along that creek. And all those areas where  
2 there was creek, or there was a river that ran through  
3 the ocean, there were sites of Acjachemen. Acjachemen  
4 would go from -- from Camp Pendleton, continue north to  
5 Newport Beach, inland to Santiago Canyon. These were  
6 all cultural resource areas for us.

7 MR. MORALES: Are the sites listed on --

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

9 MR. MORALES: -- in the registry?

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

12 MR. ACUNA: Panhe.

13 MR. MORALES: Panhe. Sorry.

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

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

24 MR. ACUNA: You ready? A-C-J-A-C-H-E-M-E-N.

25 MR. MORALES: Thank you.

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

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

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

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

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

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

24 MS. HEMSEY: We do.

25 MR. STRAWN: Thank you for being brief. Drew

1       Murphy. He was designated some additional time from a  
2       Howard Pippin, who I guess has left now.

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

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

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

20              To use testimony is always a little different  
21      than the Coalition. We support the Coalition as we have  
22      since 2009. We speak, as you know, for the fish. And  
23      one of the rarest forms of life and the only trout  
24      native to Southern California streams, and through our  
25      projects and the chapter we spent over \$2 million of

1 public money. This is on Trabuco Creek primarily, to  
2 reconnect the lower sections to the upper sections.

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

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

16 And that's where we're looking at the watershed  
17 from San Juan, top to bottom. Not just a segment. You  
18 have to look at it from top to bottom. All the way from  
19 head waters in the mountains. It's 20 miles long to the  
20 ocean out at Doheny. You can say the same thing for San  
21 Mateo because if it goes to San Mateo, we talked about  
22 San Mateo in 2005 and we're talking about San Juan in  
23 2009. All these little trips up high, they're  
24 important.

25 They're important for water quality, they're

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

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

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

25 MR. STRAWN: Next up would be Jim Moriarty from

1 Surfrider. There's 24 cards from Surfrider, so if you  
2 guys can figure out a way to maybe --

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

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

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

25 And so that's what is so strange about this.

1 We're here again and again talking about state parks.  
2 That seems strange. It should make us all pause. Why  
3 are we here talking about letting a private sea-based  
4 road through a state park? Wouldn't we allow the same  
5 thing in Yosemite? Would we put a toll bridge from one  
6 rim to the other in the Grand Canyon? Of course we  
7 wouldn't.

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

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

25 MR. STRAWN: Your time is up. If you have

1 somebody to donate, thank you. We will need a name on  
2 those.

3 MR. MORIARTY: Roderick Michener, Craig  
4 Cadwallader --

5 MR. SKELTON: Don Skelton, he can have my time,  
6 too.

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

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

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

21 MALE SPEAKER: No, I gave him time.

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

23 MR. WALTI: Alan Walti, and I've been a surfer  
24 for 55 years. First surfed San Onofre in 1958, probably  
25 before most of you guys were born. Anyhow, regardless

1 of that, you have all seen a lot of things happen over  
2 time, a lot of things like Killer Dana. We now have  
3 Dana Point Harbor. We got Limine, a prime surf spot  
4 there. We got Limine, a family diner up by Ventura  
5 about putting a freeway over that.

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

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

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

23 MS. BRENNER: My name is Kristen Brenner and I  
24 live in Solana Beach. I'm here to voice my opposition  
25 to the Tesoro Extension Project. Extension -- the PCS

1 plan to construct a toll road through the Trestles that  
2 we're speaking of. The plan is to construct the same  
3 toll road that was rejected in 2008.

4 THE REPORTER: Hold on. Start over.

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

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

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

21 For centuries, people have been moving to  
22 California for the treasure of our lands and coastal  
23 resources, and I see a lot of people out here today with  
24 T-shirts that say "Good roads equal good jobs, equal  
25 good economies." But what I'm wondering -- I'm

1 wondering is how many quote, unquote good roads and good  
2 jobs is it going to take before we pave over all of the  
3 resources that have been the lifeblood of myriad  
4 California economies from tourism to agriculture.

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

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

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

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

24 If we are interested in approving projects that  
25 mitigate damage and protect our areas' water and water

1 quality, I think we should be looking ahead to projects  
2 that not only mitigate impact, but that also consider  
3 how we're going to eliminate and reduce carbon emissions  
4 which we know will ultimately impact our water quality.

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

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

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

23 MADDY: My name is actually Maddy. Patti had  
24 to get on a bus but she left a statement for you. I'd  
25 like to read it on her behalf and then leave it with

1 your court reporter if that's okay.

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

4 MADDY: Oh, okay. So this is -- this is from  
5 Patti Meade. "To the residents of San Clemente. My  
6 name is Patti Meade. All this talk of propane tanker,  
7 it would not have helped because it was where the 5 and  
8 241 would have already been combined. The reason Orange  
9 County is for the toll road, which most residents  
10 according to Patti are not for this toll road; it's  
11 mainly the TCA -- is because the council people that  
12 come before you are also on the board of the TCA and  
13 have a conflict of interest.

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

23 "Trestles is not just a surfing place. It's an  
24 escape from urban congestion. There are not" -- sorry  
25 -- "there are wild oaks and deer and marshes and

1 wildlife. It is world famous and when I travel to  
2 Australia, when asked where I'm from, I say Trestles,  
3 and they all knew where that was. It's one of the few  
4 surf spots with clean water left. I raised my kids to  
5 respect nature and they have jobs as an environmental  
6 scientist and a geologist.

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

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

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

22 And I also work in the solar industry, and so  
23 when I look around and see good jobs and good economy,  
24 solar is one of the fastest-growing industries in the  
25 nation. And it's one of the fastest-growing industries

1 here in California. This is the leading nation for  
2 solar technology, so if we want good jobs, let's create  
3 good opportunities for these jobs in training them  
4 collectively.

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

13 MR. ANDERSON: Was the surf good?

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

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

21 FEMALE SPEAKER: Mark had to leave.

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

25 Ladies and gentlemen, gentlemen of the public,

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

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

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

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

1 items of threat, waves around the world.

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

11 Our recent Surfrider surfenomics study found  
12 that Trestles direct economic impact on the City of San  
13 Clemente is anywhere from 8 to \$13 million a year.  
14 That's direct economic impact from surfing. The  
15 economic value of surfing at Trestles is estimated at  
16 \$26 million a year. These are huge numbers that surfing  
17 brings to San Clemente.

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

25 The spot's been listed by surfing A list. Guys

1 like Robert August, Dewey Webber, Phil Edwards, Mike  
2 Doyle and Mickey Doral have all talked about it. This  
3 place is special. Please, please don't go down the  
4 slippery slope that this project is. Deny the permit.  
5 Keep Trestles safe. Thank you.

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

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

20 So our legislature enacted CEQA, which requires  
21 public agencies to collect and consider all relevant  
22 information giving prime consideration to preventing  
23 environmental damage before undertaking a project that  
24 may significantly affect our environment. An agency  
25 subverts the purposes of CEQA if it omits for

1 consideration material necessary to inform  
2 decision-making and inform public participation.

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

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

19 This decision was made long before a word was  
20 written. This revised tentative order relies entirely  
21 on exactly the kind of post hoc rationalization that  
22 CEQA prohibits, so I ask you as key members of this  
23 board, does this FS EIR and the addendum really provide  
24 you with all the material you need to make this  
25 important decision.

1 I will leave you with this question which lies  
2 at the heart of CEQA and advice my parents gave me: You  
3 will never regret giving big decisions a bit more  
4 thought, but you will always regret not thinking them  
5 through enough. This is a big decision.

6 MR. STRAWN: Mark Renschler.

7 FEMALE SPEAKER: He left.

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

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

14 Question before you this afternoon is whether  
15 to issue a discharge permit for the very first segment  
16 of this road. The very language that they're using  
17 implies that it's part of a bigger project. Unless  
18 they're willing to sign off on some legally binding  
19 document suggesting that they will no longer extend the  
20 road or go further than this initial project, I don't  
21 think you even have a choice in front of you today  
22 because a full project, there was an alignment in 2008  
23 that was rejected. They have had other previous  
24 alignments that they've thought of in the time since  
25 then.

1           Now they have a first segment. Obviously, the  
2 intention is to make a new alignment. And without  
3 analyzing the cumulative impact from the entire project,  
4 it's impossible to move forward from this point. The  
5 example they used with the rail project throughout  
6 California, yes, that project is analyzed and will be  
7 built in segments, but not without acknowledging all of  
8 the impacts to the entire project which is what we  
9 believe is legally necessary for this project today.

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

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

25           MR. STRAWN: Do we have Travis?

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

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

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

22 MR. LINDSAY: My name is Michael Lindsay. I  
23 live in Laguna Beach and the issues that I wanted to  
24 raise have been talked about a number of times here, so  
25 I will keep this brief.

1           I am deeply concerned about the CEQA compliance  
2 aspects of this. It would appear to me based on the  
3 testimony that I've heard today, the conversations that  
4 what we're looking at really is a 16-mile project, the  
5 entire project. And that it should be addressed in that  
6 way to take this as a segment and look at the water  
7 quality of just one piece of it. When we know that the  
8 rest of it is coming, that seems to me to be not in  
9 compliance with CEQA, and that I ask that you deny  
10 this -- this application until these issues are  
11 addressed. Thank you.

12           MR. STRAWN: Ginger.

13           THE AUDIENCE: Tom and Ginger both left.

14           MR. STRAWN: Okay. Jack Eidt.

15           MR. EIDT: Yes.

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

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

25           Real quick, I just -- because it's been said

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

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

19 I would say this segment could be achieved by  
20 building a simple arterial heading south from the  
21 existing toll road if that's all they want to build.  
22 And -- and so the question remains, is this really an  
23 alternative for the I-5? The circuitous route heading  
24 north and then south to come back to the employment  
25 centers in Orange County are in Irvine, Santa Ana, these

1 areas, not Yorba Linda.

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

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

23           We need sustainable alternatives, and we only  
24 have so much pollution to put out there. Carbon  
25 pollution, we got a major climate problem. The Global

1 Warming Solutions Act as well. We need to be smarter  
2 about everything that we do, so I -- and I know that you  
3 guys aren't -- aren't the -- the -- you're here standing  
4 in line for -- for this issue which isn't water, but  
5 unfortunately, you have been placed in this position.

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

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

12 MR. STRAWN: Amy Jackson and Carrie  
13 Stromboughtnie.

14 MR. MORALES: I want to reiterate. If any of  
15 you can lump your time together and choose one speaker,  
16 please do so because we still got approximately 35  
17 speaker cards and folks, I think your positions for the  
18 most part have been registered. We want you to talk to  
19 the extent possible about modifications to the order of  
20 CEQA. Because at some point, there may be diminishing  
21 returns here because we still are going to have to do a  
22 fair amount of deliberation. Staff is going to have  
23 more time. I know counsel for the NGO's wanted to get  
24 in, you know, two, maybe three minutes prior to  
25 6.o'clock because they have to catch a flight. That's

1 not happening, given the number of pink cards we have  
2 got before us. So seriously, talk among yourselves,  
3 please sir.

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

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

21 These projects have a very serious potential to  
22 impact our oceans, waves and beaches and I don't know  
23 how you can do a permit without all the information. I  
24 heard several comments today about information coming  
25 later on. How can you do a permit unless you have a

1 final plan with all the documentation. The  
2 hydromodification plan is the same as March, but you  
3 don't have the documentation.

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

7 MR. STRAWN: Okay. Patricia Marks.

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

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

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

1 I'm president of the California Cultural Resources  
2 Preservation Alliance.

3 And you have heard that there are five sites,  
4 archaeological sites within the area of potential effect  
5 of this five-mile segment of the project and that these  
6 sites are important to the Native American community.  
7 Some of the sites -- all of the sites are recorded at  
8 the information center at Cal State Fullerton.

9 Locations of the sites are confidential and so you won't  
10 see a lot of maps showing where the sites are located.

11 On a need-to-know basis for development, they  
12 can be -- the location can be noted. The reason you're  
13 not hearing a lot about these sites is because probably  
14 the TCA is going to say that they don't meet State or  
15 federal requirements for significance. And if they do,  
16 we can mitigate them by scientific excavation to  
17 retrieve a sample, an archaeological sample of data.  
18 Usually it's like one percent of the entire site and  
19 then it's blown away.

20 This does not meet any mitigation for any  
21 Native American religious and culture sites. This is a  
22 traditional cultural property area with traditional  
23 landscape, and it's very important to this community.  
24 And even more important is the sacred sites that's  
25 located in San Mateo campground near San Onofre State

1 Beach, and this site has -- it's 9,000 years old, has  
2 burials. And the plan was for the toll road to go over  
3 this site, put pillars in and put it over.

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

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

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

23 MR. KUBE: I'm going to keep this real brief.  
24 My name is Roger Kube. I'm chair of the Surfrider  
25 Foundation, San Diego County chapter. On behalf of

1 approximately 2500 San Diego County members and about  
2 13,000 documented San Diego County supporters of our  
3 organization, I just want to let you guys know we're  
4 opposed to this project.

5 Surfrider's mission is the protection and  
6 enjoyment of our oceans, waves and beaches through a  
7 powerful activous network. And in alignment with our  
8 mission, the significant concerns about the impact this  
9 project will have on water quality and the San Juan  
10 Creek and the surrounding watershed.

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

19 MR. STRAWN: Joseph Feters. Shannon Quirk,  
20 and then a Scott Thomas.

21 MS. QUIRK: Hi. My name is Shannon Quirk.  
22 Thank you for taking the time to listen to everyone  
23 speak. On behalf of the Surf Channel's Television  
24 Network and all of our viewers, since I'm the editor in  
25 chief, I've had to read many letters and comments and

1 see the traffic that has been just outstanding because  
2 of this Tesoro extension.

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

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

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

18 Good afternoon, Chairman Morales and honorable  
19 board members. My name is Rick Sandzimier. I'm a  
20 resident of the City of Mission Viejo for the past 20  
21 years, a resident of Orange County for the past 32  
22 years. Incidentally, the 32 years is the same year I  
23 moved to Orange County from San Diego County is when  
24 this road was put on the plans. So it's been in the  
25 works for a long time.

1 I'm a professional planner with more than 28  
2 years of experience in the community development  
3 transportation planning -- strategic planning and I've  
4 served as the planning transportation commissioner and I  
5 know what it's like to hear testimony like you're  
6 hearing today. I currently serve as a board member  
7 involved in workforce investment, creation of jobs,  
8 economic development and public safety non-profit.

9 I come here tonight before you because we're  
10 already at night now, with all due respect, to ask you  
11 to approve the project that is before you. And this is  
12 where I'm changing gears. I had some prepared  
13 testimony, but I just want to put in context some of the  
14 things that I know as you as an urban planner for 28  
15 years. And I want to focus on the independent utility  
16 of the facility and the request before you today is the  
17 5.5 mile segment.

18 It has standing as a former resident of  
19 San Diego County and a resident of Orange County, I've  
20 got family that lives in Temecula. I travel out to  
21 Riverside County and San Diego County for business. I  
22 know that this road has independent utility because it  
23 proves access to the 74. I have been involved in major  
24 investment studies in Orange County. Looking at the  
25 board between Riverside County, San Diego County and

1 L.A. County and I can tell you that there's a challenge  
2 on all fronts. It's no different than what you  
3 experienced down in San Diego where the 78 and the 15  
4 intersect, and the improvements that were so recently  
5 done on the 15.

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

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

21 In 1993, I worked for a community that had the  
22 experience the Laguna Beach fires. I'll try to wrap up  
23 real quick. This is an important one. But for public  
24 safety standpoint, the independent utility of this  
25 facility in Laguna Beach and Irvine, when they were on

1 fire, there was limited access to the Canyon Road and  
2 some small roads, and it was a nightmare to try to  
3 evacuate people.

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

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

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

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

23 We have had so many bad situations with traffic  
24 polluting our oceans, people getting sick, I myself have  
25 had a fungus from being out in the ocean and I think a

1 lot has to do with the runoff. And the other thing that  
2 I think needs to be done on this particular issue is  
3 that because it has been changed to a five-mile portion  
4 of the road, that I really think the original CEQA  
5 document needs to be supplemented and resubmitted and  
6 therefore I would ask that you deny this application.  
7 Thank you.

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

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

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

23 My hope today is this board demonstrates  
24 leadership similar to that which denied the quail brush  
25 plant for being an unnecessary taxpayer burden. Will

1 you protect the comments? Will you preserve a natural  
2 wonder, or will you take a page from the Duke Cunningham  
3 School of Civic Duty.

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

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

19 My understanding from Patti earlier today,  
20 though, I spoke about TCA is already renigged on a -- on  
21 a highway in Laguna. So they have a history of market  
22 failure. Furthermore, according to the L.A. Times  
23 article, ridership on California toll roads and highway  
24 expansion have never reached predictions, so we build  
25 them and no one comes. Thank you.

1 MR. JACOBSON: Good evening, Mr. Chairman and  
2 honorable members of the board. My name is Dan  
3 Jacobson. I'm from Tustin in central Orange County.  
4 I'm a retired member of the Board of Directors of the  
5 Richard and Donald O'Neil Land Conservancy and I was a  
6 close friend of Richard O'Neil, the patriarch of Rancho  
7 Mission Viejo.

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

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

23 And I leave with a quote from Richard O'Neil in  
24 a letter he wrote to the Coastal Commission on January  
25 31st, 2008. He said, "I built self-sustaining

1 communities that have greatly enhanced the future.  
2 Building for the future is the right thing to do.  
3 Building to destroy the future is the wrong thing to  
4 do." Building the 241 extension is the wrong thing to  
5 do. Thank you.

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

8 FEMALE SPEAKER: He went.

9 MR. STRAWN: Chad Nelson.

10 FEMALE SPEAKER: He had to leave.

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

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

24 So I'm wondering if this thing goes through all  
25 a way, do we look a little bit forward and think about

1 the development that comes as a result of because a lot  
2 of the permitting for that development, it can't happen  
3 if the infrastructure's not there. Yes, There are some  
4 in the works, but they stop there. Once this things  
5 goes all the way through and we all know that this is a  
6 pig with lipstick. It is going to go through eventually  
7 if passed.

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

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

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

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

25 MR. WILLIAMS: Thank you. Thank everybody for

1 the recitations. I know it's a long, long session here.  
2 I'm Steve Williams. I'm a conservation biologist and  
3 also an executive committee member of Surfrider West  
4 L.A. Malibu. Came down with a bunch of folks.

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

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

20 In my 15 years of monitoring water quality and  
21 sensitive species in coastal Southern California  
22 streams, my experience is this: Where you have roads  
23 along the creek corridor, you have trash, water quality  
24 degradation can introduce invasive species. For  
25 example, where I work in the Santa Monica Mountains,

1 Louisiana crayfish have been introduced along Malibu and  
2 Topanga Creek Highways in the creek there and are  
3 devastating the populations of native amphibians as  
4 their eggs are a delicacy for crayfish. That's one  
5 example of many.

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

11 MR. STRAWN: Your time.

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

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

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

25 And second of all, I actually attend all of the

1 TCA meetings and most of their financial committee  
2 meetings, and their failed experiment. They were  
3 supposed to monetize roads by incurring debt and then  
4 pay off the debt with the tolls from the road by 2040.  
5 No scenario that they can currently articulate allows  
6 them to do that.

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

13 MR. STRAWN: No, that's all they wrote down.  
14 Ryan Wiggins. Then a Mark Babski and an Israel Adina.

15 MR. WIGGINS: Good evening. I'm Ryan Wiggins.  
16 I'm the climate change director for an organization  
17 called Transforming California. I'd just like to say  
18 that this project is really a 20th Century band-aid for  
19 a problem that really requires a 21st Century solution.

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

1 to combat climate change.

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

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

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

25 And we can go ahead and decide whether to go

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

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

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

9 MR. STRAWN: Your name, sir?

10 MR. HARRISON: Scott Harrison.

11 MR. STRAWN: You took the oath?

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

18 But three points that I would like to cover.  
19 They have been covered today already. One of the major  
20 arguments for the road is the jobs. The jobs will be  
21 temporary. The roads will be permanent and the damage  
22 to the environment will be permanent, so when the jobs  
23 are long gone, the road will still be here and causing  
24 the problems that we're here to try to figure out if the  
25 road will actually cause these problems.

1                   Number two, what brings us sort of unsavory  
2                   pall over the proceedings today are the fact -- and you  
3                   have seen it here in San Diego -- is toll roads. That  
4                   the toll roads eventually, they're bankrupt. Esther  
5                   talked about this a little bit. All the monies being  
6                   made up front; therefore, I can see the enthusiasm by a  
7                   group like TCA, well, let's build a toll road; big money  
8                   grab.

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

14                 Marty talked about an elephant. I'm more the  
15                 800-pound gorilla that's here to talk about the clean  
16                 water. You have all heard the saying, all stuff flows  
17                 downhill and mitigation, filtration, CEQA, NEPA, swales,  
18                 whales, all that stuff, when you come to a significant  
19                 reign event, the stuff is going to continue to flow  
20                 downhill anyway. And just about everything that we  
21                 value here today, we're talking about is downhill from  
22                 this road.

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

25                 MR. STRAWN: There are about five more here.

1 This one, I just can't make -- actually, I'll go down  
2 the person that signed the oath is Eleanor Robbins.  
3 There might be a Norris Robbins or something. No? And  
4 just calling everybody once. If I called your name and  
5 -- Valerie Johnson, followed by a something Richmond.

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

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

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

25 I also want to say that it makes me feel a bit

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

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

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

25 There's no taxpayer dollars being used. Number

1 two, just going through a state park. It's not going  
2 through a state park. Number three, it's going to be 16  
3 and a half miles long. It's not. It's 5.5 miles long.  
4 What you got in front of you, the CEQA which your staff  
5 reviewed, which you -- you're supposed to vote on only  
6 the CEQA.

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

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

20           MR. STRAWN: T.M. Johnson.

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

25           I've sat in the back from the beginning since

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

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

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

24 If it's about the environment, we waste more  
25 gas sitting still than we do traveling. That's going to

1 help everyone in the long run. I's tell you what. I  
2 wouldn't want to go five miles to the grocery store over  
3 a dirt road to get there and get back on bicycle. Just  
4 telling you, man.

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

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

10 MR. STRAWN: Your name?

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

19 And one document that this board may or may not  
20 be familiar with that does apply, is the United Nations  
21 declaration under the rights of indigenous people and  
22 was passed by the nation's general assembly on September  
23 13th, 2007. And I want to refer to two articles.  
24 Article 8, Section 1 specifically states that  
25 "Indigenous people, individuals have the right not to be

1 subject subjected to forced assimilation or the  
2 destruction of their culture."

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

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

20 MR. MORALES: Okay. That's it for the public  
21 comments. I think we have been going for a while and  
22 our court reporter probably needs to rest her fingers.  
23 Yeah, I know that NGO's might.

24 Okay. I'm going to give you guys two or three  
25 minutes max. I'm going to add it to your time if you

1 wish to add that because we do believe that you used  
2 your 30 minutes.

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

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

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

25 So this one, we think is a no-brainer. You

1 should just -- you should deny this application, require  
2 they do the analysis before taking any further action.  
3 To get back to the larger issue, the issue of what is  
4 the project and whether the project has independent  
5 utility.

6 I think the biggest misconception that we have  
7 so far tonight is that this 5.5 segment of toll road is  
8 needed to serve the Rancho Mission Viejo development.  
9 The Rancho Mission Viejo development was approved by  
10 Orange County. It has its own transportation plan. The  
11 county itself determined that the toll road was not  
12 necessary, was not a necessary part of the  
13 transportation plan for that project. The  
14 transportation will be adequately served for those  
15 14,000 units if and when they're ever built by that  
16 transportation plan as part of the project.

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

23 It is a complete fallacy that the toll road is  
24 needed at all to serve Rancho Mission Viejo. That is a  
25 critical point that you have to understand. So back to

1 what are your options or what are your obligations at  
2 this point. I think I've already mentioned that you're  
3 required by CEQA to make findings before you approve the  
4 project with respect to the significant impact. This is  
5 something that you're not -- there is no definite of the  
6 TCA on these findings. They have to be independent  
7 findings.

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

17 If TCA wanted this to be a separate project,  
18 they could've taken advantage -- if they wanted to use  
19 the 2006 EIR, they could have taken advantage of that  
20 process and done that. They chose not to. Instead they  
21 chose to call this a segment or a -- a phase or whatever  
22 you want, of the original project. They relied on the  
23 2006 EIR, and that's all you have before you to make  
24 your findings. That EIR has over a dozen water quality  
25 related significant impacts.

1           You found in 2008 that the mitigation provided  
2           for those impacts was not enough to mitigate those  
3           significant impacts. You should do the same thing  
4           today. It's not a difficult decision. They want to  
5           make this a separate project, let them go through that  
6           process. They haven't done it yet. They've only given  
7           you one option and that is to make mitigation findings  
8           for the project as a whole. We urge that you do what  
9           you did in 2008 and reject the project. Thank you very  
10          much.

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

14           (Recess)

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

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

1 important to focus.

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

13 That's why as the chairman appropriately noted  
14 this morning, there are restrictions on ex-parte  
15 communications because you're sitting as a  
16 quasi-adjudicatory body. So your obligation is to  
17 decide this matter on the basis of not emotion, not  
18 policies about growth in California, not whether some of  
19 us would prefer to have a population of less than 38  
20 million people, but rather to fairly apply the laws of  
21 the State of California as they apply to water quality  
22 and the regulations of the State of California as they  
23 apply to water quality and has been articulated in your  
24 basic plan and the water committee quality facts of this  
25 matter.

1           And the facts of this matter are as your staff  
2 has articulated that you have a project before you that  
3 involves the impact to four-tenths of an acre in stated  
4 waters that has 15 to one mitigation ratio, an unheard  
5 of mitigation ratio, but your staff has drafted a  
6 tentative weight discharge order that requires this  
7 agency, this public agency by the way, public agency  
8 that represents two million people live in Orange  
9 County.

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

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

1 waters of the State.

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

10 And a judge -- Superior Court judge and perhaps  
11 a court of appeals will decide that issue, but that's an  
12 issue to be decided in that venue, not in this venue.  
13 Your council has advised you that there are no -- there  
14 is no basis to require additional environmental  
15 documentation.

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

1 recommendations to approve this WDR.

2 Finally, I just want to respond briefly to  
3 suggestions that determination by the opponents that the  
4 denial without prejudice in 2008 somehow constituted  
5 some kind of binding determination. Again, let's focus  
6 on the law. The State water board's regulations Section  
7 3831H provides denial without prejudice, means inability  
8 to grant certification for procedural rather than  
9 substantive reasons.

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

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

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

23 MR. BRADFORD: Thank you. In closing, I would  
24 like to clarify a few pieces of information brought up  
25 today. Approving projects based on a refined conceptual

1 design plan at the time the WDR are issued is common  
2 practice by the water board. Therefore, approving the  
3 WDR for this project during this stage is appropriate.

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

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

20 Moreover, TCA must provide financial assurances  
21 for the mitigation sites acceptable to the San Diego  
22 Water Board. The financial assurances instrument  
23 shall -- shall allow the San Diego Water Board to  
24 immediately draw on the financial assurance if the  
25 San Diego Water Board determines in its sole discretion

1 that TCA has failed to meet the mitigation obligations.

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

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

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

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

22 MR. MORALES: I think that concludes all of the  
23 testimony that we are going to be receiving on this  
24 matter, so at this point we go into our deliberations;  
25 correct.

1 MS. HAGAN: So Chair Morales, so formally  
2 closing the public hearing?

3 MR. MORALES: Yes. At this point, we are  
4 formally closing the public hearing. Thank you all.

5 So we have heard staff's recommendation and  
6 think -- oh, boy, the board -- where are we, folks?

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

14 I guess what's most persuasive to me, being --  
15 not having been here in '08 when this was last reviewed,  
16 was reading through the attorney general's complaint or  
17 writ, actually, because I do not believe that the  
18 project is Tesoro, and I think that the project has been  
19 presented is the entire highway. And the reason I think  
20 that is that there have been no alternatives at all  
21 brought forth by the TCA to tell us well, this is the  
22 first segment that's needed because we've got these  
23 homes here. It's not going to have an environmental  
24 impact. The water quality standards will be met, but  
25 the rest of it, what's happening there?

1           There's been no explanation. And from what I  
2 can gather from all the evidence that was presented to  
3 us, that was a very big issue in 2008, and it's still an  
4 issue. And there's not alternatives being presented. I  
5 think the staff has done a wonderful job. I don't -- I  
6 don't question the staff's conclusion that this segment  
7 meets water quality standards. That's not why I'm going  
8 to vote against the staff's recommendation. It's  
9 because I think that is not the project. In honesty, it  
10 is not the project.

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

22           So I can't approve the staff's recommendation.  
23 Now, I'm persuadable otherwise, but I just don't believe  
24 that we have been given the project. So as the attorney  
25 general says in her first cause of action, it's not been

1 explained, the environmental impacts or the evaluated  
2 for the entire project and the water quality standards  
3 by definition as well.

4 MR. MORALES: Anybody else or should we vote?

5 MS. KALEMKIARIAN: Am I standing alone perhaps?

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

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

23 MR. ANDERSON: Well, I'm not afraid of slippery  
24 slopes. This is a 5.5 mile section serving a fairly  
25 large planned community, and I will support the --

1 second your -- is that a motion?

2 MR. MORALES: Not yet.

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

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

22 I feel as though somebody came before this  
23 board and the Coastal Commission and the Department of  
24 Commerce basically the people of California and the  
25 United States some years ago and said we want to build a

1 bridge and that was rejected. And somebody is coming  
2 back now and saying let's build a quarter of the bridge.  
3 It's not going to impact traffic. Right. Not going to  
4 cost as much. It's not going impact this or that now,  
5 but the whole project is clearly identified as impacting  
6 water quality and many other things.

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

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

19 MR. MORALES: Wow. I'm really torn on this one  
20 because while I got to say it's a -- a story. Having  
21 traveled on the 241 often, but the -- the time I recall  
22 actually traveling on the 241 was during one of the big  
23 fires that we had when my wife and I were at a  
24 conference in the desert and our two young children were  
25 with a good family friend at our home here in San Diego

1 and fires raged all over the county. And the only way  
2 that we were able to get home to our kids with all the  
3 roads shut down was by taking a portion of 241.

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

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

23 I don't know. As I see it, the project as  
24 envisioned may end up there; may not. I don't know. I  
25 do think it's more than five and a half miles, though.

1 I was torn with a lot of the questions about CEQA and  
2 TCA, you know. They went -- they provided us with an  
3 NOD, which -- which I think is very, very helpful.

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

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

14 MR. MORALES: I am.

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

1 South extension.

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

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

20 And it's not that I like it. I'm not a big fan  
21 of big highways. I'm not sure that I wouldn't prefer to  
22 see there be less growth, but, you know, the gentleman  
23 from the union who spoke last was very eloquent. We  
24 can't just stop growth in the state, and that's what I'm  
25 not about. But I do think you have to be genuine and

1 accurate and I do not believe the project description is  
2 accurate the way it's being presented and that's my  
3 problem. So...

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

6 MR. ABARANEL: I move we do not approve  
7 tentative order R92013 triple 07.

8 MS. KALEMKIARIAN: Second.

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

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

19 MR. ABARBNEL: May I respond. That's always  
20 possible, but I think the reasons with one exception  
21 that I have, I tried to articulate. I hope they're on  
22 the record. If it's the opinion of counsel and the  
23 senior staff, that would be very important to do, I  
24 would be happy to go along with it. But if it's not so  
25 important, I just as soon proceed now.

1 I do have another item that's important to me  
2 and maybe that would be -- which I haven't articulated  
3 yet. It's not important as the one that I did  
4 articulate, so I would like to know just how big a deal  
5 this is.

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

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

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

18 IN UNISON: Aye.

19 MR. MORALES: Those opposed?

20 MR. ANDERSON and MR. STRAWN: No.

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

23 (Whereupon the hearing was concluded at  
24 7:15 p.m.)

25 \* \* \*

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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

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 19, 2013

ITEM: 9

SUBJECT: Public Hearing (Continued): Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*).

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

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

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

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

findings as appropriate for inclusion in the Tentative Order.

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

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

The testimony of participants at the March 13, 2013 Board meeting also included concerns with the Tesoro Extension Project meeting the coarse (bed material) sediment supply preservation requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). The testimony focused on how the construction of the Tesoro Extension would affect the supply of bed material sediment

to Chiquita Creek, Gobernadora Creek, and San Juan Creek. F/ETCA testified that the findings and conclusions of the *Baseline Geomorphic and Hydrologic Conditions Report* for Rancho Mission Viejo (PCR, PWA, and BHI, 2002), demonstrated that constructing the Tesoro Extension through the headwater channels in Chiquita Creek and Gobernadora Creek would not adversely impact the supply of bed material sediment to those streams. The SSOC maintains that neither the overall purpose nor the detailed findings of the *Baseline Geomorphic and Hydrologic Conditions Report* support F/ETCA's assertion.

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

#### **Final Revisions to the Tentative Order**

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

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

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

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

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

**LEGAL CONCERNS:** None.

**SUPPORTING DOCUMENTS:**

1. EOSR and Supplemental EOSR for Item 8 of the March 13, 2013 San Diego Water Board meeting.
2. San Diego Water Board Member Questions for Written Response Due March 29, 2013 by 5:00 p.m.
3. Shute, Mihaly & Weinberger LLP, Save San Onofre Coalition's Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
4. Nossaman LLP, Foothill/Eastern Transportation Corridor Agencies, Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
5. A Resolution of the F/ETCA Board of Directors Approving the Addendum to the Final Subsequent Environmental Impact Report and the Conceptual Design of the Tesoro Extension Project. (Resolution

EOSR Agenda Item 9

- 5 -

June 19, 2013

- No. 2013F-005), dated April 18, 2013.
6. Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report, dated February 2013.
  7. F/ETCA Notice of Determination, dated April 23, 2013.
  8. San Diego Water Board Revised Response to Comments document.
  9. Revised Tentative Order No. R9-2013-0007 with attachments.

# EXHIBIT 7

**Boucher, Leanne**

---

**From:** Thornton, Rob  
**Sent:** Wednesday, February 18, 2015 1:44 PM  
**To:** Boucher, Leanne  
**Cc:** Clark, Stephanie N.  
**Subject:** File 060182-0173 Doc Clip FW: "Comment - Tentative Resolution No. R9-2015-0022, Place ID: 785677"  
**Attachments:** TCA Comments on Tentative Resolution No. R9-2015-0022\_Place ID 785677\_Tesoro\_02\_18\_2015.pdf

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**From:** McFall, Valarie [<mailto:vmcfall@thetollroads.com>]  
**Sent:** Wednesday, February 18, 2015 1:40 PM  
**To:** 'RB9\_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](mailto:vmcfall@thetollroads.com)  
[thetollroads.com](http://thetollroads.com)

San Joaquin Hills  
Transportation  
Corridor Agency

Chairman:  
Scott Schoeffel  
Dana Point



**Transportation Corridor Agencies™**

Foothill/Eastern  
Transportation  
Corridor Agency

Chairman:  
Sam Allevato  
San Juan Capistrano

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](mailto: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.<sup>1</sup>

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

<sup>1</sup> 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.

125 Pacifica, Suite 100, Irvine, CA 92618-3304 • (949) 754-3400 Fax (949) 754-3467

[thetollroads.com](http://thetollroads.com)

Members: Aliso Viejo • Anaheim • Costa Mesa • County of Orange • Dana Point • Irvine • Laguna Hills • Logano Niguel • Laguna Woods • Lake Forest  
Mission Viejo • Newport Beach • Orange • Rancho Santa Margarita • Santa Ana • San Clemente • San Juan Capistrano • Tustin • Yorba Linda

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 its 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<sup>2</sup>, 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

<sup>2</sup> 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.

impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.”

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

County of Orange<sup>3</sup>

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

<sup>3</sup> 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.”

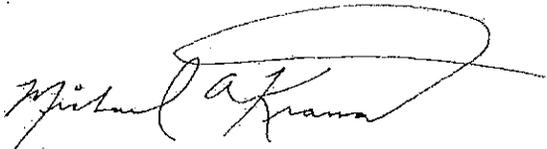
(Letter to State Board from Exposition Metro Line Construction Authority to State Board, p. 2 (Sept. 2, 2014).)<sup>4</sup>

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)

<sup>4</sup> 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.

Mr. Darren Bradford  
Comments on Tentative Resolution No. R9-2015-0022  
February 18, 2015  
Page 6 of 6

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

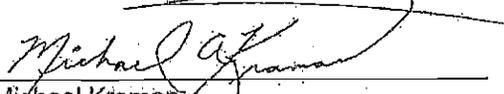
1. The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to

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 15, 2015

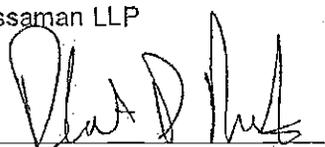
TRANSPORTATION CORRIDOR AGENCIES

By: 

Michael Kraman  
Chief Executive Officer

APPROVED AS TO FORM:

Nossaman LLP

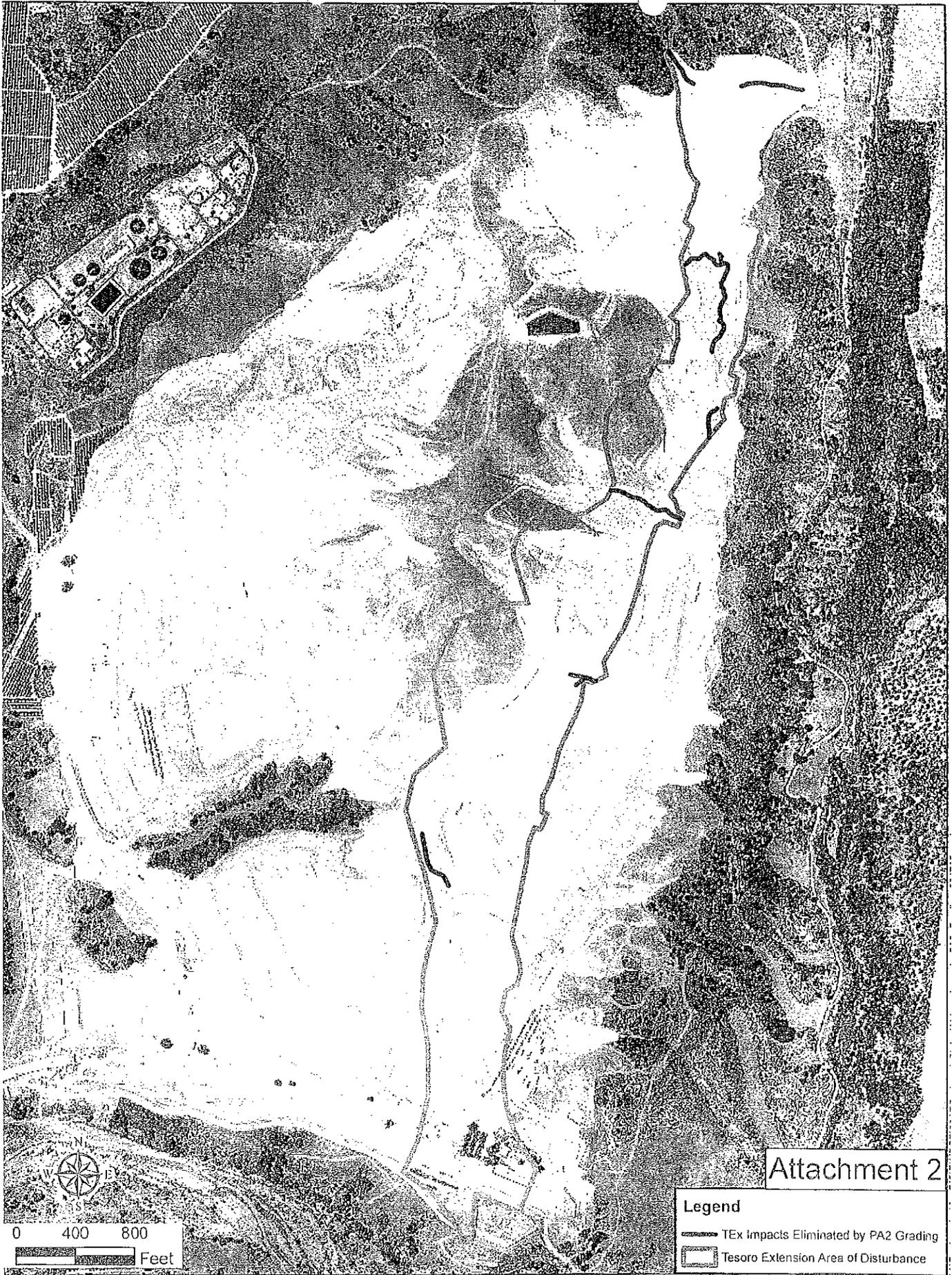
By: 

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

ACKNOWLEDGEMENT:

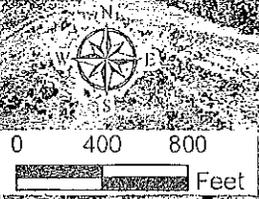
Regional Water Quality Control Board,  
San Diego Region

By \_\_\_\_\_



Attachment 2

- Legend**
- TEx Impacts Eliminated by PA2 Grading
  - Tesoro Extension Area of Disturbance



Attachment 3

EXHIBIT 2



**METROPOLITAN  
TRANSPORTATION  
COMMISSION**

Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
TEL 510.817.5700  
TTY/TDD 510.817.5709  
FAX 510.817.5888  
EMAIL info@mtc.ca.gov  
WEB www.mtc.ca.gov

*Amy Rein Harb, Chair*  
Cities of Contra Costa County

*Dave Coenen, Vice Chair*  
Santa Clara County

*Albina C. Aguirre*  
Cities of San Mateo County

*Tom Alvarado*  
U.S. Department of Housing  
and Urban Development

*Tom Bates*  
Cities of Alameda County

*David Campos*  
City and County of San Francisco

*Bill Dodd*  
Napa County and Cities

*Dorcas M. Giacopini*  
U.S. Department of Transportation

*Federal D. Glover*  
Contra Costa County

*Scott Haggerty*  
Alameda County

*Anne H. Halsted*  
San Francisco Bay Area Commission  
and Development Commission

*Steve Kinsey*  
Marin County and Cities

*Sam Liccardo*  
San Jose Mayor's Appointee

*Mark Lutz*  
Association of Bay Area Governments

*Jake Madsonic*  
Sonoma County and Cities

*Joe Pirzynski*  
Cities of Santa Clara County

*Jean Quan*  
Oakland Mayor's Appointee

*Bijan Siroshi*  
California State  
Transportation Agency

*James P. Spering*  
Solano County and Cities

*Adrienne J. Tisler*  
San Mateo County

*Scott Wiener*  
San Francisco Mayor's Appointee

*Steve Houlger*  
Executive Director

*Ally Buckelma*  
Deputy Executive Director, Policy

*Andrew B. Freeman*  
Deputy Executive Director, Operations

September 8, 2014

Via E Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

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

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 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.

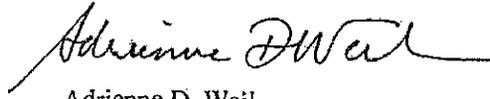
- BART extensions to the Livermore Valley
- BART extensions to Santa Clara County
- Expansions of the ferry system
- Expansion of the HOV/Express Lane system
- Caltrain grade separation projects and track improvements
- San Francisco MUNI Third Street light rail improvements
- Santa Clara VTA light rail extensions

Ms. Jeanine Townsend  
September 8, 2014  
Page 3

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 3



Exposition Metro Line  
Construction Authority

707 Wilshire Boulevard  
34th Floor  
Los Angeles, CA 90017

213.243.5500  
BuildExpo.org

## Expo

September 3, 2014

EXPO2 02068  
CA 112

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

Via E Mail: [commentletters@waterboard.ca.gov](mailto: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  
Page 2

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.

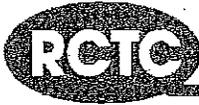
Sincerely,



Samantha Bricker  
Chief Operating Officer

cc: Rob Thornton  
Document Control

EXHIBIT 5



4080 Lemon Street, 3rd Floor • Riverside, CA 92501  
Mailing Address: P. O. Box 12008 • Riverside, CA 92502-2208  
(951) 787-7141 • Fax (951) 787-7920 • www.rctc.org

Riverside County Transportation Commission

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  
Page 2  
September 11, 2014

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, subs. (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, subs. (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

Ms. Jeanine Townsend  
Clerk to the Board  
Page 3  
September 11, 2014

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**

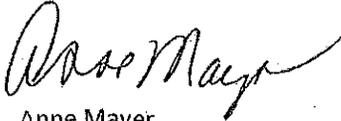
The Draft Order’s apparent conflation of a CEQA “project” and a “proposed discharge” under Porter-Cologne expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For these reasons, the Commission requests that 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  
Page 4  
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,

A handwritten signature in cursive script, appearing to read "Anne Mayer".

Anne Mayer  
Executive Director

Via email ([commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov))

EXHIBIT 6



County of Orange  
California

September 12, 2014

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento CA 92814

Via email: [commentletters@waterboard.ca.gov](mailto: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 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.

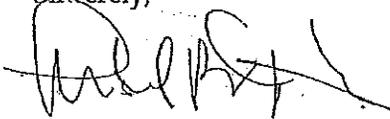
This proposed Draft Order puts the process for acquiring necessary permitting for public works projects throughout our county, and others, at risk. I strongly encourage that you change the wording in the Draft Order to disallow your Regional Boards from considering potential project extensions that have not been proposed or perhaps even contemplated by the applicant.

County Executive Office  
33 W. Santa Ana Blvd.  
Third Floor  
Santa Ana, California  
92701-4062

tel: (714) 834-6200  
fax: (714) 834-3018  
web: [www.oegov.com](http://www.oegov.com)

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,

A handwritten signature in black ink, appearing to read "Michael B. Giancola", written over a horizontal line.

Michael B. Giancola

County Executive Officer

EXHIBIT 11

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
<b>Transit/Light Rail/Bikeway Projects</b>			
Bay Area	BART Extension to Silicon Valley	16-mile extension of the Bay Area Rapid Transit (BART).	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.
Los Angeles	Exposition Transit Corridor	15.2 mile light rail transit project	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.
Los Angeles	Foothill Gold Line	Light project from Los Angeles to Montclair in San Bernardino County.	Phase 1: Los Angeles to Pasadena Phase 2a: Pasadena to Azusa Phase 2b: Azusa to Montclair Phase 2c: Montclair to the Ontario Airport
Los Angeles	Westside Subway Extension (Metro Purple Line)	Extension of metro line.	Phase 1: Wilshire/Western to Wilshire/La Cienega. Phase 2: Wilshire/La Cienega to Century City. Phase 3: Century City to Westwood/VVA Hospital.
Riverside	MetroLink Perris Valley Line Extensions	24-mile MetroLink extension.	Ferris 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.
Statewide	California High-Speed Rail Project	High-speed rail project from Los Angeles to San Francisco, with San Diego and Sacramento extensions.	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.).
San Bernardino	Downtown San Bernardino and Redlands Passenger Rail Project	MetroLink extension.	Phase 1: 1-mile extension of the existing passenger rail service. Phase 2: 9-mile construction of passenger rail line.
San Diego	Inland Rail Trail Bikeway	21-mile bike trail.	Phase 1: 6 miles of the bikeway. Phase 2: 7 miles of bikeway. Phase 3: 8 miles of bikeway.
Sacramento/ Multiple	Sacramento Downtown/Riverfront Streetcar Project	9-mile urban streetcar network.	Phase 1: 3-mile Streetcar network. Phase 2: Connecting South R Street and Broadway corridors.

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
Sacramento/ Multiple	Union Pacific Third Track	17.8-mile railroad track.	4 total segments.
Sacramento	I-5 Bus/Carpool (HOV) Lanes	Construction of bus/carpool HOV lanes in both directions on I-5.	Phase 1: 13 miles of bus/carpool lanes on I-5 in the Sacramento area. Phase 2: 6.8 miles of bus/carpool lanes.
San Francisco	MUNI Third Street Light Rail Improvements	6.9-mile light rail project.	Phase 1: 5.1 miles of light rail construction. Phase 2: 1.7 miles of light rail construction.
<b>Highway Projects</b>			
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 Hollow 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. Phase 1B: 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 (CIP 72334/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 1: 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 Faird 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

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
Los Angeles	I-10 HOV Lanes	11 miles of HOV lanes.	overcrossing, and new auxiliary lanes between interchanges. 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 50 <sup>th</sup> Street East. East/West Connection Project: 32 miles from 50 <sup>th</sup> 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.
San Diego	SR-52 Improvements	Construction of 2 HOV lanes and 2 managed lanes.	North Segment: Centre City Parkway to SR-78. SR-52 East – Extension of the SR-52 freeway through Santee into East San Diego County; included SR-52/SR-67 interchange. SR-52 West – Construction of 1 additional general purpose lane in each direction and 2 reversible Managed Lanes from I-15 to SR-125. Additional Improvements – Construction of 2 HOV lanes between I-805 and I-15.

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
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, LED street light conversion, full road reconstruction, hardscape and landscape. Phase 4: Design and construction; ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades; LED 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, LED 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.
San Diego	I-805 Managed Lanes	28-mile Express Lanes facility.	I-805 HOV/Carroll Canyon Road Extension Project: 10-mile HOV lane in two directions. I-805 North Express Lanes Project: 4-mile project in multiple phases.

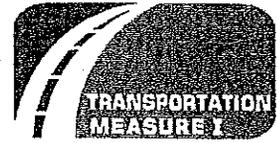
**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
San Diego	I-5 North Coast Corridor Program	27-mile series of highway, rail, transit, bicycle, and pedestrian projects.	<p>Stage 1: 1 carpool lane in each direction.</p> <p>Stages 2-4: Second carpool lane in the median.</p> <p>Stage 5: Direct freeway to freeway HOV connector in the median.</p> <p>Highway - Phases 1-3: 1-5 Widening to accommodate four new Express Lanes and HOV connectors.</p> <p>Rail: Double tracking of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor.</p> <p>Transit: Enhanced Coastal Bus and a Bus Rapid Transit service.</p> <p>Bikeways: A new 27 mile NCC Bikeway.</p> <p>Trails: 7 miles of the Coastal Rail Trail, as well as other shorter connections to existing trail networks and transit stations.</p>
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
<b>Utility/Transmission Line Projects</b>			
Los Angeles/ San Bernardino	SCE Tehachapi Renewable Transmission Line	250 miles of transmission facilities.	<p>11 Segments: Include substation expansions and construction of a 25.6 mile transmission line.</p> <p>The following permits have been issued:</p> <p>Segment 3B - Water Quality Order No. 2012-0007-DWQ, Waste Discharge Requirements WDID No. SB12009IN</p> <p>Segments 4 and 5 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB10003IN Waste Discharge Requirements</p> <p>Segment 6 - Section 401 Certification File No. SB11003IN</p> <p>Segments 7 and 8 - Section 401 Certification File No. SB10002IN</p> <p>Segment 9 - Water Quality Order No. 2004-004-DWQ; File No. SB10001IN</p> <p>Segment 10 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB10003IN Waste Discharge Requirements</p> <p>Segment 11 - Section 401 Certification File No. SB13003IN</p>



**San Bernardino Associated Governments**

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410  
Phone: (909) 884-8276 Fax: (909) 885-4407  
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•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority  
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

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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

RE: Comments on A-2259 -- Petition of Foothill/Eastern Transportation Corridor Agency --  
Waste Discharge Requirements Tentative Order No. R-9-2013-0007 -- Tesoro Extension Project  
-- State Route 241

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.

*Cities of: Adelanto, Barstow, Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair, Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Upland, Victorville, Yucaipa*  
*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,



Raymond W. Wolfe  
Executive Director  
San Bernardino Associated Governments

cc: Gonzales, Quintana & Hunter LLC

# EXHIBIT 8



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## California Regional Water Quality Control Board, San Diego Region

March 6, 2015

To: Interested Persons

**SUBJECT: Notice of Procedures for Consideration of Tentative Resolution No. R9-2015-0022, Foothill Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County**

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](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.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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



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.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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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](mailto: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**  
2375 Northside Drive, Suite 100, San Diego, California 92108  
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Documents are available at: <http://www.waterboards.ca.gov/sandiego>

**California Regional Water Quality Control Board  
San Diego Region**

Henry Abarbanel, *Chair*  
Gary Strawn, *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*

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**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:	Page No.
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.

San Diego Water Board Response to Comments  
 Tentative Resolution No. R9-2015-0022

No.	Comment	Response	Action Taken
<b>Foothill/Eastern Transportation Corridor Agency (F/ETCA)</b>			
1.	<p>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.)</p>	<p>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 "the analytical gap between raw evidence and the ultimate decision or order." (<i>Topanga Assn. for a Scenic Community v. County of Los Angeles</i> (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.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
2.	<p>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.</p>	<p>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.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
3.	<p>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</p>	<p>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</p>	<p>No changes to the Tentative Resolution have been made here.</p>

San Diego Water Board Response to Comments  
Tentative Resolution No. R9-2015-0022

No.	Comment	Response	Action Taken
4.	<p>(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."</p> <p>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.</p> <p>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</p>	<p>such authority is not predicated on entering into a stipulated agreement with TCA.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

San Diego Water Board Response to Comments  
 Tentative Resolution No. R9-2015-0022

No.	Comment	Response	Action Taken
5.	<p>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.</p> <p>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.</p> <p>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.)</p> <p>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</p>	<p>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.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

No.	Comment	Response	Action Taken
	<p>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.</p>		
<p><b>Save San Onofre Coalition</b></p>			
6.	<p>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.</p>	<p>Comments Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
	<p>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.</p>		
	<p>Courts have long recognized that this kind of piecemealing prejudices agency decision making. Once</p>		

San Diego Water Board Response to Comments  
 Tentative Resolution No. R9-2015-0022

No.	Comment	Response	Action Taken
	<p>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." <i>Colorado Wild, Inc. v. U.S. Forest Service</i> (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. <i>Id.</i>; see also <i>Maryland Conservation Council, Inc. v. Gilchrist</i> (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); <i>San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus</i> (1994) Cal.App.4<sup>th</sup> 713, 742 (full consideration of alternatives will be prejudiced as well).</p> <p>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.</p>		
<b>Buena Vista Audubon Society</b>			
7.	<p>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.</p>	<p>Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

No.	Comment	Response	Action Taken
8.	<p><b>California Native Plant Society, Orange County Chapter</b>            Comment Noted.</p> <p>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.</p> <p>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.</p>	<p><b>California Native Plant Society, Orange County Chapter</b>            Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
9.	<p><b>Malibu Surfing Association</b>            Comment Noted.</p> <p>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 of Commerce turned it down the TCA's 241 project proposals. Even so, TCA has developed a strategy of first constructing the</p>	<p><b>Malibu Surfing Association</b>            Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

San Diego Water Board Response to Comments  
 Tentative Resolution No. R9-2015-0022

No.	Comment	Response	Action Taken
	<p>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.</p>		
	<p><b>Saddleback Canyons Conservancy</b></p> <p>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.</p> <p>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.</p>	<p>Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
	<p><b>South Coast Chapter of Trout Unlimited</b></p> <p>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</p>	<p>Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

San Diego Water Board Response to Comments  
Tentative Resolution No. R9-2015-0022

March 16, 2015  
Item No. 9  
Supporting Document No. 11

No.	Comment	Response	Action Taken
	<p>nightmares for thousands of Orange County residents. For these reasons, we urge the Regional Board to "stay the course" and again DENY waste discharge requirements for the so-called Tesoro Extension project.</p>		
12.	<p>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.</p>	<p><b>Wild Heritage Planners</b> Comment Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
13.	<p>As a concerned citizen, I ask you to adopt the staff-recommended findings for denial of the Tesoro Extension.</p>	<p><b>2,759 Private Citizen Format Letter Comments in Support of the Tentative Resolution</b> Comments Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>
14.	<p>Join me and support TCA's WDR application.</p>	<p><b>3 Private Citizen Format Letter Comments Against the Tentative Resolution</b> Comments Noted.</p>	<p>No changes to the Tentative Resolution have been made here.</p>

March 16, 2015  
Item No. X  
Supporting Document No. 4

San Diego Water Board Response to Comments  
Tentative Order No. R9-2015-0009, NPDES No. CA0109142  
Waste Discharge Requirements for Continental Maritime of San Diego

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# EXHIBIT 10



Audubon CALIFORNIA



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.<sup>1</sup>

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.<sup>2</sup>

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

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<sup>1</sup> Administrative Record, Vol. 1, Index 27 at 198-99, 201-203.

<sup>2</sup> WQ-2014-0154 at 15.

Darren Bradford  
February 18, 2015  
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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.<sup>3</sup> 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.<sup>4</sup>
- **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").<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> 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).

<sup>4</sup> Administrative Record, Vol. 4, Index 6 at 7, 54.

<sup>5</sup> Administrative Record, Vol. 1, Index 5 at 19-29.

<sup>6</sup> Administrative Record, Vol. 1, Index 4 at 5-6; *see also* Vol. 2, Index 2 at 48.

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- **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.<sup>7</sup> This design is driven not by function, but to avoid Army Corps of Engineers environmental review and permitting authority.<sup>8</sup> The Army Corps staff itself recognized that the road could be a “road to nowhere,”<sup>9</sup> 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.<sup>10</sup>

- **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.”<sup>11</sup>
- **Tesoro Serves No Purpose Alone.** Without further extension, Tesoro serves only the Rancho Mission Viejo development (“RMV”).<sup>12</sup> 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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<sup>7</sup> Administrative Record, Vol. 4, Index 6 at 53-54.

<sup>8</sup> Administrative Record, Vol. 2, Index 2 at 195-96.

<sup>9</sup> Administrative Record, Vol. 2, Index 2 at 216.

<sup>10</sup> 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”).

<sup>11</sup> Administrative Record, Vol. 4, Index 5 at 87-88.

<sup>12</sup> Administrative Record, Vol. 4, Index 6 at 8.

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outperforms Tesoro.<sup>13</sup> 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,<sup>14</sup> 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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<sup>13</sup> 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).

<sup>14</sup> Administrative Record, Vol. 2, Index 2 at 92.

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February 18, 2015  
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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  
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Executive Director  
Audubon California

Garry Brown  
Executive Director  
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Executive Director  
WILD Coast-COSTASALVAJE

# EXHIBIT 11



**METROPOLITAN  
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*Doreen M. Giavapini*  
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*Steve Kinsey*  
Marin County and Cities

*Sun Liccardo*  
San Jose Mayor's Appointee

*Mark Luce*  
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*Jake Mackenzie*  
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*Steve Heminger*  
Executive Director

*Mix Bockelman*  
Deputy Executive Director Policy

*Andrea B. Fremier*  
Deputy Executive Director Operations

September 8, 2014

*Via E Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

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

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 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.

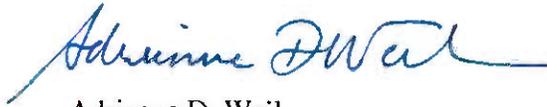
- BART extensions to the Livermore Valley
- BART extensions to Santa Clara County
- Expansions of the ferry system
- Expansion of the HOV/Express Lane system
- Caltrain grade separation projects and track improvements
- San Francisco MUNI Third Street light rail improvements
- Santa Clara VTA light rail extensions

Ms. Jeanine Townsend  
September 8, 2014  
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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



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

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Chief Executive Officer  
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September 15, 2014

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
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Sacramento, CA 92814

Via E Mail: [commentletters@waterboard.ca.gov](mailto: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 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.

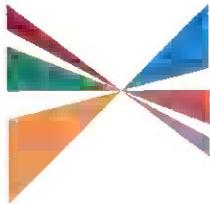
Thank you for this opportunity to provide comments.

Sincerely,

  
Arthur T. Leahy  
Chief Executive Officer

# EXHIBIT 13

SOUTHERN CALIFORNIA



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**Executive/Administration  
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Carl Morehouse, San Buenaventura

**Policy Committee Chairs**

Community, Economic and  
Human Development  
Margaret Finlay, Duarte

Energy & Environment  
Deborah Robertson, Rialto

Transportation  
Alan Wapner, San Bernardino  
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September 15, 2014

Ms. Jeanine Townsend  
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Via E Mail: [commentletters@waterboard.ca.gov](mailto:commentletters@waterboard.ca.gov)

**Re: Comments on A-2259 –September 23 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 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 23<sup>rd</sup> 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



Riverside County Transportation Commission

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

Ms. Jeanine Townsend  
Clerk to the Board  
Page 3  
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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**

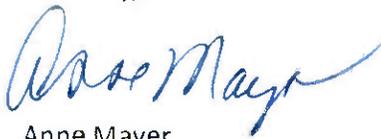
The Draft Order’s apparent conflation of a CEQA “project” and a “proposed discharge” under Porter-Cologne expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For these reasons, the Commission requests that 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  
Page 4  
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,

A handwritten signature in blue ink, appearing to read "Anne Mayer". The signature is fluid and cursive, with a large initial "A" and a long, sweeping tail.

Anne Mayer  
Executive Director

Via email ([commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov))

# EXHIBIT 15



## San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410

Phone: (909) 884-8276 Fax: (909) 885-4407

Web: [www.sanbag.ca.gov](http://www.sanbag.ca.gov)



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•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority  
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

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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

RE: Comments on A-2259 – Petition of Foothill/Eastern Transportation Corridor Agency –  
Waste Discharge Requirements Tentative Order No. R-9-2013-0007 – Tesoro Extension Project  
– State Route 241

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.

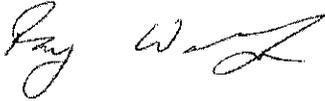
Historically, the State Water Resources Control Board has considered it appropriate for regional water quality control boards to permit projects in phases, reflecting the current conditions and funding availability for the actual project being constructed at that time. The revised tentative order now 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  
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,



Raymond W. Wolfe  
Executive Director  
San Bernardino Associated Governments

cc: Gonzales, Quintana & Hunter LLC

# EXHIBIT 16



Exposition Metro Line  
Construction Authority

707 Wilshire Boulevard  
34th Floor  
Los Angeles, CA 90017

213.243.5500  
BuildExpo.org

## Expo

September 3, 2014

EXPO2 02068  
CA 112

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

Via E Mail: [commentletters@waterboard.ca.gov](mailto: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  
Page 2

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.

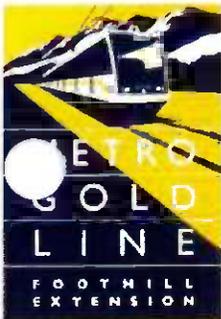
Sincerely,



Samantha Bricker  
Chief Operating Officer

cc: Rob Thornton  
Document Control

# EXHIBIT 17



**Board Members:**

**Doug Tessitor**  
Chair  
Council Member,  
City of Glendora  
Appointee,  
City of Pasadena

**Sam Pedroza**  
1<sup>st</sup> Vice Chair  
Council Member,  
City of Claremont  
Appointee of SGVCOG

**Marisol Salguero**  
City of Los Angeles  
Alternate Appointee,  
City of Los Angeles

**Paul S. Leon**  
Member  
Mayor,  
City of Ontario  
Appointee,  
City of South  
Pasadena

**John Fasana**  
Member  
Council Member,  
City of Duarte  
Appointee, LACMTA

**Bill Bogaard**  
Member, Non-Voting  
Mayor,  
City of Pasadena  
Appointee, City of  
Pasadena

**Carrie Bowen**  
Member, Non-Voting  
District 7 Director,  
Caltrans  
Gubernatorial  
Appointee

**Daniel M. Evans**  
Member, Non-Voting  
City of  
South Pasadena  
Appointee, City of  
South Pasadena

**Alan D. Wepner**  
Member, Non-Voting  
Council Member,  
City of Ontario  
Appointee, SANBAG

**Executive Officer:**

**Habib F. Balian**  
Chief Executive Officer

**Metro Gold Line Foothill Extension  
Construction Authority**

406 E Huntington Drive, Suite 202  
Monrovia, CA 91016-3633

626-471-9050 ph  
626-471-9049 fx

[www.foothillextension.org](http://www.foothillextension.org)

BLCA-3RD-1530

September 3, 2014

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

Via E Mail: [commentletters@waterboard.ca.gov](mailto: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

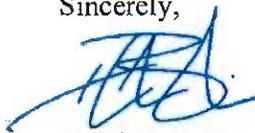
Ms. Jeanine Townsend  
September 3, 2014  
Page 2

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,

A handwritten signature in blue ink, appearing to read 'Habib F. Balian', with a stylized flourish at the end.

Habib F. Balian  
Chief Executive Officer

# EXHIBIT 18



BOARD OF DIRECTORS

*Shawn Neilson*  
Chairman

*Jeffrey Lalloway*  
Vice Chairman

*Patricia Bates*  
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*Lori Donchak*  
Director

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Director

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Director

*Ryan Chamberlain*  
Ex-Officio Member

CHIEF EXECUTIVE OFFICE

*Darrell Johnson*  
Chief Executive Officer

September 15, 2014

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

Subject: Comments on A-2259: September 23 Board Meeting: Petition of Foothill/Eastern Transportation Corridor Agency – Waste Discharge Requirements Revised Tentative Order No. R9-2013-0007 – Tesoro Extension Project – State Route 241

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.

Ms. Jeanine Townsend  
September 15, 2014  
Page 2

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,

A handwritten signature in blue ink, appearing to read 'Darrell Johnson', with a long horizontal flourish extending to the right.

Darrell Johnson  
Chief Executive Officer

DJ:dp

c: Platinum Associates, LLC

# EXHIBIT 19

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
<b>Transit/Light Rail/Bikeway Projects</b>			
Bay Area	BART Extension to Silicon Valley	16-mile extension of the Bay Area Rapid Transit (BART).	<p><b>Phase 1:</b> 10-mile, two-station BART extension.</p> <p><b>Phase 2:</b> 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.</p>
Los Angeles	Exposition Transit Corridor	15.2 mile light rail transit project.	<p><b>Phase 1:</b> 8.6-mile extension of the Metro Rail System from downtown Los Angeles to Culver City.</p> <p><b>Phase 2:</b> 6.6 mile extension of the rail system from Culver City to Santa Monica</p>
Los Angeles	Foothill Gold Line	Light project from Los Angeles to Montclair in San Bernardino County.	<p><b>Phase 1:</b> Los Angeles to Pasadena</p> <p><b>Phase 2a:</b> Pasadena to Azusa.</p> <p><b>Phase 2b:</b> Azusa to Montclair</p> <p><b>Phase 2c:</b> Montclair to the Ontario Airport</p>
Los Angeles	Westside Subway Extension (Metro Purple Line)	Extension of metro line.	<p><b>Phase 1:</b> Wilshire/Western to Wilshire/La Cienega.</p> <p><b>Phase 2:</b> Wilshire/La Cienega to Century City.</p> <p><b>Phase 3:</b> Century City to Westwood/VVA Hospital.</p>
Riverside	Metrolink Perris Valley Line Extensions	24-mile Metrolink extension.	<p><b>Perris Valley Line:</b> 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.</p> <p><b>Future extensions:</b> Anticipated but not yet planned.</p>
Statewide	California High-Speed Rail Project	High-speed rail project from Los Angeles to San Francisco, with San Diego and Sacramento extensions.	<p><b>Permitting Phase 1:</b> 24 miles of the HST Project along the southern end of the Merced to Fresno segment. The overall project footprint is approximately 885 acres.</p> <p><b>Additional Permitting Phases:</b> Separate environmental documents and permits will be obtained for each segment of the project (Merced to Fresno, Fresno to Bakerfield, Palmdale to Los Angeles, etc.).</p>
San Bernardino	Downtown San Bernardino and Redlands Passenger Rail Project	Metrolink extension.	<p><b>Phase 1:</b> 1-mile extension of the existing passenger rail service.</p> <p><b>Phase 2:</b> 9-mile construction of passenger rail line.</p>
San Diego	Inland Rail Trail Bikeway	21-mile bike trail.	<p><b>Phase 1:</b> 6 miles of the bikeway.</p> <p><b>Phase 2:</b> 7 miles of bikeway.</p> <p><b>Phase 3:</b> 8 miles of bikeway.</p>
Sacramento/Multiple	Sacramento Downtown/Riverfront Streetcar Project	9-mile urban streetcar network.	<p><b>Phase 1:</b> 3 - mile Streetcar network.</p> <p><b>Phase 2:</b> Connecting South R Street and Broadway corridors.</p>

**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
Sacramento/ Multiple	Union Pacific Third Track	17.8-mile railroad track.	<b>4 total segments.</b>
Sacramento	I-5 Bus/Carpool (HOV) Lanes	Construction of bus/carpool HOV lanes in both directions on I-5.	<b>Phase 1:</b> 13 miles of bus/carpool lanes on I-5 in the Sacramento area. <b>Phase 2:</b> 6.8 miles of bus/carpool lanes.
San Francisco	MUNI Third Street Light Rail Improvements	6.9-mile light rail project.	<b>Phase 1:</b> 5.1 miles of light rail construction. <b>Phase 2:</b> 1.7 miles of light rail construction.
<b>Highway Projects</b>			
Bay Area (Multiple Counties)	Bay Area Express Lanes	550-mile network of Bay Area express lanes.	<b>Phase 1:</b> Conversion of 150 miles of HOV lanes to express lanes. Addition of 120 miles of new lanes. <b>Phase 2:</b> 90 miles of express lanes. <b>Phase 3:</b> 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.	<b>Phase 1 A:</b> US 50 to Hollow Oak Rd. <b>Phase 1 B:</b> US 50 to Silver Springs Parkway.
El Dorado	Diamond Springs Pkwy	Construction of 4-lane divided roadway.	<b>Phase 1 A:</b> 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 (CIP72334/ELDI5990) to advance this new roadway project. <b>Phase 1 B:</b> New 2-lane roadway connecting Missouri Flat Road to SR 49. <b>Phase 2:</b> Widening/improvement to 4-lanes from Missouri Flat Road to Highway 49. <b>Phase 3:</b> Ultimate widening/improvements for 4-lane divided SR-49.
<b>El Dorado</b>	US 50 Bus/ Carpool Lanes	13 miles of HOV and bus/carpool lanes.	<b>Phase 1</b> Add HOV lanes from El Dorado Hills Blvd to Bass Lake Grade. <b>Phase 2A:</b> Add HOV lanes from Bass Lake Road to Cameron Park Drive. <b>Phase 2B:</b> Add HOV lanes from Cameron Park Dr. to Ponderosa Rd. <b>Phase 3:</b> Add Bus/Carpool lanes from Ponderosa Rd to Greenstone Rd.
<b>El Dorado</b>	Western Placerville Interchanges	Improvements on and around US 50.	<b>Phase 1A/1B:</b> 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 Faird Lane to accommodate new improvements, bicycle/pedestrian improvements, widened shoulders, retaining walls <b>Phase 2:</b> Replacement and widening of overcrossing, improved interchange, new ramps at the existing

## RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
Los Angeles	I-10 HOV Lanes	11 miles of HOV lanes.	overcrossing, and new auxiliary lanes between interchanges. <b>Phase 1:</b> I-605 to Puente Ave. <b>Phase 2:</b> Puente Ave. to Citrus Ave (9.2 miles of carpool lanes in each direction of I-10) <b>Phase 3:</b> 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.	<b>Phase 1:</b> Truck lanes for 3.7 miles southbound and 1.4 miles northbound. <b>Phase 2:</b> Truck lane and HOV lanes from SR-14 to Parker Road. <b>Phase 3:</b> 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.	<b>Los Angeles County Project:</b> 9 miles from SR-14 to 50 <sup>th</sup> Street East. <b>East/West Connection Project:</b> 32 miles from 50 <sup>th</sup> Street East to US-395. <b>San Bernardino County Project:</b> 20 miles from US-395 to SR-18.
Los Angeles/Orange	I-5 Corridor Improvements	Corridor improvements consisting of 17 projects.	<b>I-5 North Improvements:</b> HOV Lanes – Carpool lanes; Direct HOV Connectors; Interchange Improvements; bridge widening and bridge reconstruction; truck lane designation; Pavement Replacements; and Grade Separation. <b>I-5 South Improvements:</b> High-Occupancy Vehicle (HOV or carpool) Lanes; Interchange Modifications; Pedestrian Overcrossings; and Frontage Road Modification
Riverside/Orange	SR-91 Corridor Improvements	20 miles of capacity, operational, and safety enhancements.	<b>Phase 1:</b> 8 miles of improvements; 3 miles of direct connectors. Construction of two express lanes, one general purpose lane, and auxiliary lanes. <b>Phase 2:</b> 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.	<b>Middle Segment:</b> SR-56 to Centre City Parkway. <b>South Segment:</b> SR-163 to SR-56.
San Diego	SR-52 Improvements	Construction of 2 HOV lanes and 2 managed lanes.	<b>North Segment:</b> Centre City Parkway to SR-78. <b>SR-52 East</b> – Extension of the SR-52 freeway through Santee through East San Diego County; included SR-52/SR-67 interchange. <b>SR-52 West</b> – Construction of 1 additional general purpose lane in each direction and 2 reversible Managed Lanes from I-15 to SR-125. <b>Additional Improvements</b> – Construction of 2 HOV lanes between I-805 and I-15.

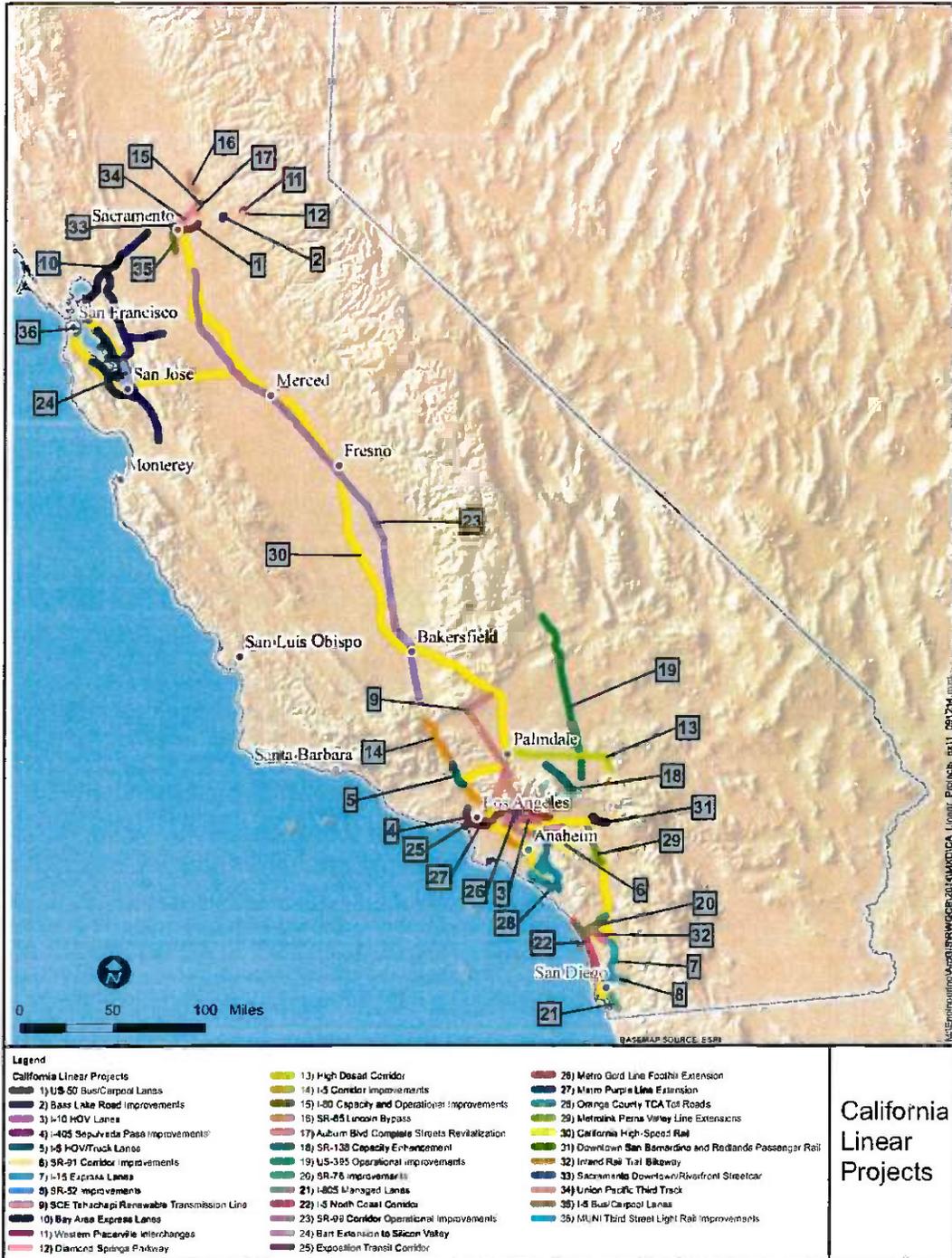
## RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
Placer	I-80 Capacity & Operational Improvements	Freeway widening and extension of carpool lanes.	<p><b>Phase 1:</b> Extension of eastbound on-ramp.</p> <p><b>Phase 2:</b> Eastbound and westbound carpool and auxiliary lanes.</p> <p><b>Phase 3:</b> Added auxiliary lanes and carpool lanes on both eastbound and westbound sides, approximately 2.2 miles.</p>
Placer	SR-65 Lincoln Bypass	Construction of a new 4-lane and 2-lane expressway.	<p><b>Phase 1:</b> 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.</p> <p><b>Phase 2A:</b> Adds 2 southbound lanes to extend 4-lane section of Lincoln Bypass from its Phase 1 terminus.</p> <p><b>Phase 2B:</b> 2 lanes from north of West Wise Road to Sheridan, providing a full 4 lanes (2 in each direction).</p>
Sacramento	Auburn Blvd Complete Streets Revitalization Project	Construction of pedestrian and bicycle lanes; various infrastructure improvements.	<p><b>Phase 1:</b> 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.</p> <p><b>Phase 2:</b> ADA, Ped, Bicycle, and Transit Improvements, new street light installations, hardscape, landscape, full road reconstruction.</p> <p><b>Phase 3:</b> Design, ROW acquisition and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape.</p> <p><b>Phase 4:</b> Design and construction; ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape.</p> <p><b>Phase 5:</b> Design, ROW, and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape.</p>
San Bernardino	SR-138 Capacity Enhancement	54 miles of highway widening.	<p><b>Phase 1:</b> 13 miles of highway widening.</p> <p><b>Phase 2:</b> LA County to San Bernardino County.</p>
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.	<p><b>West Segment:</b> I-5 to Melrose Dr.</p> <p><b>Middle Segment:</b> 5.5-mile segment.</p> <p><b>East Segment:</b> 5.2-mile segment.</p>
San Diego	I-805 Managed Lanes	28-mile Express Lanes facility.	<p><b>I-805 HOV/Carroll Canyon Road Extension Project:</b> 10-mile HOV lane in two directions.</p> <p><b>I-805 North Express Lanes Project:</b> 4-mile project in multiple phases.</p>

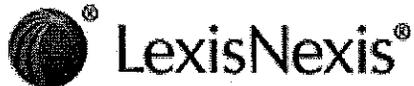
**RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS**

Project Location (County)	Project Name	Description	Permit Construction Phases
San Diego	I-5 North Coast Corridor Program	27-mile series of highway, rail, transit, bicycle, and pedestrian projects.	<p><b>Stage 1:</b> 1 carpool lane in each direction.</p> <p><b>Stages 2-4:</b> Second carpool lane in the median.</p> <p><b>Stage 5:</b> Direct freeway to freeway HOV connector in the median.</p> <p><b>Highway - Phases 1-3:</b> I-5 Widening to accommodate four new Express Lanes and HOV connectors.</p> <p><b>Rail:</b> Double tracking of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor.</p> <p><b>Transit:</b> Enhanced Coastal Bus and a Bus Rapid Transit service.</p> <p><b>Bikeways:</b> A new 27 mile NCC Bikeway.</p> <p><b>Trails:</b> 7 miles of the Coastal Rail Trail, as well as other shorter connections to existing trail networks and transit stations.</p>
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
<b>Utility/Transmission Line Projects</b>			
Los Angeles/ San Bernardino	SCE Tehachapi Renewable Transmission Line	250 miles of transmission facilities.	<p><b>11 Segments:</b> Include substation expansions and construction of a 25.6 mile transmission line.</p> <p>The following permits have been issued:</p> <p><b>Segment 3B</b> - Water Quality Order No. 2012-0007-DWQ; Waste Discharge Requirements WDDID No. SB12009IN</p> <p><b>Segments 4 and 5</b> - Water Quality Order No. 2010-0015-DWQ, WDDID No. SB10003IN Waste Discharge Requirements</p> <p><b>Segment 6</b> - Section 401 Certification File No. SB11003IN</p> <p><b>Segments 7 and 8</b> - Section 401 Certification File No. SB10002IN</p> <p><b>Segment 9</b> - Water Quality Order No. 2004-004-DWQ; File No. SB10001IN</p> <p><b>Segment 10</b> - Water Quality Order No. 2010-0015-DWQ, WDDID No. SB10003IN Waste Discharge Requirements</p> <p><b>Segment 11</b> - Section 401 Certification File No. SB13003IN</p>

# EXHIBIT 20



# EXHIBIT 21



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Los Angeles Times

August 24, 2014 Sunday  
Home Edition

**SECTION:** MAIN NEWS; Metro Desk; Part A; Pg. 27

**LENGTH:** 915 words

**HEADLINE:** Train route option draws praise;  
A proposal to tunnel through the Angeles National Forest is getting a closer look.

**BYLINE:** Dan Weikel

**BODY:**

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 Sky 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.weikel@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.  
**PHOTOGRAPHER:** Illustration by California High-Speed Rail Authority **GRAPHIC:** MAP: Angeles National Forest  
**CREDIT:** Thomas Suh Lauder Los Angeles Times

**LOAD-DATE:** August 24, 2014

# EXHIBIT 22

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**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

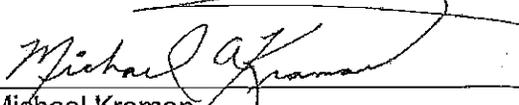
prohibit or otherwise restrict future discharges or other impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.

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



EDMUND G. BROWN JR.  
GOVERNOR

MATHEA RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

**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.<sup>1</sup>

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.

<sup>1</sup> 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

## EX PARTE QUESTIONS AND ANSWERS

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# EX PARTE QUESTIONS AND ANSWERS

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## I. EX PARTE SUMMARY

### Summary of ex parte framework:

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.

### 1. Q. What is an ex parte communication?

A. An ex parte communication is a communication to a board member from any person<sup>1</sup> 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 impending 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

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<sup>1</sup> There are special rules for certain staff who advise the board member. Please see Question 22.

## **EX PARTE QUESTIONS AND ANSWERS**

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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**

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**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

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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

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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*,<sup>2</sup> 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 complaint 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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<sup>2</sup> *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674.

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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

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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.

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- 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.

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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.

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**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

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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

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action. The proceedings culminating in the issuance of general waste discharge orders are, therefore, more appropriately considered adjudicative proceedings.

**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.

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### 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 proceedings 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.

## EX PARTE QUESTIONS AND ANSWERS

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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.

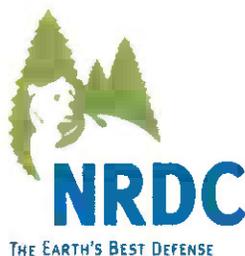
Persons participating in adjudicative proceedings also have an obligation to understand and follow the rules, particularly attorneys and professional lobbyists. As discussed in

## **EX PARTE QUESTIONS AND ANSWERS**

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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 4<sup>th</sup> Street, Suite 200  
 Los Angeles, CA 90013  
 Email: [sunger@waterboards.ca.gov](mailto: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.<sup>1</sup> 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,

<sup>1</sup> 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.”

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Board Member Lutz is not prohibited from participating as a discharger. . . .”<sup>2</sup> 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.”<sup>3</sup> 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 LA 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

<sup>2</sup> 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.

<sup>3</sup> Mary Ann Lutz (Spring 2012) “Cleaning Up Our Act is No Small Cost to Cities,” Council for Watershed Health, Watershed Wise v. 14 no. 2, at

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Order, “to develop a unified voice to participate in a collaborative negotiating process.”<sup>4</sup> Indeed, many of these same dischargers also fund a staff advisor for Board Member Lutz.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> In that case, years of work and substantial resources of the Regional Board, the Permittees,

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> See, e.g., email from Mary Ann Lutz re: SAVE THE DATE - Meeting with US EPA (February 18, 2012).

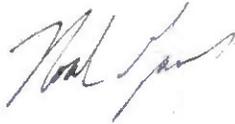
<sup>8</sup> See Notice of Entry of Judgment and Issuance of Peremptory Writ of Mandate, in *County of Los Angeles v. State Water Resources Control Bd.*, No. BS122724 (L.A. Super. Ct. July 16, 2010)

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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