BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of:

THE FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
FOR REVIEW OF ACTION, AND FAILURE
TO ACT, BY THE CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD, SAN
DIEGO REGION, IN CONNECTION WITH
RESOLUTION REGARDING THE DENIAL
OF WASTE DISCHARGE
REQUIREMENTS, REVISED TENTATIVE
ORDER NO. R9-2015-0022

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Pursuant to Water Code section 13320 and California Code of Regulations, title 23, section 2050, the Foothill/Eastern Transportation Corridor Agency ("TCA") hereby petitions the State Water Resources Control Board ("State Board") for review of certain actions, and failure to act, by the California Regional Water Quality Control Board for the San Diego Region ("Regional Board"). TCA seeks review of the Regional Board's March 16, 2015 adoption of a Resolution regarding the denial of Waste Discharge Requirements ("WDRs") (Tentative Order No. R9-2015-0022) ("Resolution") for the Tesoro Extension Project ("Project") - a 5.5 mile extension of State Route 241 ("SR 241") in Orange County. The State Board, by Order WQ 2014-0154 dated September 23, 2014 ("State Board Order"), directed the Regional Board to adopt legally valid and sufficient findings regarding its denial of WDRs for the Project through the Board's disapproval of Revised Tentative Order No. R9-2013-0007 ("Revised Tentative Order"). The Regional Board's adoption of the Resolution (i) violates the express requirements of the State Board Order, and (ii) violates the due process requirements of the United States Constitution, the California Constitution, and other law applicable to agencies acting in a quasi-judicial capacity.

I CONTACT INFORMATION FOR PETITIONER:

TCA's mailing address, telephone number, and email address are as follows:

    Robert D. Thornton
    Nossaman LLP
    18101 Von Karman
    Suite 1800
    Irvine, CA 92620-1047
    Phone: (949) 833-7800
    Email: rthornton@nossaman.com
II SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD THAT THE STATE BOARD IS REQUESTED TO REVIEW:

The TCA is requesting that the State Board (i) review the Resolution, (ii) declare that the Regional Board failed to comply with the State Board Order, (iii) declare that the Regional Board violated legal requirements applicable to agencies acting in a quasi-judicial capacity, (iv) vacate the Resolution and the Regional Board's action on the Revised Tentative Order, and (v) approve the Revised Tentative Order for the Project recommended by the Regional Board staff in June 2013.

III DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT:

The Regional Board adopted the Resolution on March 16, 2015.

IV A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

As more fully set forth in TCA's Memorandum of Points and Authorities below, in adopting the Resolution, the Regional Board abused its discretion and otherwise failed to act in accordance with relevant governing law. Specifically, but without limitation, the Regional Board:

a. Violated the State Board Order by failing to make the findings required by the State Board Order, and by failing to adopt findings that comply with law applicable to adjudicatory proceedings; and

b. Violated constitutional and statutory due process requirements by (i) failing to approve the Resolution by a legally competent majority of the Regional Board, (ii) allowing two Board members who did not participate in the adjudicatory hearings on the Revised Tentative Order, and who did not consider the voluminous evidence supporting Revised Tentative Order, to participate and vote on the Resolution, (iii) allowing two Board members who previously voted to approve the Revised Tentative Order to change
their vote on the Revised Tentative Order and vote approve the Resolution without reopening the adjudicatory hearings and reconsidering the Revised Tentative Order, (iv) allowing two Board members to vote on the Resolution despite the fact that the two Board members are members of designated "interested parties" who received prohibited ex parte communications from the interested parties, (v) failing to disclose the full substance of prohibited ex parte communications, (vi) failing to reopen the adjudicatory hearings to consider significant new evidence, including, but not limited to, evidence that the impacts of the Project have been greatly reduced because much of the alignment of the Project has been graded pursuant to approvals issued by the Regional Board, and evidence regarding the Regional Board's authority over future extensions of SR 241, and (vii) by allowing interested parties to submit new evidence after the close of the adjudicatory hearings, while simultaneously prohibiting the TCA from submitting new evidence.

V THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:

The TCA is a Joint Powers Agency formed by the County of Orange and 12 cities in the County to plan, finance, design, construct and operate a toll highway system in Orange County, California. The TCA Board members are all elected officials who collectively represent 1.8 million people. TCA has proposed the Project, a 5.5 mile long extension of the existing State Route 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of State Route 74 in Orange County.

The Regional Board's approval of the Resolution prevents the timely implementation of the Project. The Project is an important element of the Southern California Regional Transportation Plan, Orange County Long Range Transportation Plan, General Plans of the County of Orange and of every city in south Orange County. The Regional Board's decision will result in continued and severe congestion on
Interstate-5 and local arterials in south Orange County adversely impact air quality, public health and safety of the 1.8 million people represented by the TCA Board members.

VI THE SPECIFIC ACTION THE PETITIONER REQUESTS:

For the reasons described in Section IV of this Petition for Review and in the attached Memorandum of Points and Authorities, TCA requests that the State Board (1) declare that the Resolution violates the State Board Order, (2) declare that the Regional Board otherwise violated California law applicable to adjudicatory proceedings, (3) vacate the Regional Board’s action on the Resolution, (4) vacate the Regional Board’s action on the Revised Tentative Order, and (5) adopt the Revised Tentative Order recommended by the Regional Board staff.

VII STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN PETITION:

Please see TCA’s Memorandum of Points and Authorities below and incorporated by reference as if fully set forth herein.

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

A true and correct copy of this Petition and Memorandum of Points and Authorities with attached Exhibits was mailed to the Regional Board via First Class mail on April 14, 2015.
STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD:

The issues raised in the Petition were raised by the TCA before the Regional Board. As more fully set forth in TCA’s Memorandum of Points and Authorities below, the TCA advised the Regional Board that (1) the Resolution violated the State Board Order, (2) the Regional Board should have reopened the adjudicatory proceedings and reconsidered its action on the Revised Tentative Order, (3) the Regional Board should have allowed the TCA to introduce new evidence that the changes in circumstances have greatly reduced the impacts of the Project on water quality, and (4) the procedure applicable to the Regional Board’s consideration of the Resolution violated due process requirements. The procedures adopted by the Regional Board precluded the TCA from introducing any new evidence at the meeting on the Resolution, and from raising other issues prior to the action of the Regional Board on the Resolution.

DATED: April 14, 2015

Respectfully Submitted,

NOSSAMAN LLP

By: ROBERT D. THORNTON
    STEPHANIE N. CLARK
Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & SUMMARY

A. Violation of the State Board Order – Failure to Adopt the Required Findings.

Despite clear and explicit direction by the State Board, the Resolution adopted by the Regional Board violates the express requirements of the State Board Order. The State Board could not have been clearer that, in order for the Regional Board to deny the WDR for the Tesoro Project on the basis of potential water quality impacts of potential future extensions of SR 241, the Regional Board was "most importantly" required to make express findings that:

"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 . . . "

(State Board Order, at p. 11, ¶ 3 [emphasis added] (attached hereto as Exhibit 1)). The State Board adopted the above requirement in response to testimony by transportation agencies throughout California that it is standard practice to permit and construct transportation projects in phases.

The Resolution adopted by the Regional Board is devoid of the "most important" finding required by the State Board Order. Instead, the Regional Board relied on the following incomprehensible "finding":

"By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the
entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases.”

(Resolution, at p. 6, ¶ 32 (attached hereto as Exhibit 2).)

Following the logic of the Regional Board in the Resolution, a regional board could deny permits for any of the dozens of transportation improvements in the State that are being permitted and constructed in phases, including the California High Speed Rail project. Nowhere in the Resolution does the Regional Board “explain why the regional water board would be limited in its ability to exercise its 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.” (Exhibit 1, p. 11, ¶ 3.) To the extent that the Regional Board’s Resolution attempts to justify its denial of WDRs based on potential future impacts of future extensions of SR 241 it reads a single provision of the State Board Order out of context and fails to comply with the State Board Order as a whole.

In sum, the Regional Board’s failure to make the findings required by the State Board Order violated Government Code section 11425.10, is contrary to law, and constitutes an abuse of discretion.

B. Violation of State Board Order – Failure to Identify Competent Evidence to Support the Required Finding.

The requirement that agencies acting in a quasi-adjudicatory matter adopt legally sufficient findings is not a mere formality; it is required to ensure that quasi-judicial agencies follow the law. Five decades ago, the California Supreme Court made it clear that quasi-judicial decisions of administrative agencies are required to be supported by written findings that identify the facts relied upon by the agency and that explain the connection between such facts and the agency’s legal conclusions. (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.) As the Supreme
Court made clear, it is not sufficient for an agency to make the bare finding required by the law. The agency is required to cite to the evidence that it is relying upon to support the finding and to "bridge the analytic gap" between the evidence and the finding. (Id. at p. 515.)

Here, the Regional Board not only failed to make the finding required by the State Board Order, it failed to identify any relevant or competent evidence to "bridge the analytic gap" between the facts and the required finding that the Regional Board “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.” (Exhibit 1, at p. 11, ¶3.)

The uncontested facts here are that the future extensions of SR 241 will require WDRs and 401 water quality certifications issued by the Regional Board for any potential future alignments. Thus, the Regional Board will have full authority to regulate discharges from future extensions of SR 241. The Regional Board failed entirely to identify any evidence to “bridge the analytic gap” between these uncontested facts and the finding required by the State Board Order.

During the 2013 adjudicatory hearings, NO person presented any evidence that the Regional Board lacked authority to regulate discharges or other water quality impacts from future extensions to protect the waters of the state. At the time the Board denied WDRs for the Project in 2013, none of the three Regional Board members who voted to disapprove the staff recommendation (Abarbanel, Kalemkiarian, Morales) expressed any concern that the Regional Board did not have full authority to regulate future extensions so as to protect the waters of the state. (Exhibit 1, at pp. 13-14, ¶3 [noting that neither the State Board nor its staff were able to determine the basis for the Regional Board’s decision to disapprove of the Revised Tentative Order].) Indeed, as noted by the State Board Order, it is impossible to discern any coherent or lawful rationale for the Regional Board majority’s rejection of the Regional Board staff recommendation. (Ibid.)
C. **The Regional Board Findings Are an Illegal Post-Hoc Rationalization.**

Agencies may not engage in post-hoc rationalizations of their decisions.

(Motor Vehicle Manufacturers Assoc. of the U.S. v. State Farm Mutual Automobile Insurance Co. (1983) 463 U.S. 29 [invalidating National Highway Traffic Safety Administration's decision where the reason for the decision was not articulated at the time of the agency's decision].) Where an agency's findings are not issued contemporaneously with the agency's decision, the agency's findings are nothing more than post-hoc rationalizations of a decision the agency made. (Bam, Inc. v. Board of Police Commissioners of City of Los Angeles (1992) 7 Cal.App.4th 1343, 1346-49.)

The uncontested fact is that **during the 2013 adjudicatory hearings**, the Regional Board never discussed or considered the extent of the Regional Board's authority to regulate discharges from future extensions of SR 241. Indeed, neither the Regional Board staff nor any person testifying during the adjudicatory hearings suggested that the Regional Board would not have full authority to regulate future extensions to protect water quality. Thus, the findings adopted by the Regional Board are nothing more than an illegal post-hoc rationalization of the Regional Board's decision.

D. **The Regional Board Violated Due Process Requirements and Deprived the TCA and the Public of a Fair and Impartial Adjudicatory Proceeding.**

Constitutional guarantees of due process of law govern the Regional Board's adjudicatory proceedings. (Withrow v. Larkin (1975) 421 U.S. 35, 46; Morongo Band of Mission Indians v. State Water Resources Control Board (2009) 45 Cal.4th 731, 737.) Here, due process violations pervade the Regional Board's adjudicatory proceedings. The due process violations include:

1. Board Members Warren and Olson voted in favor of the Resolution despite the fact that they were not Board members during the adjudicatory
proceedings and thus could not have heard the evidence presented to the Regional Board during the 2013 adjudicatory hearings.

2. Board Members Warren and Abarbanel are members of designated “interested parties” in the adjudicatory proceeding (Surfrider Foundation, Sierra Club), and Board Members Warren and Abarbanel engaged in prohibited ex parte communications with interested parties (Surfrider Foundation, NRDC). Their membership and ex parte communications with interested parties deprive TCA and the public of their procedural due process guarantee that all such hearings will be conducted before a reasonably impartial, noninvolved reviewer.

3. Board members who were in the minority in the 2013 vote on the Revised Tentative Order are not competent on remand to adopt findings that purport to explain the reasoning of the former Board majority, with whom they disagreed.

4. On remand, the Regional Board refused to reopen the adjudicatory hearing and prohibited the TCA from introducing critical new evidence, but allowed the project opponents to introduce new evidence and failed to strike supplemental information introduced by project opponents from the record.

5. Contrary to the State Board Order, the Regional Board did not give the TCA an opportunity to revise the report of waste discharge to provide information regarding potential future impacts of SR 241.

The cumulative effect of the violations deprived the TCA and the public of a fair and impartial proceeding and violated the due process protections of the California Constitution and the United States Constitution.

1 No other member of the Board or Board staff disclosed membership in any organization listed as an interested party. Members of Board staff received emails from the NRDC, Endangered Habitats League and California State Parks Foundation, all of which are designated interested parties.
FACTUAL BACKGROUND

A. The Tesoro Extension Project

The facts regarding the Tesoro extension are described in detail in the TCA's initial Petition for Review which is attached hereto. (TCA's Petition for State Board Review of Regional Water Board Denial of WDRs, September 2014 (attached hereto as Exhibit 4).) The Tesoro Extension is an approximately 5.5 mile long extension of existing State Route ("SR") 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74 in Orange County ("County"), California.

The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on Interstate 5 ("I-5") and the arterial network in the southern portion of the County. The Project will serve both local (existing and future) and intra- and inter-regional trips. The Project is a component of the Southern California Regional Transportation Plan, the South Coast Air Quality Management Plan and the State Clean Air Act Implementation Plan.

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

The Project is situated within an unincorporated portion of the County, within the Rancho Mission Viejo ("RMV"). The Regional Board approved a section 401 water quality certification for Cow Camp Road. 1.49 miles (27 percent) of the Project is within Planning Area 2-South of the RMV Ranch Plan. Pursuant to Regional Board approval, RMV graded Planning Area 2 between early 2013 and present day. RMV obtained approvals for development of the Ranch Plan from the County, the U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife. The U.S. Army Corps of Engineers approved a Special Area Management Plan regarding the Ranch.
Plan under the federal Clean Water Act. The Regional Board approved RMV's request for WDRs for the grading of Planning Area 2, which coincides with the area proposed for the Tesoro Extension. Several environmental groups agreed to the development proposed in the Ranch Plan in a settlement agreement with the County and RMV. These same groups now oppose the Tesoro Extension, which lies within the same geographic area as the Ranch Plan.

B. The Tentative Order and Revised Tentative Order

On August 10, 2012, TCA submitted a Report of Waste Discharge ("ROWD") to construct the Project. (Water Code, § 13260, subd. (a).) Additional information to complete the ROWD application was received on October 4, 2012 and November 8, 2012. The ROWD was deemed complete on November 14, 2012. TCA proposes to discharge fill material into waters of the State in association with construction activities at the Project site. The Project was originally anticipated to result in the discharge of fill in a total of 0.64 acre of waters of the State, including 0.40 acres (5,297 linear feet) of permanent impacts and 0.24 acres (1,819 linear feet) of temporary impacts into jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00). Based on the completed grading as part of the permitted Ranch Plan, this anticipated discharge has been reduced to 0.29 acre of permanent impacts to state jurisdictional waters. (Exhibit 7, at p. 3.)

Regional Board staff released Tentative Order No. R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County, for public review and comment on January 17, 2013 ("Tentative Order").

At the March 19, 2013 hearing, Regional Board staff presented information regarding the Tentative Order, including explaining the compensatory mitigation and BMPs proposed for the Project. Regional Board staff commended TCA for water quality protection and mitigation elements of the Project. (See Transcript Excerpts from March 13, 2013 Hearing, pp. 22-23 [emphasis added] (attached hereto as Exhibit 3).)
Regional Board staff commented that TCA had proposed a "[gold] standard of mitigation" for the Project. (Id. at pp. 31-32.)

At the conclusion of the proceedings, the Regional Board continued the public hearing to June 19, 2013 to allow staff and counsel adequate time to (1) evaluate the comments submitted on CEQA compliance, (2) prepare responses to remaining issues, and (3) draft revised conditions and/or additional findings for inclusion in the Tentative Order. (Ibid.) On June 19, 2013, the Regional Board held its second hearing on the Tentative Order relating to the Project. Regional Board staff opened the hearing with its presentation regarding the Revised Tentative Order. Among other things, Regional Board staff explained how the Tentative Order had been revised since the March 13, 2013 hearing to address concerns raised by the public and by Regional Board members. In order to address concerns, Regional Board staff included additional requirements and modified mitigation measures. (See Exhibit 1, pp. 7-26; see also Transcript Excerpts from June 19, 2013 Hearing, pp. 18-22 (attached hereto as Exhibit 5); June 19, 2013 Executive Officer Summary Report, pp. 3-4 (attached hereto as Exhibit 6).) Staff explained that these changes addressed concerns regarding the Project's effect on the supply of sediment bed material to Chiquita Creek, Gobernadora Creek and San Juan Creek, as well as concerns regarding the timing of the Regional Board's approval of certain monitoring and mitigation plans. (Exhibit 5, pp. 17-20.) Staff further explained that, with these revisions, the mitigation in the Tentative Order "meets the mitigation requirements of CEQA and adequately addresses impacts to waters of the State." (Id. at p. 20.) No other state highway has been required to satisfy such rigorous water quality standards, including compliance with the South Orange County Hydromodification Plan, the draft Model Water Quality Management Plan for South Orange County, and the standards set forth in the storm water permit referred to as "MS4."

Despite its staff's recommendation to approve the Revised Tentative Order, by a three-to-two decision, the Regional Board denied the Revised Tentative Order. Board
Members Kalemkiarian, Abarbanel and Morales voted in the majority, denying WDRs for the Project. Board Members Anderson and Strawn voted to approve WDRs as described in the Revised Tentative Order.

C. The Regional Board’s Decision

During deliberations on the Revised Tentative Order, Board Member Kalemkiarian—referring to the May 23, 2013 complaint filed by the Attorney General against TCA—stated “I guess what’s most persuasive to me . . . was reading through the attorney general’s complaint or writ, actually, because I do not believe that the project is Tesoro, and I think that the project [that] has been presented is the entire [SOCTIIP] highway.” (Exhibit 5, at p. 198 [emphasis added].) Ms. Kalemkiarian noted that, with respect to the 5.5 mile Project currently before the Board, “the water quality standards will be met.” (Id. at pp. 204-05; see also id. at p. 198 [stating “I don’t question the staff’s conclusion that this segment meets water quality standards”].)

Nonetheless, she explained that after reading the Attorney General’s complaint, she was able to identify her concerns about the Project, which related to the project description. (Id. at pp. 204-05). After reading portions of the complaint aloud, Ms. Kalemkiarian stated: “This is not an adequate project description . . . I do not believe that the project description is genuine.” (Id. at p. 205.)

Following Ms. Kalemkiarian’s comments, Mr. Abarbanel stated: “I think the project that’s in front of us is actually pretty clear. It's the [SOCTIIP] project that was presented here in 2008 . . . Some people might say I made up what the project is, but I went to the website of the Transportation Corridor Authority and it shows the project going all the way through Interstate 5, somewhere kind of in San Diego County. I don't know if that's where they're going to do it. But that's the goal of their project and they're asking us to support that, and I cannot.” (Id. at pp. 201-02.) Similarly, Regional Board Chair Morales stated, “As I see it, the project as envisioned may end up [south of San Clemente]; may not. I don’t know. I do think it’s more than five and a half miles though.” (Id. at p. 203.)
The above statements constitute the only grounds cited by the Regional Board at the time of the decision on the Revised Tentative Order. Board Member Olson became a member of the Regional Board a full month after the adjudicatory hearings on the Revised Tentative Order, and Board Member Warren did not become a Board Member until December 2014 – 18 months after the Regional Board action on the Revised Tentative Order. Thus, neither Board Member Olson nor Warren was a Board Member at the time the decision to deny WDRs for the Project was made. Former Board Member Kalemkiarian resigned from the Regional Board in 2013.

D. The State Board Order

TCA timely petitioned the State Board for review of the Regional Board’s decision and failure to act. Transportation agencies throughout California testified before the State Board that it is standard practice to permit and construct transportation projects in phases. The transportation agencies also documented that it is very common for an individual transportation improvement to be part of a larger project as described on local and regional transportation plans.

The State Board adopted its Order on September 23, 2014. The State Board Order 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.” (Exhibit 1, at 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 found that it would not have the full authority to restrict water quality impacts of future phases.

The State Board Order determined that there was insufficient evidence in the record to determine the reasoning of the Regional Board for denying the Revised Tentative Order. (Exhibit 1, at p. 13.) The State Board found that the Regional Board had failed to comply with the explicit directive of Government Code, § 11425.50,
subdivision (a), which requires that a decision like the Regional Board’s “shall be in writing and shall include a statement of the factual and legal basis for that decision.”

The State Board acknowledged that

“In most cases, as long as the regional water board complies with CEQA, the regional water board may issue WDRs for the current project and defer issuance of WDRs for future discharges of waste until the point in time that those discharges are actually proposed, without compromising its responsibility to protect water quality from those future discharges.”

(Exhibit 1, at p. 11.)

Thus, the State Board found the need for detailed findings from a Regional Board is heightened in situations where a Regional Board declines to issue WDRs based on a project’s potential to lead to future discharges, requiring an explanation about why the Regional 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.”

(Id. at p. 11.) Specifically, the State Board Order provides

“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."

(Id., at p. 11 (emphasis added).)

The State Board noted that "it is clear from the transcript that concerns about
water quality impacts resulting directly from the Tesoro Extension did not form the basis
for the San Diego Water Board's decision." (Id. at p. 13.) Following an extensive
discussion of the reasons why detailed findings of fact and law are required when a
Regional Board chooses to deny WDRs against staff recommendations, the State
Board Order directed the Regional board to "provide the factual and legal basis for its
decision consistent with this Order." (Id. at p. 15.) By failing to adopt the express
findings required by the State Board Order, and by failing to identify any competent
evidence to support a finding that the Regional Board would be limited in its ability to
exercise its full authority in the future, the Regional Board failed to comply with the State
Board Order. The Regional Board's findings ignore the State Board assurances made
to state-wide transportation agencies that regional boards should not deny WDRs based
on impacts of future projects unless the Regional Board makes the "most important"
finding, supported by evidence in the record, regarding jurisdiction over future phases.

E. The Regional Board Resolution

After receiving the State Board decision, Regional Board staff discussed the
Regional Board's planned course of action with TCA and interested parties in November
2014 and again in January 2015. TCA disclosed to the Regional Board at a meeting
with Regional Board staff on November 13, 2014 that substantial grading had occurred
near the planned project site, associated with the permitted Ranch Plan, which had
reduced the Tesoro Extension's potential impacts to State waters from 0.40 acres to
0.29 acres. Regional Board staff advised TCA that no additional evidence would be
allowed, and that the reduced impact of the Tesoro Extension would not be considered
in connection with the Resolution. (Comment Letter from TCA to Regional Board dated February 18, 2015, at p. 3 (attached hereto as Exhibit 7).) The Regional Board thereafter set a hearing date for March 16, 2015 and released the Resolution (Resolution No. R9-2015-0022) for public review and comment on February 4, 2015. The Regional Board explicitly prohibited the introduction of new or additional evidence related to the Revised Tentative Order, and specified “[c]omments must be limited to the findings of the Resolution.” (Regional Board Notice of Procedures for Considering Resolution No. R9-2015-0022, at p. 1 (attached hereto as Exhibit 8).) The Regional Board prepared a Response to Comment Report. (See Regional Board Response to Comments Report for Resolution No. R9-2015-0022 (attached hereto as Exhibit 9).) TCA’s comments are the only comments substantively responded to in the Response to Comment Report. (Id. at pp. 2-5.) They are also the only comments for which the Regional Board reiterates its prohibition on new evidence concerning the Tesoro Extension, despite the fact that multiple comments from interested parties and the public stray far from the contents of the Resolution and provide new or supplemental information on topics covered during the 2013 adjudication. (Compare Id. at p. 3 with id. at pp. 5-6.) In particular, a comment from the Save San Onofre Coalition provides new information regarding an arterial (“F” Street) under development by the Rancho Mission Viejo Company and questions the independent utility of the Tesoro Extension as compared with “F” Street. (See Comment Letter from Save San Onofre Coalition, at pp. 4-5 (attached hereto as Exhibit 10).) While F Street was also discussed during the 2013 adjudicatory hearings, the Rancho Mission Viejo Company did not begin seeking construction approvals for that project until after the 2013 adjudicatory hearings2. The Regional Board informed TCA that information regarding “F” Street and the associated progress of the Ranch Plan would be excluded as new information if offered by TCA, but then allowed that

2 The Regional Board’s website notes that RMV application for a section 401 water quality certification for F Street was noticed for public comment on April 9, 2015.
information when submitted by the Save San Onofre Coalition. The Regional Board was required to exclude the testimony regarding the current of F Street and its partial approval by the Regional Board. Rather than clarifying that this information would not be considered by the Board for purposes of the Resolution, the Regional Board noted the non-governmental organization's comment. (Exhibit 9, at p. 5.) This is only one example of many instances where the Regional Board considered new information from Project opponents despite its refusal to allow the TCA to introduce any new evidence.

The Resolution states that the Regional Board believes its jurisdiction and review of the Tesoro Extension to have been improperly limited based on the fact that the entirety of the 241 Extension was not placed before the Regional Board. (Exhibit 2, at p. 6, ¶¶ 30-32.) Contradicting this finding is the Regional Board's finding that any future alignment of SR 241 beyond Cow Camp Road would cross state waters and would therefore be subject to the full authority of the Regional Board. (Id. at p. 6, ¶ 30; Exhibit 9, at pp. 2-3.)

The following table compares the finding required by the State Board Order with the findings adopted by the Regional Board. It is obvious that the Regional Board did not adopt the findings required by the State Board Order.

<table>
<thead>
<tr>
<th>State Board Order Required Findings</th>
<th>Regional Board Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Board Order, p. 11</td>
<td>Regional Board Resolution, ¶¶ 31-32</td>
</tr>
<tr>
<td>&quot;[D]escribe the potential for future discharges of waste or other water quality impacts&quot;</td>
<td>&quot;Proposed future alignments of the toll road extension will have impacts to water quality and water resources, including the San Juan Creek, San Mateo Creek, San Onofre Creek and Christianitos Creek watersheds.&quot;</td>
</tr>
<tr>
<td>&quot;[E]xplain why [those impacts] are likely to result from the current project before the regional board&quot;</td>
<td>&quot;[E]vidence in the record shows the Tesoro Extension is likely to lead to the SOCTIP toll road project and that unmitigated water quality impacts are likely to result from the SOCTIP toll road project.&quot;</td>
</tr>
</tbody>
</table>
“Explain why the regional water board would be limited in 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.”

“By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases.”

We anticipate that the Regional Board will argue that its findings comply with the State Board Order because the State Board Order states that a regional board would be justified in declining to issue a WDR where subsequent phases of a linear project will likely lead to “water quality impacts from which the regional water board may not be able to adequately protect waters of the state by issuing WDRs or taking other appropriate regulatory actions in the future.” (Exhibit 1, at p. 10-11.) The above statement in the State Board Order must be read in conjunction with the State Board’s explicit directive immediately following, that “most importantly” regional boards are required to make the explicit findings that “explain why the regional water board would be limited in its ability to exercise its full authority in the future.” (Exhibit 1, at p. 11.).

The Regional Board did not make the “most important” finding required by the State Board Order and did not identify any competent evidence to support a finding that the Regional Board “would be limited in its full authority” to regulate future extensions of SR 241.

F. Regional Board Adopts the Resolution

On March 16, 2015, the Regional Board adopted the Resolution. Two of the Regional Board members (Warren and Olson) who voted to adopt the Resolution were not members of the Board during the original adjudicatory proceedings regarding WDRs for the Tesoro Extension. Neither of these Regional Board members
documented on the record that they read the transcript of the adjudicatory hearings and had reviewed and considered the evidence presented during the adjudicatory hearings. Board Member Warren disclosed that she is a member of the Surfrider Foundation – a designated interested party in the adjudicatory proceedings on the Resolution – and that she engaged in ex parte communications with the Surfrider Foundation. (Exhibit 8, at pp. 2-3.) Board Member Abarbanel, a member of another interested party (Sierra Club) also disclosed that he engaged in ex parte communications with interested parties (NRDC). Neither Board Member Warren nor Abarbanel disclosed the substance of the ex parte communications, as is required by law.

III ARGUMENT

A. The Regional Board Violated the State Board Order.

Despite clear and explicit direction by the State Board, the Resolution adopted by the Regional Board violates the express requirements of the State Board Order. The State Board could not have been clearer that, in order for the Regional Board to deny the WDR for the Tesoro Project on the basis of potential water quality impacts of potential future extensions of SR 241, the Regional Board was “most importantly” required to make express findings that:

"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.”

3 Mr. Abarbanel also disclosed his Sierra Club membership at the March 13, 2013 hearing. (Exhibit 5, at p. 14, lines 1-3.) Receipt of any communications from an interested party should have been disclosed under the rules governing ex parte contacts with State and Regional Board members relating to an ongoing proceeding. (See Gov. Code, §§ 11430.10-11430.80.) To date, Mr. Abarbanel has disclosed only a voicemail from the Orange County Business Council and an email from the Natural Resources Defense Council. (Exhibit 5 at p. 8; Exhibit 8, at p. 3.)
(State Board Order, Exhibit 1, at p. 11, ¶ 3 [emphasis added].) The Resolution adopted by the Regional Board is devoid of the “most important” finding required by the State Board Order. Instead, the Regional Board relied on the following incomprehensible finding:

"By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases."

(Exhibit 2, at p. 6, ¶ 32.)

Nowhere in this finding (or in any other finding) does the Regional Board “explain why the regional water board would be limited in its ability to exercise its 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.”

We can only speculate as to why the Regional Board elected to ignore the express requirement of the State Board Order. It may be that the Regional Board did not make the finding because the uncontested facts do not support the required finding. Indeed the Resolution acknowledges that future extensions of SR 241 south of Cow Camp Road would require the crossing of San Juan Creek and would have other impacts on waters of the State and waters of the United States. (Exhibit 2, at p. 6, ¶ 30.) Thus, it is beyond any serious dispute that the Regional Board has the “ability to exercise its full authority in the future” to regulate any discharges from future extensions of SR 241 to protect the waters of the state, including if necessary the denial of a WDR or section 401 certification for future extensions of SR 241.
Instead of complying with the clear directive of the State Board Order, the
Regional Board adopted findings that can only be described as Orwellian. The
syllogism reflected in the Resolution is the following: “Future extensions of SR 241 are
contemplated by the TCA. The TCA did not include potential future phases of SR 241 in
the WDR application for the Tesoro Extension project. The potential future phases
impact waters of the state. Therefore, the Regional Board is limited in its ability to
protect waters of the state through an action on the Tesoro Extension.”

By this “logic”, any regional board in the state could always deny a WDR or a
401 certification for any transportation improvement where future extensions or
improvements are contemplated in a transportation plan. In their testimony to the State
Board on this matter, the following transportation agencies from throughout the State
documented 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
Riverside County Transportation Commission
San Bernardino Associated Governments
Exposition Metro-Line Construction Authority
Metro Gold Line Transportation Authority
Orange County Transportation Authority

(Transportation Agency Comment Letters to State Water Board (attached hereto as
Exhibits 11–18).)

The TCAs submitted evidence to the State Board and Regional Board
documenting dozens of examples of transportation projects in all parts of California that
are permitted and built in phase, including, but not limited to, the following:

- California High Speed Rail Project
- Bay Area Rapid Transit extensions to Santa Clara County
• LA Exposition Corridor transit project
• LA Foothill Gold Line transit project
• LA Westside Subway extension project
• San Joaquin Valley State Route 99 improvements
• Sacramento I-5 improvements
• Bay Area Highway Express Lane projects
• LA I-5 Improvements
• San Bernardino High Desert Corridor
• San Bernardino SR 138 improvements
• San Diego I-15 improvements
• San Diego SR 52 improvements
• San Diego SR 76 improvements
• Placer SR 65 Lincoln Bypass

(Table of Phased Transportation Projects and Permits (attached hereto as Exhibit 19); see also Map of Linear Phased Projects (attached hereto as Exhibit 20).) Following the logic of the Regional Board in the Resolution, regional board could deny permits for all of the above projects because the future phases of the projects would impact waters of the state and the permit applicant did not include the entire project in the first phase application.

For example, the California High Speed Rail Authority is permitting and constructing the High Speed Rail project in multiple sections (starting with sections in the Central Valley) while the CEQA analysis of alternative alignments continues on the sections in the Bay Area and in Southern California.4

4 Exhibit 21 ["A Proposal To Tunnel Through the Angeles National Forest is Getting a Closer Look", Los Angeles Times (Aug. 24, 2014).]
Petition for Review

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Similarly, Caltrans is separately permitting and building dozens of improvements to State Route 99 in the Central Valley that are part of a larger set of improvements to SR 99. (See map of project below)

Figure 3.4.3H
Route 99 Business Plan
Programmed Capacity and Operational Improvements Projects
The High Speed Rail Project and the SR 99 improvements will be indefinitely delayed if regional boards may deny the approval of an individual improvement based on potential impacts of future improvements despite independent water board jurisdiction over those future improvements.

The transportation agencies testified that a policy allowing regional boards to deny WDRs for one improvement or phase based on potential impacts of subsequent phases would adversely impact the timely and cost-effective delivery of transportation improvements throughout the State. For example, the Metropolitan Transportation Commission for the San Francisco Bay Area testified:

"The regional transportation plan for the 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 as funding becomes available, as the CEQA process is completed for each phase, and as regulatory approvals are obtained. It is simply not feasible for practical to obtain regional board or other permits for the entire length of each improvement identified in a multi-decade transportation plan at the time that [the Bay Area transportation agencies] propose to construct an initial phase."

(MTC letter to State Board dated September 8, 2014, at p. 2 (attached hereto as Exhibit 11).)

Similarly, the Exposition Corridor transit authority explained that it phasing of permitting of is essential to the cost-effective and timely delivery of projects:

"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."

(Exposition Metro Line Construction Authority Letter to State Board dated September 3, 2014, at p. 2 (attached hereto as Exhibit 16).)

In response to the above testimony, the State Board Order specifically instructed the Regional Board that, in order to deny the WDR for the Tesoro Project on the basis of potential water quality impacts of future phases, the Regional Board was required to provide the factual and legal basis to support a finding that the Regional Board would be "limited in its ability to exercise its full authority in the future to prohibit, or otherwise restrict, those future discharges." (Exh. 1 at p. 11.)

Instead of complying with the express direction of the State Board, the Resolution rehashes the same asserted bases for the Regional Board's decision to deny WDRs for the Tesoro Extension, namely, that the Regional Board disagreed with the project description. Not a single finding within the Resolution meets the State Board Order's requirement that the Regional Board explain why its authority over extensions of SR 241 south of Cow Camp Road would be limited.
B. The Regional Board Failed To Identify Competent Evidence to Support the Required Finding and Failed to “Bridge the Analytic Gap” Between the Evidence and the Required Finding.

The requirement that agencies carrying out a quasi-adjudicatory role adopt legally sufficient findings to support their decisions is a means of ensuring that these agencies follow the law. Adopting findings is more than a mere formality, as the State Board Order acknowledges, because it allows a reviewing body to determine the reasoning behind an agency’s decision. The Regional Board is governed by the provisions of the California Administrative Procedures Act that relate to quasi-adjudicative proceedings. (Water Code, § 648, subd. (b).) This includes the provisions of the Administrative Adjudication Bill of Rights. (Gov. Code, § 11425.10.) Under those provisions, the adjudicative decision of the Regional Board to either condition or deny altogether a permit for water discharge is to be made in writing, based on the record, and include a statement of the factual and legal basis for the decision. (Gov. Code, § 11425.10, subd. (a)(6).) Both state and federal courts have held that legally adequate findings in quasi-judicial actions are necessary to protect the due process rights of parties before an administrative agency. (Goldberg v. Kelly (1970) 397 U.S. 254; Saleeby v. State Bar of Calif. (1985) 39 Cal.3d 547, 566-68 [holding that an administrative body is required to issue findings in support of its decision in order to satisfy the due process rights of the parties before the agency].)

Five decades ago, the California Supreme Court made it clear that quasi-judicial decisions of administrative agencies are required to be supported by written findings that identify the facts relied upon by the agency and that explain the connection between such facts and the agency’s legal conclusions. (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.) As the Supreme Court made clear, it is not sufficient for an agency to make the bare finding required by the law. The agency is required to cite to the evidence that it is relying upon to support the
finding and to "bridge the analytic gap" between the evidence and the finding. (Id. at p. 519.)

Here, the Regional Board not only failed to make the finding required by the State Board Order, it failed to identify any relevant or competent evidence to "bridge the analytic gap" between the facts and the required finding that the Regional Board "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." (Exhibit 1, at p. 11, ¶ 3.)

The uncontested facts here are that the future extensions of SR 241 will require WDRs, storm water discharge NPDES permits, and 401 water quality certifications issued by the Regional Board for any potential future extensions south of Cow Camp Road. Thus, the Regional Board will have full authority to regulate discharges from future extensions of SR 241. The Regional Board failed entirely to identify any evidence to "bridge the analytic gap" between these uncontested facts and the finding required by the State Board Order.

Indeed, the TCA submitted the only evidence on this issue. The TCA presented a stipulated agreement to the Regional Board documenting that future extensions of SR 241 would require Regional Board approval of WDRs and section 401 water quality certifications. (TCA Stipulation to Regional Board's Future Authority, at pp. 2-3 (attached hereto as Exhibit 22).) No contrary evidence regarding the Regional Board's future jurisdiction was submitted during the adjudicatory proceedings before the Regional Board.

C. The Regional Board Findings Are an Illegal Post-Hoc Rationalization.

Agencies may not engage in post hoc rationalizations of their decisions. (Motor Vehicle Manufacturers Assoc. of the U.S. v. State Farm Mutual Automobile Insurance Co. (1983) 463 U.S. 29 [invalidating National Highway Traffic Safety Administration's decision where the reason for the decision was not articulated at the time of the agency's decision].) Where an agency's findings are not issued contemporaneously...
with the agency's decision, the agency's findings are nothing more than post-hoc rationalizations of a decision the agency made. (Bam, Inc. v. Board of Police Commissioners of City of Los Angeles (1992) 7 Cal.App.4th 1343, 1346-49 [holding that findings issued only after the agency's initial decision to be nothing more than unsupportable post-hoc rationalizations].) In *Bam*, the Court of Appeal held that the decision of the board of police commissioners to suspend a motion picture arcade's permit and to issue findings two days later violated the motion picture arcade's due process rights. (*Id.* at p. 1348-49.) As in *Bam*, the Regional Board offered no coherent or legal explanation for denial of the WDRs when it made the decision.

During the 2013 adjudicatory hearings, **NO person** presented any evidence that the Regional Board lacked authority to regulate discharges from future extensions to protect the waters of the state. During the 2013 adjudicatory proceedings on TCA's request for WDRs, none of the three Regional Board members who voted to disapprove the staff recommendation (Abarbanel, Kalmkarian, Morales) expressed any concern that the Regional Board did not have full authority to regulate future extensions of SR 241 to protect the waters of the state. Indeed, as noted by the State Board Order, it is impossible to discern any coherent or lawful rationale for the Regional Board majority's rejection of the Regional Board staff recommendation:

"As a preliminary matter, it is clear from the transcript that concerns about water quality impacts resulting directly from the Tesoro Extension did not form the basis for the San Diego Water Board's decision. Two of the Board Members indicated that they were satisfied that the Revised Tentative Order adequately addressed any water quality impacts that were directly related to the Tesoro Extension. None of the remaining three Board Members expressed any concerns about water quality impacts that were
directly related to the Tesoro Extension . . . . Three of the four Board Members who had concluded that the Tesoro Extension is part of a larger project ultimately voted to not approve the Revised Tentative Order. Two of the majority also expressed generalized concerns that future extensions to Interstate 5 may impact water quality. One of the majority referred three times during the deliberations to a CEQA complaint that had recently been filed by the Attorney General that alleged that the Petitioner had violated CEQA by failing to adequately describe the project. Another majority-voting Board Member also referred to CEQA and stated that he thought that there was "some ambiguity in what we are required to do and not do in terms of our analysis." . . . Therefore, while we can conclude that all three of the Board Members who voted in the majority believed that the Tesoro Extension was part of a larger project that would eventually connect to Interstate 5, we are left with no conclusion as to why they voted to not approve the Revised Tentative Order. Without knowing the factual and legal basis for the decision, it is simply not possible to determine whether it was appropriate." (Exhibit 1, at pp. 13-14.) The uncontested fact is that during the 2013 adjudicatory hearings, the Regional Board never discussed or considered the extent of the Regional Board's authority to regulate discharges from future extensions of SR 241. The Resolution is also devoid of any discussion of the so-called CEQA rationale relied upon by former Board Member Kalemkiarian. Thus, the Regional Board has
conceded that CEQA does not provide a lawful basis for denial of the Revised Tentative Order. As the TCA documented in its initial petition to the State Board, CEQA required the Regional Board to assume that the TCA had complied with CEQA.

At best, paragraphs 31 and 32 of the Resolution are nothing more than an illegal post hoc rationalization, devoid of evidentiary support, for why the Regional Board would be constrained in its ability to regulate future discharges, and at worst it offers no explanation and no finding on this point at all. The Regional Board’s post-hoc rationalization violates the California Constitution’s due process safeguards in Article 1, section 7, and its guarantee of “freedom from arbitrary procedures.” (People v. Ramirez (1979) 25 Cal.3d 260, 268-69, accord Saleeb v. State Bar of Calif. (1985) 39 Cal.3d 547, 563-64.)

D. The Regional Board Violated Due Process Requirements and Deprived the TCA and the Public of a Fair and Impartial Adjudicatory Proceeding.

Constitutional guarantees of due process of law govern the Regional Board’s adjudicatory proceedings. (Withrow v. Larkin (1975) 421 U.S. 35, 46; Morongo Band of Mission Indians v. State Water Resources Control Board (2009) 45 Cal.4th 731, 737.) Here, due process violations pervade the Regional Board’s adjudicatory proceedings. The due process violations include:

1. Board Members Warren and Olson voted in favor of the Resolution despite the fact that they were not Board members during the 2013 adjudicatory proceedings and thus could not hear the evidence presented to the Regional Board during the 2013 adjudicatory hearings.

2. Board Members Warren and Abarbanel are members of designated "interested parties" in the adjudicatory proceeding (Surfrider Foundation and Sierra Club, respectively). Board members Warren and Abarbanel

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5 No other Board members or Board staff disclosed membership in organizations that are designated interested parties. However, documents produced by the Regional Board show that
engaged in prohibited ex parte communications with interested parties (Surfrider Foundation and NRDC, respectively). Their membership in, and ex parte communications with interested parties to the 2013 and remand proceedings deprive TCA and the public of their procedural due process guarantee that all such hearings will be conducted before a reasonably impartial, noninvolved reviewer.

3. Board members who were in the minority in the 2013 vote on the Revised Tentative Order are not competent to adopt findings in the Resolution on remand that purport to explain the reasoning of the former Board majority.

4. The Regional Board refused to reopen the adjudicatory hearing and prohibited the TCA from introducing critical new evidence, but allowed the project opponents to introduce new evidence and failed to strike that evidence from the record.

The cumulative effect of the violations deprived the TCA and the public of a fair and impartial proceeding and violated the due process protections of the California Constitution and the United States Constitution.

1. “He Who Decides Must Hear.” Board Members Warren and Olson Should Have Been Prohibited from Participating in the Deliberations and Decision Regarding the Resolution.

A fundamental principle of adjudicatory proceedings is that “he who decides must hear.” (Morgan v. United States (1936) 298 U.S. 468 [holding that the one who decides must hear the evidence].) Indeed, the California courts have held that members of quasi-judicial agencies violate due process where they attend the hearing, but don’t pay attention to the applicant’s presentation of the evidence. (Lacy St. Hospitality Serv. Inc. v. City of Los Angeles (2004) 125 Cal.App.4th 526, 529.) In Lacy, the Court invalidated an adjudicatory decision of a city council because:

Regional Board staff received emails from the NRDC, Endangered Habitats League and California Parks Foundation asking them to oppose the project.

6 The Regional Board has withheld other relevant communications requested by TCA in violation of the Public Records Act.
"The tape [of the council hearing] shows that . . . eight
council members -- three of whom were absent -- were not in
their seats. Only two council members were visibly paying
attention. Four others might have been paying attention,
although they engaged themselves with other activities."

(Ibid.)

The court concluded that the council member's inattention during the hearing
prevented the council from making a reasoned decision and, as a result, violated the
applicant's due process rights. (Ibid.) Here, Board Members Warren and Olson were
not only inattentive; they were completely absent.

In 2013, Regional Board held two days of evidentiary hearings on the WDR
proposed by the Regional Board staff. The hearings included lengthy technical
presentations by the Regional Board staff and by the TCA. The Regional Board staff
recommended that the Regional Board approve WDRs for the Tesoro Extension.
However, in June 2013, by a 3-2 vote, the Regional Board rejected the Regional Board
staff recommendation.

Board Members Warren and Olson were appointed after the Regional Board's
June 2013 decision to deny WDRs for the Tesoro Extension. Board Member Warren
was appointed in July 2013, and Board Member Olson was not appointed until
December 2014. These members were not on the Board at the time of the prior
adjudicatory proceeding, and thus have no ability to understand or explain the analysis
and reason of the former Board majority. Neither Board Member Olson nor Board
Member Warren indicated at the March 16, 2015 hearing that they had either reviewed
the record of the prior proceedings or had made themselves familiar with the evidence
prior to considering and acting on the Resolution. It is impossible to know whether they
had any familiarity with the prior adjudicatory proceedings whatsoever. As the State
Board Order recognized, long-established California law requires that quasi-judicial
decisions of administrative agencies are required to be supported by written findings.
that identify the facts relied upon by the decision maker and that explain the connection between such facts and the legal conclusions. (Exhibit 1, p. 11; Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.) In Topanga, the California Supreme Court explained that a fundamental purpose of written findings is to force the agency to explain the factual and legal basis for its decision – to bridge the “analytic gap” between the evidence and the agency’s legal conclusions. (Id., 11 Cal.3d at p. 516)

With the resignation of Board Member Kalemkian, the former Board majority no longer exists. Thus, it is impossible, as both a legal and a factual matter, for the former majority to adopt findings that explain the former majority’s reasoning. Certainly Board members Warren and Olson cannot possibly explain the factual and legal basis of the decision by the prior board majority. Board Members Warren and Olson did not participate in the prior proceeding and they simply have no basis to approve the factual and legal reasoning of the former majority. This is particularly the case because, at the time of the decision, the former Board majority failed to articulate any comprehensible basis for the decision. As the State Board Order notes:

"Therefore, while we can conclude that all three of the Board Members who voted in the majority believed that the Tesoro Extension was part of a larger project that would eventually connect to Interstate 5, we are left with no conclusion as to why they voted to not approve the Revised Tentative Order."

(Exhibit 1, pp. 13-14 [emphasis added; footnotes omitted].) If, after a review of the record, the State Board and its counsel were "left with no conclusion as to why [the former Board majority] voted to not approve the Revised Tentative Order,” it was similarly impossible for Board Members Olson and Warren to explain the legal and factual basis for the former Board majority’s decision.
In order for Board Members Warren and Olson to lawfully participate in the consideration of the Resolution, the Regional Board was required to reopen the adjudicatory proceeding, reconsider the evidence presented during the prior proceedings, allow the introduction of new evidence, and reconsider the Regional Board staff recommendation to approve the Revised Tentative Order.

2. **Board Members Warren and Abarbanel Are Members of "Interested Parties" in the Adjudicatory Proceeding, Engaged in Ex Parte Communications with Interested Parties, and Thus the Board Members are Unable to Exercise Independent Judgment.**

   Code of Civil Procedure section 1094.5, subdivision (b) creates a statutory right to a fair hearing, which must be conducted before an impartial tribunal. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170; see also *Haas v. County of San Bernardino* (2002) 37 Cal.4th 310, 346 ["When due process requires a hearing the adjudicator must be impartial"]). The California Supreme Court has said of administrative adjudicatory hearings that,

   "Administrative tribunals which are required to make a determination after a hearing cannot act upon their own information, and nothing can be considered as evidence that was not introduced at a hearing of which the parties had notice or at which they were present. The fact that there may be substantial and properly introduced evidence which supports the board's ruling is immaterial. A contrary conclusion would be tantamount to requiring a hearing in form but not in substance, for the right of hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its determination upon..."
information received without the knowledge of the
parties. A hearing requires that the party be apprised
of the evidence against him so that he may have an
opportunity to refute, test, and explain it, and the
requirement of a hearing necessarily contemplates a
decision in light of the evidence there introduced.”

(English v. City of Long Beach (1950) 35 Cal.2d 155, 158-59 [citations omitted].) It is
fundamental to due process that a decision maker may not sit in judgment over his own
case. (Today’s Fresh Start, Inc. v. Los Angeles County Office of Education (2013) 57
Cal.4th 197, 223; Department of Alcoholic Beverage Control v. Alcoholic Beverage
Control Appeals Bd. (2006) 40 Cal.4th 1, 4 ["One fairness principle directs that in
adjudicative matters, one adversary should not be permitted to bend the ear of the
ultimate decision maker or the decision maker’s advisors in private."])

A violation of due process can be demonstrated by a showing of a situation,
based on the totality of circumstances, “which experience teaches that the probability
of actual bias on the part of the judge or decision-maker is too high to be constitutionally
tolerable.” (Withrow, supra, 421 U.S. 35, 47 [emphasis added].) The probability that a
single decision maker is biased can be sufficient to warrant reversal of the adjudicatory
decision. (Woody’s Group, Inc. v. City of Newport Beach (2015) 233 Cal.App.4th 1012,
1021-22.)

California courts are clear that “[i]just 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

“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 470, 483 [emphasis in original].) Here two Regional Board Members (Warren and Abarbanel) are admitted members of designated “interested parties” (Surfrider Foundation, Sierra Club) who oppose the Tesoro Extension7.

The Regional Board designated the Surfrider Foundation, the NRDC, and the Sierra Club as “interested parties” during the original adjudicatory proceeding, and both organizations remained actively involved as interested parties throughout the petition proceedings before the State Board and the Regional Board’s subsequent adoption of the Resolution. Both organizations played extensive and prominent roles in the adjudicatory proceedings including providing written and oral testimony and organizing their members to speak in opposition to the Project. Board Members Warren and Abarbanel admitted to receiving prohibited ex parte communications with the environmental organizations. Receipt of such communications by a member of a Regional Board may be grounds for disqualification under Government Code, section 11430.60 and, even if receipt of such communications might be remedied by a Regional Board Member, such communications further compound due process concerns, particularly since Board Members Warren and Abarbanel did not disclose the substance of the ex parte communications as required by law.8 (Gov. Code, §§ 11430.40, 11430.50.)

A memorandum from the State Board’s Office of Chief Counsel to the members of the State Board and the regional boards explains why ex parte communications in adjudicatory proceedings are prohibited:

“Rules regarding ex parte communications have their roots in constitutional principles of due process and fundamental

7 The issue of bias as it relates to Mr. Abarbanel was previously raised by TCA in its prior petition for State Board Review (Exhibit 4).

8 No other communications to/from Board members have been produced, despite TCA’s request for them.
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."

(Memorandum from Michael Lauffer, Chief Counsel Regarding Ex Parte Communications Questions and Answers, at p. 2 (April 25, 2013) (attached hereto as Exhibit 23) [emphasis added].)

In similar circumstances, and even in recent general NPDES permitting circumstances where restrictions on ex parte communications were less stringent than those applicable to these proceedings, the Office of Chief Counsel has previously advised that regional board members were required to recuse themselves from participating in regional board proceedings. In 2008, the Office of Chief Counsel advised regional board members to recuse themselves in general permit matters where board members were officials in a public agency interested in general permits before

During the proceedings for Los Angeles County's MS4 permit in 2012, the Natural Resources Defense Council ("NRDC"), objected to the participation of Regional Board Member, Mary Ann Lutz, because she was an elected official of an agency that would be subject to the MS4 permit and because she had ex parte communications with interested parties to the proceedings. (NRDC Comment Letter Participation of Board Member Mary Lutz in Los Angeles MS4 Permit Hearing, at p. 2 (attached hereto as Exhibit 24).) The NRDC stated:

"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 484 (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 area." (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."

(Id.)

Board Member Lutz stated that she disagreed with the Board counsel's advice that she should recuse herself from the hearing due to ex parte contacts between
herself and stakeholders and believed that all of her communications with interested parties had been sufficiently disclosed. *(Ibid.)* Nevertheless, Board Member Lutz was disqualified from the general permit proceedings on the advice of the Board’s counsel. If Board Member Lutz was required to recuse herself from participating in the MS4 permit proceedings, where ex parte communications were expressly permitted by the statutory exception to the ex parte communication prohibitions of the Water Code, adopted in 2012, then Board Members Abarbanel and Warren were also required to recuse themselves from a decision regarding WDRs where such communications are prohibited under the Water Code and Government Code. *(Ibid.)*

The 2012 amendments to the Water Code strengthened the prohibition on ex parte communications, but created an exception for general permit proceedings. *(See Water Code, § 13287, subd. (b) [noting that communications regarding general permits are conditionally exempted from the prohibition on ex parte communications].)* However, the prohibition on ex parte contacts between Regional Board members and interested parties for WDRs remains in effect while a matter is pending before the Regional Board and is not waived for proceedings regarding WDRs or individual NPDES permits. The prohibition extends the period in which an action of the Regional Board is pending, including the period during which an action is being reviewed on appeal to the State Board, and during any subsequent proceedings that the State Board may order. *(Exhibit 23, at pp. 9-10.)* Thus, the 2012 Water Code amendments reinforce the prohibition on ex parte communications involving WDRs and such communications by Board Members Abarbanel and Warren, particularly in the absence of disclosures of the content of those communications, provide additional grounds to invalidate the Regional Board Resolution.

The “totality of the circumstances” here – the prominent and vocal opposition of NRDC, the Surfrider Foundation and Sierra Club to the Tesoro Extension, the designation of these environmental organizations as “interested parties” in the adjudicatory proceeding, the extensive participation of NRDC, the Surfrider Foundation
and Sierra Club in the proceedings, the unlawful ex parte communication by Board
Members Warren and Abarbanel, and Board Member Abarbanel’s position as Chair of
the Regional Board during the consideration of the Resolution – demonstrate a
probability of bias on the part of Board Members Warrant and Abarbanel and that Board
Members Warren and Abarbanel were required to recuse themselves from the Regional
Board’s deliberations on the Tesoro Extension Project. Their failure to do so deprived
the TCA and the public of a hearing before a reasonably impartial, noninvolved reviewer
and violated due process.

3. Board Members Anderson and Strawn Were Prohibited from
Participating in the Deliberation on the Resolution.

The State Board Order required the Regional Board to “provide the legal and
factual basis for its decision.” (Exhibit 1, at p. 15.) The “decision” refers to decision by
the three member majority of the Regional Board (Abarbanel, Kalemkiarian, Morales) to
reject the Regional Board staff recommendation and deny the approval of the Revised
Tentative Order. Board Members Strawn and Anderson were in the minority and voted
to accept the staff recommendation and approve the Revised Tentative Order, finding
that based on the evidence presented to them during both hearings, there was not a
legitimate reason to deny WDRs for the Project. Board Members Strawn and Anderson
are not able to “provide the legal and factual basis” for a decision that they opposed.
They were thus prohibited from participating in the deliberations on the Resolution. For
this reason, it is common practice of other state boards (such as the Coastal
Commission) to limit the approval of findings to board members who voted in the
majority.
4. The Regional Board Refused to Reopen the Adjudicatory Hearing and Prohibited the TCA from Introducing Critical New Evidence, While Allowing the Project Opponents to Introduce New Evidence.

The TCA requested that it have an opportunity to introduce important new evidence that the impacts of the Project are greatly reduced as a result of the grading for the Rancho Mission Viejo development. Ironically, the Regional Board approved the much more extensive grading for the Rancho Mission Viejo development, while denying approval of the Tesoro Extension in the exact same area. Despite the obvious relevance of this new information, the Regional Board denied the TCA's request to reopen the adjudicatory hearing to allow the TCA to introduce this important new evidence. At the same time, the procedures adopted by the Regional Board allowed the interested parties and project opponents to introduce new evidence. During the meeting on the Resolution, the Regional Board objected to the testimony of the TCA's sole representative, but allowed hours of testimony by the project opponents. The Regional Board's inconsistent treatment of the TCA and the project opponent and the Regional Board's refusal to reopen the adjudicatory hearing and failure to strike improper new evidence from project opponents constitutes a violation of due process.

The State Board Order states that when a regional board declines to issue a WDR it may "choose to give the project proponent an opportunity to revise its project and submit a revised report of waste discharge." (Exhibit 1, at p. 9.) Despite the fact that (i) the Regional Board staff recommended approval of the Revised Tentative Order, and (ii) the Regional Board never considered any evidence regarding the extent of its authority to regulate future extensions of SR 241, the Regional Board never provided the TCA with the opportunity to submit a revised report of waste discharge. The Regional Board's failure to do so is a violation of due process.
IV CONCLUSION

The Regional Board abused its discretion and violated applicable law. The State Board is required to (a) vacate the Resolution, and (b) act in place of the Regional Board and approve the Revised Tentative Order recommended by the Regional Board staff.

April 14, 2015

Respectfully Submitted,

NOSSAMAN LLP

By: ROBERT D. THORNTON
    STEPHANIE N. CLARK

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
LIST OF EXHIBITS


Exhibit 8: California Regional Water Quality Control Board, San Diego Region, Revised Meeting Notice and Agenda for March 16, 2015 and Notice of Procedures (March 6, 2015).

Exhibit 10: Correspondence from William J. White of Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition to Darren Bradford, California Regional Water Quality Control Board Re: Findings Supporting Denial of WDRs for Tesoro Extension (Comment – Resolution No. R9-2015-0022, Place ID: 785677) (February 18, 2015).


Exhibit 14: Correspondence from Anne Mayer, Riverside County Transportation Commission, to Jeanine Townsend, State Water Resources Control Board, Re: Comments on Draft Order WQ 2014-xx, Petition of Foothill/Eastern Transportation Corridor Agency (SWRCB/OCC File A-2259) (September 11, 2014).


Exhibit 16: Correspondence from Samantha Bricker, Exposition Metro Line Construction Authority to Jeanine Townsend, State Water Resources Control Board, Re: Comments on A-2259; - September 23, 2014 Board


Exhibit 18: Correspondence from Darrell Johnson, Orange County Transportation Authority, to Jeanine Townsend, State Water Resources Control Board, Re: 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 (September 15, 2014).

Exhibit 19: Regional Water Quality Control Board Permitting: Adopted/Tentative Orders for Linear Projects (September 15, 2014).

Exhibit 20: Map of Linear Phased Transportation Projects in California


Exhibit 24: Correspondence from Noah Garrison, NRDC, and Liz Crosson, Los Angeles Waterkeeper, to Sam Unger, Los Angeles Regional Water Quality Control Board, Re: Participation of Board Member Mary Ann Lutz in Los Angeles MS4 Permit Hearing (August 23, 2012).
PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is 18101 Von Karman Avenue, Suite 1800, Irvine, CA 92612.

On April 14, 2015, I served the foregoing PETITION FOR REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on parties to the within action as follows:

SEE ATTACHED SERVICE LIST

☐ (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 14, 2015

[Signature]

Leanne M. Boucher
In the Matter of the Petition of the Foothill/Eastern Transportation Corridor Agency for Review of Action, and Failure to Act, by the California Regional Water Quality Control Board, San Diego Region, in Connection With Resolution Regarding the Denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2015-0022

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EXHIBIT 1
CORRECTED Certification
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 2014-0154

In the Matter of the Petition of

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

For Review of the Denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2013-0007 for the Tesoro Extension (SR 241) Project, Orange County by the California Regional Water Quality Control Board, San Diego Region

SWRCE/OCF FILE A-2259

BY THE BOARD:

In this Order, the State Water Resources Control Board (State Water Board) reviews the San Diego Regional Water Quality Control Board’s (San Diego Water Board) denial of Waste Discharge Requirements (WDRs) Revised Tentative Order R9-2013-0007 (Revised Tentative Order) for the Tesoro Extension of State Route 241 in southern Orange County (Tesoro Extension). The Foothill/Eastern Transportation Corridor Agency (Petitioner) alleges that the San Diego Water Board violated the California Environmental Quality Act (CEQA) because it failed to presume that the Petitioner’s environmental documents were adequate. Because the basis for the San Diego Water Board’s decision to deny WDRs for the Tesoro Extension is not clear from the administrative record, the State Water Board remands the matter to the San Diego Water Board with direction to provide the factual and legal basis for its decision.

BACKGROUND

Formed in 1986, the Petitioner is a joint powers authority composed of a number of local public entities that manages the financing, construction and operations of several toll roads in Orange County. As part of its ongoing planning and construction efforts, the Petitioner is generally the lead agency for purposes of compliance with CEQA. In 1981, Orange County certified an environmental impact report (EIR) which analyzed the establishment of a

1 Pub. Resources Code, § 21000 et seq.
transportation corridor in southeastern Orange County (now designated State Route 241) in the County Master Plan of Arterial Highways. In 1991, the Petitioner certified an EIR analyzing various alternatives for an extension of State Route 241.\(^2\) In February 2006, the Petitioner certified the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report (FSEIR). The FSEIR identified a preferred alternative that consisted of a sixteen mile extension of State Route 241 from its southern terminus at Oso Parkway to connect to Interstate 5 just south of the Orange County and San Diego County border.\(^3\) On February 23, 2006, the Petitioner adopted CEQA findings for the preferred alternative and approved construction of the sixteen mile extension of State Route 241.\(^4\) On March 23, 2006, the California State Parks Commission and a number of environmental groups sued the Petitioner, challenging the adequacy of the FSEIR.\(^5\) That litigation was eventually dismissed without prejudice.

Because the sixteen mile extension of State Route 241 required a Clean Water Act section 404 permit from the Army Corps of Engineers, the Petitioner submitted an application for a Clean Water Act section 401 water quality certification to the San Diego Water Board on June 13, 2006. The application was deemed complete by the San Diego Water Board on September 13, 2006.\(^6\) Despite the submission of supplemental documentation, the Petitioner's request for a water quality certification was denied without prejudice on February 6, 2008. The San Diego Water Board noted that the Petitioner's application remained insufficient to address outstanding concerns regarding the Petitioner's runoff management plan, water quality mitigation measures, proposed habitat mitigation and monitoring plan, baseline water quality monitoring, and antidegradation.\(^7\) The Petitioner subsequently withdrew its


\(^{3}\) *Ibid.* State Clearinghouse Number 2001061048.

\(^{4}\) Foothill/Eastern Transportation Corridor Agency Resolution No. F2006-02.


\(^{6}\) Letter from Senior Environmental Scientist James Smith, San Diego Water Board, to Richard Beck (Sept. 13, 2006). Note that, in this case, the application being deemed complete only means that the application has fulfilled the minimum requirements of the State Water Board certification regulations. (See Cal. Code Regs., tit. 23, § 3856.) Fulfillment of this requirement by an applicant does not mean, and should not be construed to mean, that the applicable regional water quality control board or the State Water Board has received sufficient information to make its determination that a proposed project or activity is reasonably assured to comply with water quality standards or other applicable requirements of state law.

\(^{7}\) Letter from Executive Officer John Robertus, San Diego Water Board, to Richard Beck (Feb. 6, 2008).
application for water quality certification. Also on February 6, 2008, the California Coastal Commission voted not to approve the Petitioner’s request for a consistency determination pursuant to the Coastal Zone Management Act. The Petitioner appealed the California Coastal Commission’s determination to the United States Secretary of Commerce who, in turn, rejected the Petitioner’s appeal.

After these rejections, the Petitioner authorized its staff to pursue a shorter extension of State Route 241. This shorter extension, the Tesoro Extension, would extend State Route 241 from its existing southern terminus at Oso Parkway approximately 5.5 miles south to Cow Camp Road. Cow Camp Road is immediately north of San Juan Creek in Orange County, so the Tesoro Extension would avoid the Coastal Zone and all waters subject to federal jurisdiction, thereby obviating the need for a consistency determination from the California Coastal Commission or a Clean Water Act section 404 permit from the Army Corps of Engineers. The Petitioner filed a report of waste discharge for the Tesoro Extension with the San Diego Water Board on August 10, 2012.

After analyzing the Petitioner’s documentation and repeated meetings with the Petitioner, San Diego Water Board staff drafted WDRs Tentative Order No. R9-2013-0007 (Tentative Order) for the Tesoro Extension. On January 17, 2013, San Diego Water Board staff issued a public notice announcing the availability of the Tentative Order and setting a March 13, 2013 public hearing for the San Diego Water Board to consider adoption of the Tentative Order. The public notice established a February 18, 2013 deadline for written comments on the Tentative Order.

On February 15, 2013, the Petitioner’s staff finalized a CEQA addendum to the 2006 FSEIR for the Tesoro Extension (Addendum) and submitted it to San Diego Water Board. The Addendum stated that the Petitioner proposed to construct the Tesoro Extension, and identified the Tesoro Extension as the project for the purposes of CEQA analysis. The Addendum concluded that, since the Tesoro Extension generally followed the same alignment

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8 Letter from Thomas Margro, Transportation Corridor Agencies, to Chad Loflin (Feb. 9, 2009).
10 See Decisions and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of the Foothill/Eastern Transportation Corridor Agency from the Objector by the California Coastal Commission (Dec. 18, 2008). After the rejection of the Petitioner’s appeal, the plaintiffs challenging the FSEIR voluntarily dismissed their writ petition on January 12, 2011. (Petitioner’s Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 [SWRCB/OCC File A-2259], Exhibit 8.)
as the first 5.5 miles of the sixteen mile extension preferred alternative that had been analyzed in the 2006 FSEIR, the Tesoro Extension would not result in any significant environmental effects that were not already discussed in the 2006 FSEIR.\textsuperscript{11} The Addendum also concluded that there was no need to prepare a Subsequent or Supplemental EIR, and that the 2006 FSEIR, coupled with the Addendum, satisfied the Petitioner's CEQA obligations for the Tesoro Extension.\textsuperscript{12}

Due to the last-minute submission of the Addendum by the Petitioner and the extensive written comments that related to the San Diego Water Board's CEQA obligations if it were to approve the Tentative Order, the San Diego Water Board decided that its staff needed additional time to evaluate and respond to CEQA-related issues. The San Diego Water Board stated that it would proceed with the scheduled March 13, 2013 public hearing, but that it would not take any final action on the Tentative Order on that date.

During the hearing on March 13, 2013, the Chair of the San Diego Water Board announced that a second hearing would be scheduled for the purpose of receiving comments related to CEQA, and that San Diego Water Board staff would circulate specific CEQA-related questions prior to the second hearing.\textsuperscript{13} A coalition of environmental groups called the Save San Onofre Coalition (Coalition)\textsuperscript{14} and a large number of individuals argued against adoption of the Tentative Order, voicing a number of concerns related to water quality best management practices (stormwater BMPs), hydromodification, sediment generation and transport, and compensatory mitigation implementation and monitoring, as well as CEQA.

On March 15, 2013, counsel to the San Diego Water Board circulated a memorandum with CEQA-related questions to the Petitioner, the Coalition, and the public.\textsuperscript{15} The memorandum inquired as to how the Petitioner defined the project for which WDRs were being requested, and whether it was the same as the Petitioner's CEQA definition of the project. Additionally, the memorandum asked about the CEQA consequences of the Addendum, given

\textsuperscript{11} Addendum to the South Orange County Transportation Infrastructure Improvement Project Final Subsequent Environmental Impact Report -- Tesoro Extension Project (Feb. 2013), p. 3-22.
\textsuperscript{12} Ibid.
\textsuperscript{13} San Diego Water Board Hearing Transcript (March 13, 2013), pp. 36-37, 70-71.
\textsuperscript{14} The “Save San Onofre Coalition” consists of a dozen non-governmental entities, including the California State Parks Foundation, the Natural Resources Defense Council, Sierra Club California, Surfrider Foundation, and Orange County Coastkeeper.
\textsuperscript{15} Letter from Senior Staff Counsel Catherine Hagen to Foothill/Eastern Transportation Corridor Agency, Save San Onofre Coalition and Interested Parties (March 15, 2013).
the lack of the Petitioner's approval of the Tesoro Extension or filing of a CEQA Notice of Determination.\(^{16}\)

On March 29, 2013, the Petitioner and the Coalition submitted responses to the memorandum. On April 18, 2013, the Petitioner's Board of Directors approved the conceptual design for the Tesoro Extension and approved the Addendum.\(^{17}\) On May 30, 2013, the San Diego Water Board staff issued a public notice announcing the availability of the Revised Tentative Order and setting a June 19, 2013 continued public hearing for the San Diego Water Board to receive comments limited to CEQA and the revisions to the Tentative Order, and to consider adoption of the Revised Tentative Order.

The San Diego Water Board conducted the second hearing on June 19, 2013. At the hearing, the public was asked to limit their comments to the revisions to the Tentative Order and CEQA-related issues.\(^{18}\) San Diego Water Board staff explained that the revisions to were designed to address water quality concerns related to the Tesoro Extension that had been expressed by Board Members as well as the prior hearing. The revisions addressed sediment supply and hydromodification; the timing of the habitat mitigation monitoring plan and the runoff management plan.\(^{19}\) The San Diego Water Board's counsel described the Petitioner's recent approval of the conceptual design for the Tesoro Extension and the Addendum, explained that, as a CEQA responsible agency, the San Diego Water Board was bound by the Petitioner's 2006 EIR and the Addendum. Counsel explained that the Revised Tentative Order did not contain any specific findings about environmental impacts related to potential future segments of the toll road.\(^{20}\)

After reviewing the written comments and listening to the public comments at both hearings, the Board Members engaged in deliberations about whether to approve the Revised Tentative Order. Eventually, one Board Member made a motion to not approve it. The motion carried, with three Board Members voting in favor of the motion and two Board Members voting against the motion. In response, the Petitioner filed a timely petition with the State Water Board alleging, among other things, that the San Diego Water Board improperly denied the Revised Tentative Order because it believed that the Petitioner's CEQA documents, particularly

\(^{16}\) Ibid.
\(^{17}\) Foothill/Eastern Transportation Corridor Agency Resolution No. 2013F-05.
\(^{18}\) San Diego Water Board Hearing Transcript (June 19, 2013), pp. 2-3.
\(^{19}\) Id., p. 14.
\(^{20}\) Id., pp. 30-31, 35-36.
the description of the Tesoro Extension as the CEQA project in the Addendum, were inadequate.

**ISSUES AND FINDINGS**

This Order addresses the general scope of San Diego Water Board's responsibilities and authorities regarding the Tesoro Extension pursuant to both CEQA and the Porter-Cologne Water Quality Control Act, as well as the need for a regional water quality control board to provide the legal and factual basis for its adjudicative decisions. To the extent the Petitioner raised issues that are not discussed in this Order, either in whole or in part, such issues are dismissed as not raising substantial issues appropriate for our review.

The California Environmental Quality Act

CEQA requires that all governmental agencies that regulate activities found to affect the quality of the environment, do so giving major consideration to preventing environmental damage. As such, CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. The Legislature has made clear that an EIR is "an informational document" and that "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."

The "lead agency" is the public agency that has the principal responsibility for carrying out or approving the project. The lead agency will decide whether to prepare an EIR or a negative declaration for the project and will cause the document to be prepared. This

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21 Wat. Code, § 13000 et seq.
24 Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259.
decision is final and conclusive on all persons, including responsible agencies, except under limited situations involving changes to a project or its circumstances. Under CEQA, a "project" means "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." It refers to the underlying "activity" for which approval is being sought. An EIR must contain an accurate and consistent project description.

When describing the project and preparing the requisite environmental review, CEQA forbids 'piecemeal' review of the significant environmental impacts of a project. "Piecemealing" refers to chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences. The California Supreme Court set forth a piecemealing test in Laurel Heights stating that:

an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Under this standard, the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action.

Courts have held there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development, or when the reviewed project legally compels or practically presumes completion of another action. On the other hand, two projects may properly undergo separate environmental review (i.e., no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently.

Public agencies, other than the lead agency, that have responsibility for carrying out or having discretionary approval power over a project are responsible agencies.

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29 See County of Inyo v. City of Los Angeles (1977) 71 Cal. App.3d 185, 199.
31 Laurel Heights, supra, 47 Cal.3d at p. 396.
32 Laurel Heights, supra, 47 Cal.3d at p. 398.
Responsible agencies have limited authority under CEQA to conduct their own environmental review outside the processes initiated and managed by the lead agency. A responsible agency is required to consider only the effects of those activities involved in a project which it is required by law to carry out or approve. While a lead agency must consider all environmental impacts of the project before approving it, a responsible agency only considers those aspects of a project that are within the scope of its jurisdiction. When mitigating or avoiding a significant effect within its jurisdiction, the responsible agency may only exercise those express or implied powers provided by laws other than CEQA.

Once a lead agency has completed an EIR, it is presumed legally adequate and the lead agency’s certification of an EIR as complying with the requirements of CEQA is presumed correct. If an action or proceeding is commenced alleging that the EIR does not comply with CEQA and no injunctive or similar relief is granted, responsible agencies must assume that the EIR complies with CEQA and approve or disapprove the project accordingly. If no action or proceeding is commenced as described in Public Resources Code section 21167.3, and a responsible agency believes that the final EIR is inadequate based on impacts to resources within the scope of its purview, it may take that issue to court within 30 days after the lead agency files a notice of determination, prepare a subsequent EIR if permissible under CEQA Guidelines section 15162, assume the lead agency role under the circumstances described above, or be deemed to have waived any objections.

The Porter-Cologne Water Quality Control Act

When the Legislature enacted the Porter-Cologne Water Quality Control Act (the Porter-Cologne Act), it declared that the activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable considering all demands being made on those waters and that the state must be prepared to

38 Riverwatch, supra, 170 Cal.App.4th at p. 1202.
39 Sierra Club, supra, 35 Cal.4th at p. 859; see also Pub. Resources Code, § 21004.
41 Pub. Resources Code, § 21167.3, subd. (b).
43 Wat. Code, § 13000, et seq.
exercise its full power and jurisdiction to protect water quality.\textsuperscript{44} The Porter-Cologne Act sets forth many authorities and responsibilities for the regional water quality control boards (regional water boards). One such authority is the issuance of WDRs to persons discharging waste that could affect the quality of waters of the state.\textsuperscript{45}

When a regional water board issues WDRs, the regional water board is obligated to ensure that the WDRs implement relevant water quality control plans, take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.\textsuperscript{46} When issuing WDRs, a regional water board is not required to utilize the full waste assimilation capacities of the receiving water. Whether or not a discharge is authorized, the discharge of waste does not create any vested rights to continue the discharge; the discharge of waste is a privilege, not a right.\textsuperscript{47} It follows, then, that a regional water board has the authority to decline to issue WDRs for a specific discharge. When a regional water board declines to issue WDRs, it may also choose to give the project proponent an opportunity to revise its project and submit a revised report of waste discharge. In addition to the issuance or denial of WDRs, the Porter-Cologne Act also authorizes a regional water board to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.\textsuperscript{48} This may be done in a water quality control plan or in WDRs, and is a more enduring mechanism for protecting water quality.

When issuing WDRs, regional water boards must protect the beneficial uses of the waters that are receiving both direct and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharges.\textsuperscript{49} When a regional water board is deciding whether to issue WDRs for discharges of waste associated with a project, it is appropriate for the regional water board to consider whether that project will likely lead to additional, future discharges of waste or other related impacts to water quality.

\textsuperscript{44} Wat. Code, § 13000.
\textsuperscript{45} Wat. Code, §§ 13260, subd. (a)(1) & 13263.
\textsuperscript{46} Wat. Code, § 13263, subd. (a). Water Code section 13241 contains six additional factors that must be considered when, in a project-specific context, a regional water board is establishing effluent limitations more stringent than federal law requires. (City of Burbank v. State Water Resources Control Bd. (2009) 35 Cal.4th 813, 818.) These factors are not in contention with this petition.
\textsuperscript{47} Wat. Code, § 13263, subds. (b), (g).
\textsuperscript{48} Wat. Code, § 13243.
\textsuperscript{49} State Water Board Orders WQ 2012-0013 (Sacramento Regional), pp. 13, 35; WQ 2008-0008 (City of Davis), pp. 12-13.
future discharges of waste or other water quality impacts may result from future phases or segments of the same project, or from unrelated projects by other project proponents.

Linear projects (e.g., road or power line construction or maintenance) are common examples of projects that may have future phases, or segments, that will lead to future discharges of waste or other water quality impacts. Linear projects may affect many different waters and, in the case of new construction, may be implemented in sequential phases. When future phases of a linear project are likely to occur and may have water quality impacts, a regional water board may request that the project proponent provide any readily-available information on those future phases in connection with a pending report of waste discharge or application for the current phase. An example of a project that may result in future discharges of waste or other water quality impacts from unrelated projects is a development project that is adjacent to a sensitive area, such as an important wetlands area. While the project itself may not have any associated discharges of waste that directly affect the sensitive area, the new development may result in future projects and their discharges of waste, or other water quality impacts resulting from increased public access to the sensitive area.

In most cases, as long as the regional water board complies with CEQA, the regional water board may issue WDRs for the current project and defer issuance of WDRs for future discharges of waste until the point in time that those discharges are actually proposed, without compromising its responsibility to protect water quality from those future discharges. However, there are also occasional instances in which a regional water board may be asked to issue WDRs for a project that will likely lead to additional, future discharges of waste that a regional water board finds require consideration along with the current project. 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 discharges of waste or other water quality impacts in the future.\(^{50}\) For example, if a regional water board were to determine, based on evidence in the administrative record, that likely prospective alignments for subsequent phases of a linear project, or future projects that will result from a currently proposed project, will likely

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\(^{50}\) The Petitioner asserts that the regional water boards are limited to considering only the discharges of waste that are actually proposed by the discharger in a report of waste discharge, because Water Code section 13263, subdivision (a), only authorizes the regional water boards to "prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge ...." This is an overly cribbed interpretation of section 13263, particularly in light of the fact that subdivision (a) also requires the regional water board to consider "other waste discharges," and subdivision (d) makes it clear that a regional water board may issue (and, as explained above, therefore also decline to issue) WDRs even if the discharger has not filed a report of waste discharge. It also would interfere with the regional water boards' broad mandates to protect water quality, as described above.
lead to additional, future discharges of waste or other water quality impacts from which the regional water board may not be able to adequately protect waters of the state by issuing WDRs or taking other appropriate regulatory actions in the future, the regional water board would be justified in declining to issue WDRs for the project.

The Need for Findings

Regional water board proceedings to consider the issuance of WDRs to an individual entity are governed by the State Water Board's regulations for adjudicative proceedings. These regulations incorporate various statutory provisions, including Government Code section 11425.50, subdivision (a), which provides that "[t]he decision shall be in writing and shall include a statement of the factual and legal basis for the decision." This enables the parties to determine whether, and on what basis, to seek review of a regional water board's decision. The requirement to explain the basis for the regional water board's decision also helps to encourage orderly analysis and reduce the likelihood of unfounded decisions. Further, the factual basis must be supported by evidence in the administrative record.

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.

It is critical that a regional water board's staff and counsel ensure that the requirement for a statement of the factual and legal basis for the decision is met when they propose draft WDRs and other adjudicatory orders for the regional water board's consideration. Of course, a regional water board is not obliged to adopt its staff's proposed orders. When a regional water board takes a final action in an adjudicative proceeding by approving an oral

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51 Cal. Code Regs., tit. 23, § 648 et seq.
53 Id., at p. 516.
motion without a written order, it is incumbent upon the regional water board to ensure that the motion contains, or specifically incorporates, sufficient detail about the factual and legal basis for the motion. Depending on the circumstances, it may be advisable to take a recess to allow staff and counsel an opportunity to carefully draft a motion for the regional water board.\(^{55}\)

The San Diego Water Board’s Decision

Following several hours of public comments at the June 19, 2013 hearing, San Diego Water Board staff stated that they maintained their recommendation to adopt the Revised Tentative Order.\(^ {56}\) The San Diego Water Board then closed the hearing and the Board Members engaged in public deliberations. Following the deliberations, one Board Member made a motion to not approve the Revised Tentative Order. The motion carried, with a majority of three Board Members voting in favor of the motion and two Board Members voting against the motion. Because the decision was made by oral motion only, we look to the transcript of the deliberations to determine the factual and legal basis for the San Diego Water Board’s decision, paying special attention to the statements of the Board Members who comprised the majority.

The Petitioner asserts that the San Diego Water Board declined to adopt the Revised Tentative Order on the grounds that it believed that the Tesoro Extension’s Addendum, particularly the Tesoro Extension project description, were inadequate.\(^ {57}\) The San Diego Water Board asserts in its response to the petition that it determined that potential water quality impacts from a larger, more extensive project were not sufficiently evaluated for the San Diego Water Board to approve the Revised Tentative Order.\(^ {58}\) The Coalition asserts in its response to the petition for review that “the transcript clearly shows that the [San Diego Water Board] based its decision on its conclusion that the Tesoro Extension was merely the initial segment of the proposed Foothill-South previously rejected by the [San Diego Water Board], and [the Petitioner] had thus failed to propose adequate waste discharge requirements for the entire project.”\(^ {59}\)

\(^{55}\) It is not always necessary for a regional water board to adopt a formal written order; an oral motion can be memorialized in the official minutes or transcript of the regional water board meeting.

\(^{56}\) San Diego Water Board Hearing Transcript (June 19, 2013), p. 197.


As a preliminary matter, it is clear from the transcript that concerns about water quality impacts resulting directly from the Tesoro Extension did not form the basis for the San Diego Water Board's decision. Two of the Board Members indicated that they were satisfied that the Revised Tentative Order adequately addressed any water quality impacts that were directly related to the Tesoro Extension.60 None of the remaining three Board Members expressed any concerns about water quality impacts that were directly related to the Tesoro Extension.

The Petitioner, the San Diego Water Board, and the Coalition all appear to agree that the focus of the deliberations was on the description of the project. All five of the Board Members commented on the possibility that the Tesoro Extension may be just the first segment of a larger toll road project that connects State Route 241 to Interstate 5, as was analyzed in the 2006 FSEIR.61 Four of the Board Members' comments indicated that they had concluded that the Tesoro Extension is, in fact, part of a larger project that would eventually connect to Interstate 5, while the fifth Board Member's comments did not clearly indicate whether or not he agreed.62

Three of the four Board Members who had concluded that the Tesoro Extension is part of a larger project ultimately voted to not approve the Revised Tentative Order. Two of the majority also expressed generalized concerns that future extensions to Interstate 5 may impact water quality.63 One of the majority referred three times during the deliberations to a CEQA complaint that had recently been filed by the Attorney General that alleged that the Petitioner had violated CEQA by failing to adequately describe the project.64 Another majority-voting Board Member also referred to CEQA and stated that he thought that there was "some ambiguity in what we are required to do and not do in terms of our analysis."65 Additionally one of the majority indicated that there was another important reason that he planned to vote to not approve the Revised Tentative Order, but he never explained what it was.66 Therefore, while we can conclude that all three of the Board Members who voted in the majority believed that the

60 San Diego Water Board Hearing Transcript (June 19, 2013), pp. 198, 201.
62 Id. at pp. 198-203.
63 San Diego Water Board Hearing Transcript (June 19, 2013), pp. 192-205.
64 See Id. at pp. 198-205.
65 Id. at p. 204.
66 Id. at p. 207.
Tesoro Extension was part of a larger project that would eventually connect to Interstate 5, we are left with no conclusion as to why they voted to not approve the Revised Tentative Order. It is possible that one or more of the Board Members cast their vote because they believed that the Petitioner had violated CEQA. It is possible that one or more of the Board Members cast their vote because they believed that approving WDRs for the Tesoro Extension could lead to unacceptable water quality impacts from a future toll road extension. It is also possible that one or more of the Board Members cast their vote for completely different reasons. Without knowing the factual and legal basis for the decision, it is simply not possible to determine whether it was appropriate.

67 There is substantial evidence in the record to support a factual conclusion that the Tesoro Extension is part of a larger project. That evidence includes the Petitioner’s approval of the preferred alternative described in the 2006 FSR, the statement on page 2-2 of the Addendum that the Tesoro Extension “does not preclude a connection to any of the 19 toll road alternatives evaluated in the [FSR],” Figure 4 of the Addendum, which depicts connections between the Tesoro Extension and the alternatives evaluated in the FSR, entitled “Future Alignment Alternatives,” and the Petitioner’s counsel’s statement during the March 13, 2013 hearing that the Tesoro Extension is part of the planned transportation corridor that extends all the way from the existing State Route 241 to Interstate 5. (San Diego Water Board Hearing Transcript (March 13, 2013), p. 74.)
ORDER

IT IS HEREBY ORDERED that, for the reasons discussed above, this matter is remanded to the San Diego Water Board to provide the factual and legal basis for its decision, consistent with this Order. This Order does not require the San Diego Water Board to conduct any further hearings regarding the issuance of WDRs for the Tesoro Extension.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 23, 2014.

AYE:  Vice Chair Frances Spivy-Weber
      Board Member Tam M. Doduc
      Board Member Steven Moore
      Board Member Dorene D'Adamo

NAY:  None

ABSENT: None

ABSTAIN: Chair Felicia Marcus (Recused)

Jeanine Townsend
Clerk to the Board
EXHIBIT 2
TO:  Mr. Tom Howard  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  

In reply/refer to:  
dbradford:785677

FROM:  David Gibson, Executive Officer  
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD  
2375 Northside Drive, Suite 100  
San Diego, CA 92108

DATE:  March 18, 2015

SUBJECT:  Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (State Route 241) Project


The Resolution satisfies the State Water Resources Control Board’s direction in Order No. WQ 2014-0154 that the San Diego Water Board provide the factual and legal basis for its prior decision to deny Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency Tesoro Extension of State Route 241 in southern Orange County (SWRCB/OCC File A-2259).

For questions or comments regarding the Resolution, please contact me by telephone at (619) 521-3005 or by email at David.Gibson@waterboards.ca.gov.

Attachment:


HENRY ABRAHAM, CHAIR  |  DAVID GIBSON, EXECUTIVE OFFICER  
2375 Northside Drive, Suite 100, San Diego, CA 92108-2709  |  (619) 516-1990  |  www.waterboards.ca.gov/sandiego
WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter, San Diego Water Board), finds that:

1. On June 13, 2006 the Foothill/Eastern Transportation Corridor Agency (TCA) submitted an application for Clean Water Act section 401 Water Quality Certification (Water Quality Certification) for the Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP) (Water Quality Certification Application No. 06C-064). The SOCTIIP toll road extension would have added approximately 16 miles of toll road to the current terminus of State Route 241 (SR 241) at Oso Parkway in Southern Orange County and extended the SR 241 south and parallel to Interstate-5 (I-5) before merging with I-5 near the Orange County-San Diego County Line.

2. On February 23, 2006, TCA certified a Final Subsequent Environmental Impact Report (FSEIR) for the SOCTIIP project and filed a Notice of Determination.

3. In support of the FSEIR, TCA adopted findings and a statement of overriding considerations for the SOCTIIP project. TCA found that impacts to wildlife, fisheries and vegetation could not be mitigated to a less than significant level.

4. On February 6, 2008¹, the San Diego Water Board Executive Officer denied Water Quality Certification Application No. 06C-064 without prejudice and expressed concerns that the project, as proposed, would not meet water quality standards². Water quality standards include the water quality objectives and beneficial uses contained in the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan)

¹ (Administrative Record (A.R.) Vol. 5 Index 71.) Citations are to the administrative record the San Diego Water Board submitted to the State Water Resources Control Board in response to TCA’s Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007. The complete administrative record is available for review on the internet at the following location: https://swrb.ca.gov/pub/rootswcb/Tesoro%20Resolution/Tesoro%20Official%20Administrative%20Record_Final/

² Under state law, the water boards establish beneficial uses and water quality objectives in their basin plans. Together with an anti-degradation policy, these beneficial uses and water quality objectives serve as water quality standards under the Clean Water Act. In Clean Water Act parlance, state beneficial uses are called “designated uses” and state water quality objectives are called “criteria.” Throughout this Resolution, the relevant term is used depending on the statutory scheme.
5. On February 6, 2008, the SOCTIIP toll road extension was rejected by the California Coastal Commission (Coastal Commission) due to its recreational impacts to San Onofre State Park and San Mateo Creek, water quality effects, wetland impacts, and impacts to other environmental resources. The Coastal Commission staff report states, "The project is fundamentally inconsistent with the spirit and letter of numerous resource protection policies of the Coastal Act." [The project would not] be compatible with the continuance of the ESHA [environmentally sensitive habitat area]. The ESHA includes habitat for the Pacific pocket mouse, tidewater goby, arroyo toad, coastal California gnatcatcher, least Bell's vireo, and southern California coast steelhead." [T]he toll road's impacts would be permanent, irreversible, and, for the most part, unmitigable. No other alternative alignment poses the threat of unmitigable and irrevocable impacts of such magnitude." 4

6. TCA appealed the Coastal Commission's objection to the United States Secretary of Commerce. After holding its own public hearing, the Secretary of Commerce rejected the appeal, finding, among other things, that less environmentally damaging alternatives were available to meet the project need. 5


8. On August 10, 2012, TCA filed a report of waste discharge for the Tesoro Extension Project (Tesoro Extension) with the San Diego Water Board. This initial segment of the SOCTIIP toll road extension would extend SR 241 from its existing southern terminus at Oso Parkway approximately 5.5 miles south to Cow Camp Road in the vicinity of Ortega Highway (SR 74) in Orange County. In TCA's report of waste discharge...
discharge. SR 241 would now terminate at Cow Camp Road immediately north of San Juan Creek in Orange County. The Tesoro Extension would avoid the Coastal Zone and all waters subject to federal jurisdiction, thereby obviating the need for a consistency determination from the Coastal Commission, a Clean Water Act section 404 permit from the Army Corps of Engineers, and Water Quality Certification from the San Diego Water Board.


10. On March 13, 2013, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency Tesoro Extension (SR 241) Project Orange County (Tentative Order). The San Diego Water Board received testimony and accepted written comments but did not take final action on the Tentative Order.

11. At the March 13, 2013, public hearing, the San Diego Water Board directed TCA, the Save San Onofre Coalition (Coalition), and any interested persons to submit written responses to five supplemental California Environmental Quality Act (CEQA) questions. The comment period was open from March 15, 2013 to March 29, 2013.

12. TCA and the Coalition responded to the supplemental questions. TCA stated that the Tesoro Extension is a modification of SOCTIIP, and it prepared an Addendum to the SOCTIIP FSEIR to document changes to the toll road extension.

13. On April 18, 2013, the Board of Directors of TCA approved an Addendum to the SOCTIIP FSEIR for the Tesoro Extension. TCA determined that an Addendum and FSEIR would serve as its environmental documentation for the Tesoro Extension Project.\(^6\)

14. The San Diego Water Board received an Addendum to the FSEIR (Addendum) filed by TCA on April 23, 2013 and considered the contents of the Addendum along with the FSEIR prior to reaching its decision.

15. The Addendum notes that the Tesoro Extension as analyzed in the FSEIR and Addendum does not preclude a connection to any of the 19 toll road alternatives evaluated in the SOCTIIP technical reports.\(^7\)


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\(^6\) A.R. Vol.1 Index 6.

\(^7\) A.R. Vol.1 Index 1 p.7.
(SR 241) Project, Orange County was released for public review and comment. Written comments were limited to: 1) revisions to the Tentative Order since the March 13, 2013 public hearing; and 2) comments pertaining to CEQA. The comment period was open from May 30, 2013 to June 7, 2013. The San Diego Water Board received written comments from TCA, the Coalition and other interested parties.

17. On June 19, 2013, the San Diego Water Board continued the public hearing to consider adoption of Revised Tentative Order No. R9-2013-0007, comments on the Project's compliance with CEQA, and the revisions to the Tentative Order proposed since the March 13, 2013 hearing.

18. At the June 19, 2013 hearing a majority of San Diego Water Board members voted to deny adoption of Revised Tentative Order R9-2013-0007. Board members in the majority cited concerns about water quality impacts and an inaccurate and incomplete project description. Board members determined that based on testimony received, and evidence in the record, the Tesoro Extension Project was part of the larger SOCTIIP toll road extension that would extend the toll road south of San Juan Creek connecting to Interstate 5.

19. So long as the San Diego Water Board can determine that a project complies with CEQA, the Board may find it appropriate to issue waste discharge requirements for a portion or segment of a larger phased project. The San Diego Water Board, however, may disapprove any project, or portion or segment thereof, as long as the disapproval is consistent with the authority granted by the Porter-Cologne Water Quality Control Act (Porter-Cologne)(Wat. Code, section 13000 et seq.).

20. The San Diego Water Board may issue waste discharge requirements for large projects in phases; however, phased projects should not segment a larger project into pieces to avoid or limit the Board's review of the project's impacts on water quality and beneficial uses. In considering an earlier phase of a larger project, the San Diego Water Board may consider indirect water quality impacts and whether the current phase of the project is likely to lead to future activities with unacceptable water quality impacts.

21. The San Diego Water Board, when considering the adoption of a discretionary permit, can make its own findings regarding the accuracy and sufficiency of the project description to carry out its statutory obligation to protect water quality. The Board is not required to issue waste discharge requirements if it cannot determine

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8 See A.R. Vol. 1 Index 27 p. 198-207.
9 See A.R. Vol. 1 Index 27 p.201-202 (Board hearing transcript 6-19-2013, Board member Abarbanel discussing the water quality impacts of the project proposed in the SOCTIIP FSEIR and rejected by the Coastal Commission); A.R. Vol. 1 Index 27 p.198, 205 (Board member Kalemkarian discussing inadequate project description leading to an inability to completely assess water quality impacts); p. 203 (Board Chair Morales stating the project is more than a 5.5 mile Tesoro Extension and it is unclear where the larger project may terminate.)
that the project will meet water quality objectives and requirements in its regional water quality control plan.

22. Porter-Cologne provides the authority for the Board to require a report of waste discharge (Wat. Code, §13260) and issue waste discharge requirements taking into consideration "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose...and the need to prevent nuisance..." (Wat. Code, § 13263.)

23. A regional water board...in waste discharge requirements may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. (Wat. Code, § 13243.) In addition, a regional water board may prescribe requirements even if a discharger has not filed a report of waste discharge. (Wat. Code, § 13263, subd. (d.))

24. Issuance of waste discharge requirements is a discretionary action, and all discharges into waters are privileges, not rights. (Wat. Code, § 13263, subd. (g.)) Even if a discharge is authorized, the discharge of waste does not create any vested rights to continue the discharge.


26. On September 23, 2014, after accepting comments from interested parties, the State Water Board adopted Order WQ 2014-0154, supra. State Water Board Order WQ 2014-0154 remands the matter to the San Diego Water Board and provides direction to the Board to further explain the factual and legal basis for its denial.

27. State Water Board Order WQ 2014-0154 states that when a regional water board is deciding whether to issue waste discharge requirements for a project it is appropriate for the board to consider whether the project will likely lead to additional future discharges of waste or other related impacts to water quality. The regional water board has the authority to decline to issue waste discharge requirements for a specific discharge and the discretion to prohibit the discharge of waste in certain conditions or areas. (State Water Board Order WQ- 2014-0154 (Foothill/Eastern Transportation Corridor Agency).)

28. The Order states that when a regional water board declines to issue waste discharge requirements due to future impacts there is a heightened need for detailed findings. The findings need to explain the potential for future discharges of waste or water quality impacts, explain why they are likely to result from the current project before the regional water board, and 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.
29. When issuing waste discharge requirements, regional water boards must protect the beneficial uses of the waters that are receiving both direct, and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharge. (State Water Board Order WQ 2012-0013 (Sacramento Regional).)

30. Substantial evidence in the record supports a factual conclusion that the Tesoro Extension is part of a larger SOCTIIP toll road extension. The proposed toll road, and preferred alternative, as analyzed in the FSEIR, extends south of San Juan Creek and will impact waters of the United States and waters of the State.\(^\text{10}\)

31. Due to readily available information that the Tesoro Extension is part of the larger SOCTIIP toll road project, and TCA’s failure to address water quality impacts identified in the SOCTIIP toll road project, the San Diego Water Board determines that water quality impacts of TCA’s proposed toll road extension have not been adequately addressed. Because evidence in the record shows the Tesoro Extension is likely to lead to the SOCTIIP toll road project and that unmitigated water quality impacts are likely to result from the SOCTIIP toll road project, the San Diego Water Board cannot determine that water quality and beneficial uses in the region will be protected if it approves the Tesoro Extension.

32. In accordance with the direction provided in Order WQ 2014-0154, limiting the San Diego Water Board’s review to the Tesoro Extension restricts the Board’s ability to exercise its full authority to condition the project to avoid or minimize impacts. Proposed future alignments of the toll road extension will have impacts to water quality and water resources, including the San Juan Creek, San Mateo Creek, San Onofre Creek and Christianitos Creek watersheds. Evidence in the record shows that the toll road extension TCA presented to the San Diego Water Board in 2006 would not meet water quality standards. By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases.

\(^{10}\) Vol. 2 Index 2 p.39 (Memo from Sam Elters, Chief Engineer to TCA Board of Directors discussing construction of Tesoro Extension as phase of larger project, and attached Exhibit titled, “241 Completion-Initial Segment”); Vol. 2 Index 2 p.104 (TCA Board of Directors Agenda, October 13, 2011, Agenda Item 6: “Initial Segment of the 241 Completion Project”); Vol. 2 Index 20 (Board transcript from 3-13-2013 hearing p.74, Counsel for TCA discussing Tesoro Extension as part of a larger project connecting to Interstate 5); Vol.2 Index 2 p.183 (Army Corps of Engineers Memo to Record of meeting with TCA discussing Corps concerns of TCA attempting to segment a larger project to avoid a more rigorous and public environmental review process and the need for TCA to submit supporting documentation showing that the Tesoro Extension is a single and complete project); Vol.1 Index 1 p. 52 (figure in TCA’s 2013 Addendum depicting Tesoro Extension and future alignments to Interstate 5); Vol. 5 Index 1 p.442 (figure in TCA’s 2006 FSEIR depicting toll road preferred alternative route connecting to Interstate 5).
33. The denial of Revised Tentative Order No. R9-2013-0007 Waste Discharge Requirements for the Tesoro Extension (SR 241) Project is solely based on the authorities granted to the San Diego Water Board under Porter-Cologne including, but not limited to Water Code sections 13225, 13243, 13260 and 13263 subds. (a), (b), (d), (g).

THEREFORE, BE IT RESOLVED THAT:

The San Diego Water Board:

1. Adopts the detailed findings as set forth above describing the factual and legal basis of its decision to deny Revised Tentative Order No. R9-2013-0007.

2. Finds it is unnecessary to reopen the evidentiary hearing for Revised Tentative Order No. R9-2013-0007.


I, David W. Gibson, Executive Officer, do hereby certify that this Resolution with all attachments is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on March 16, 2015.

David W. Gibson
Executive Officer
EXHIBIT 3
STATE OF CALIFORNIA

REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

In the matter of:
State of California Regional Water Quality Control Board San Diego Region Meeting Notice and Agenda

Legal Advisory Committee

COSTA MESA CITY HALL
CITY COUNCIL CHAMBERS
77 FAIR DRIVE
COSTA MESA, CALIFORNIA

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

ITEM NO. 8, WATER DISCHARGE REQUIREMENTS: FOOTHILL/EASTERN TRANSPORTATION, CORRIDOR AGENCY TESORO (SR 241) EXTENSION, ORANGE COUNTY
WEDNESDAY, MARCH 13, 2013
9:00 A.M.

Reported by: Sonia Renee Smith, RPR, CRR, CSR #11512
CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE/SAN RAFAEL, CA 94901
PHONE. 415-457-4417/FAX. 415-454-5626
CALIFORNIAREPORTING@SBCGLOBAL.NET/CALIFORNIAREPORTING.COM
APPEARANCES:

BOARD MEMBERS PRESENT:

Tomas Morales, Chairman
Gary Strawn, Vice Chairman
Henry Abarbanel
Eric Anderson
Sharon Kalemkiarian

EXECUTIVE STAFF:

David Gibson, Executive Officer
James Smith, Assistant Executive Officer
Chris Witte, Executive Assistant

STATE BOARD MEMBER LIAISON:

Frances Spivy-Weber

STATE BOARD STAFF COUNSEL:

Catherine Hagan, Esq.

NORTHERN WATERSHED UNIT:

Kelly Dorsey, Senior Engineering Geologist
Darren Bradford, Environmental Scientist-C

TRANSPORTATION CORRIDOR AGENCY:

Valerie Hall, Director of Environmental Services
Paul Bob, Engineering Manager
Robert Thornton, Esq.
The following people registered support for the project:

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

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

Jack Feller, City of Oceanside
Samantha Fitzgerald
Luis Fonseca, Local #652
Brad Fowler, Director of Public Works, City of Dana Point
Emily France, The Gas Company
Richard Gardner, resident of Capo Beach
Roger Gaubel, SMWD
John Gauthier, RWAN #220
Chuck Gibson, Santa Margarita Water District
Kevin Gilhooley, Southern California Association of Governments
Jesus Gonzalez, Local #89
Fernando Guzman, Local 652
Josh Haskins, Economic Coalition
Jose Hernandez, Local 652
Peter Herzog, City of Lake Forest
Rush Hill, City of Newport Beach
Sherry Hodges, resident of Encinitas
Cindy Holmes, resident of San Clemente
Joaquin Itaro, Local #89
Heather Johnson, Dana Point Chamber of Commerce
April Josephson, resident of Santa Margarita
Lucille Kring, City of Orange
Steve LaMotte, Assemblywoman Diane Harkey’s Office, San Juan Capistrano
Michael Latham
Dave Leckness, City of Mission Viejo
Ernesto Lemus, Local #652
Brian Lochrie
William Lochrie, resident of Orange
Juan Carlos Navarro Lopez, Local #652
Victor Lopez, Local 652
Josef Francisco Lozal, Local #89
David Lowe, Director of Design and Construction,
Transportation Corridor Agencies
Sercio Machado, Local #89
Hector Madrigal, Construction Laborer
Pablo Maldonado, Local #652
Doug Mangione, IBEW
Tom Margo, Former TCA CEO
Wes May, Engineering Contractors Association
Penny Maynard, resident of Dana Point
The following people registered support for the project:

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

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

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

The following people registered opposition to the project:

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

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered opposition to the project:

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

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AGENDA: ITEM NO. 8

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

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

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

THE PUBLIC EN MASSE: (Laughter).

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

CHAIRMAN MR. MORALES: Come to order.

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

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

The purpose of this hearing is for the board
to hear testimony and comments about the tentative order.

The first staff, to the applicant, TCA and from those
affected by or interested in the proposed permit and issues
that concern the permit. And, on this past Friday, we issued
an order of proceedings setting forth the order of
proceedings for this side and allocating blocks of time.

That may be modified somewhat, in part, by agreement between
the -- the TCA and the NGOs. Because I believe there were
some travel issues for NGO folks, due to the -- the fire.

So, the TCA may -- it will likely go first, after our staff.

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

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

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

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

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

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

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

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

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

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

CHAIRMAN MR. MORALES: Yes.

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

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

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

CHAIRMAN MR. MORALES: Yes, ma'am.

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

BOARD MEMBER (MR. ANDERSON): Yes.

BOARD MEMBER (MR. ABARBANEL): Yes.

CHAIRMAN MR. MORALES: Thank you.

And with that, I'd like to request that the Water Board Staff come up to make its presentation.
(Pause in Proceedings 9:47 a.m.)

CHAIRMAN MR. MORALES: And, again -- not "again."

Thanks for telling me.

But, before we do begin, remember the proceedings are being transcribed. Some of us have the tendency to speak very quickly. So, for the sake of our court reporter, let's not try to rush too much. It's going to be a long day (nod of the head).

NORTHERN WATERSHED UNIT (MR. BRADFORD): (Nod of the head).

Good morning, Mr. Chairman and members of the board. My name is Darren Bradford. I'm an environmental scientist for the Northern Watershed Unit. I'm here to introduce Item No. 8, Waste Discharge Requirements No. R9-2013-0007, for the Tesoro Extension (State Route 241) Project.

Your agenda package includes a revised tentative order, timely submitted comments, response to comments report, along with other supporting documents. I would like to introduce the team working on development of the tentative order. In addition to myself, there is my supervisor, Kelly Dorsey, senior engineering geologist; David Barker, supervising engineer in charge of surface waters
branch; and Tony Felix, water resource control engineer.

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

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

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

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

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

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

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

The median offers future opportunities for bus rapid transit, light rail or additional lanes as traffic conditions warrant. Once construction is complete, CalTrans will assume ownership and maintenance responsibilities for the toll road and the Discharger will be the toll facilities operator. We are currently processing a 401 application for the Cow Camp Road Project. It is anticipated Cow Camp Road
will be constructed by Rancho Mission Viejo and the County of Orange prior to or concurrent with the construction of the Tesoro Extension Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This table summarizes the mitigation for permanent impacts to waters of the State. To compensate for permanent impacts to waters of the State, the tentative order requires 20.31 acres of establishment, restoration and enhancement of aquatic resources. This includes approximately 10,000 linear feet of mitigation. In addition, the tentative order requires 13.55 acres of upland buffer restoration. This amount of mitigation acreage is
substantially higher than what's typically required for
similar projects.
At a minimum, 4.05 acres of wetlands will be
established, which represents a mitigation ratio of over 15
to 1 for wetland impacts. By comparison, mitigation ratios
for similar projects are typically around 3 to 1. The
mitigation ensures no net loss and overall net gain of
wetland acreage, which is required by the "no net loss"
policy. Given the comprehensive approach and large
mitigation ratios, it is anticipated that the proposed
mitigation will adequately compensate for impacts to water
from the State associated with the discharge of fill
material.
Compensatory mitigation for permanent impacts
to waters of the State is proposed within Chiquita Canyon.
The picture before you shows the general location of the two
proposed mitigation areas, outlined by black dashed lines.
Mitigation Area A, (indicating) shown here, near Tesoro High
School. And Mitigation Area B, (indicating) right there.
You can also see in the slide, a current -- a current section
of State Route 241, which ends at Oso Parkway. And you'll --
uh -- and the proposed Tesoro Pro- (sic) -- uh -- Extension
Project will go right through, approximately, here
(indicating).
Mitigation Area A is a 15-acre area, adjacent
to Tesoro High School, located along Chiquita Creek and one of its tributaries. Wet meadow, mule fat scrub and southern willow woodland will be established and enhanced in this area. Mitigation Area B is an 18.86 acre area within the Upper Chiquita Canyon Conservation Area, which is the headwaters of Chiquita Creek. 10,300 and 25 linear feet of ephemeral drainage will be established and restored. Mitigation Area B will also include establishment of Southern Sycamore Riparian, restoration of Live Oak and Elderberry Habitat and over 13 acres of perennial grassland buffer.

CHAIRMAN MR. MORALES: Okay.

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Sure.

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

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

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Uh-h-h -- the conservation area?

BOARD MEMBER (MR. ANDERSON): No. The -- uh -- this -- the wetland where -- that you said establish and
restore -- (interrupted)

NORTHERN WATERSHED UNIT (MR. BRADFORD): There's a conservation easement. And it's part of the conservation area. But the establishment is actually creating waters. So, right now, it's a -- it's a meadow that's being grazed by cows and stuff. And they'll go in and create -- create water habitat -- (interrupted)

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

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

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

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Okay.

Okay. Thank you.

Next, I would like to discuss three key requirements of the tentative order: construction storm water BMPs, post-construction BMPs and mitigation monitoring and
reporting. First, are "construction storm water BMPs." Construction activities associated with the proposed discharges of fill may threaten beneficial uses on-site and downstream. The Discharger must apply for and obtain coverage under the Statewide Construction Storm Water Permit. Permit requires the Discharger to develop and implement a storm water pollution prevention plan to control storm water and norm- (sic) -- non-storm water discharges and prevent spills.

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

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

The tentative order was released for public review and comments on January 17th of this year. In response to a request for an extension of the comment period, the deadline for submission of comments was extended from February 18th to February 25th. Additionally, after consultation with the Board Chair, late written comments were received by March 1st, 2,013, were added to the administrative record. You can see, on this table, the breakdown of letters in support and against the project. The majority of the comment letters submitted are from letters and -- and did not include specific or substantive comments regarding the tentative order.
Over 700 timely submitted comments regarding the tentative order were received from the Discharger, various stakeholders, elected officials, organizations and several hundred private citizens. General and technical comments received by February 25th, 2,002- -- (sic) -- -13, are addressed in the Response to Comments Report included in the supplemental agenda package.

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

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

The key issues raised in comment letters reviewed to date are: Compliance with CEQA, Post-Construction Best Management Practices and Compensatory Litigation. And I will discuss each key issue, individually.
Next slide.

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

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

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

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

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

In summary, this project proposes to construct a five and a half mile toll road that will impact non-Federal waters of the State. These impacts will be mitigated at a very (sic) -- a very high ratio through establishment and restoration projects consistent with Water Board standards.

To address the storm water effects of the project, the tentative order will require the Discharger to meet the BMP standards in the CalTrans Storm Water Permit, the South Orange County Draft Hydromodification Plan and the South Orange County Draft Model Water Quality Management Plan.

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

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

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

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

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

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

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

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): No.

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

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

BOARD MEMBER MS. KALEMKIARIAN: Okay.

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

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

BOARD MEMBER MS. KALEMKIARIAN: Go 'head.

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

BOARD MEMBER MS. KALEMKIARIAN: Go 'head. Just

speak closer.

NORTHERN WATERSHED UNIT (MR. BRADFORD): Oh, and --
and -- uh -- the other area, Mitigation B, the Discharger
will be in charge of managing that. I think CalTrans will
eventually take over.

THE PUBLIC (UNIDENTIFIED): And some nonprofit
speak of the increase. It will transfer to the --

(inaudible)?

BOARD MEMBER MS. KALEMKIARIAN: And, so, who -- who
is to provide oversight, to those, to -- since they're
eventually nonprofits. Sounds like they would be.

Who -- who -- who checks the --

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Well,
they're -- they were required to consign with the permit
and -- and by the report, up until -- I believe it was the
performance standards. But in perpetuity, after that, there
will be no more reporting. There will only be -- if we discover an issue or someone reports an issue.

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Yes.

EXECUTIVE OFFICER MR. GIBSON: May I address --

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

Ms. Kalemkiarian, Robert Thornton --

(Simultaneous speech; unintelligible.)

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

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

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

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

NORTHERN WATERSHED UNIT (MS. DORSEY): Just -- just to clarify. Kelly Dorsey, from The Water Board.
This -- this water requires TCA to make sure that -- that it's maintained for the water to transcend through it. Whether it's handled by the third party, they're still on the line to make sure that it's that -- it's maintained -- (mumbled).

THE PUBLIC (UNIDENTIFIED): It's not quiet. You guys, I can't hear very well. Can you turn the mics up?

CHAIRMAN MR. MORALES: I don't know if there is a way of turning up the -- the volume, other than through our own vocal cord.

THE PUBLIC EN MASSE: Thank you.

THE PUBLIC (UNIDENTIFIED): That would be good.

THE PUBLIC (UNIDENTIFIED): Close the door.

CHAIRMAN MR. MORALES: Well, I don't know that we can close the -- the door, either. I think -- I don't wanna run afoul of the -- the fire codes.

THE PUBLIC (UNIDENTIFIED): Then, talk louder.

CHAIRMAN MR. MORALES: Okay. We will do our best to -- to talk louder.

BOARD MEMBER (MS. KALEMKIARIAN): And, also, lean forward into the speaker. 'Cause I can hear here. It's much better when you lean forward.

NORTHERN WATERSHED UNIT (MR. BRADFORD): Okay.

Understood.

CHAIRMAN MR. MORALES: Okay.
Are there any other questions, from the 
board, for our staff at this time?

Okay. Hearing no questions, at this point, 
we're going to continue on in the proceedings with our other 
presenters and public comment. But -- before we do that, I 
would ask that any individual that is expecting to testify -- 
ya know, we administer an oath that I'd ask you to stand and 
take here in a second. And when you do speak, when you come 
up, if you can state your name for the record and that you 
have taken the oath, before proceeding, we would appreciate 
that.

So, if you are intending to testify, please 
stand at this time and raise your right hand and take the 
following oath. It's very simple. It's just a required two 
words on here.

Do you swear the testimony you are about to 
give is the truth? If so, answer "I do."

EN MASSE: I do.

CHAIRMAN MR. MORALES: Thank you.

Now, I also wanted to mention that, on Friday, 
we received a formal request for postponement of this 
hearing, since staff is -- our staff is going to be taking 
more time to conduct an analysis of the -- for the CEQA 
questions. That request was denied. Because we felt it was 
important that many of you that had planned to come speak
today be given that opportunity. And since it is also likely that the hearing where final action on this matter will be taken will be held in San Diego. Simply given, the order of matters that we're going to be dealing with this year.

So, with that, I would like to ask that the TCA come up and do the presentation, initially. Originally, we had it set up in -- stated in the order of proceedings, that the NGOs would go first. But the agreement between the NGOs and the TCA, TCA have agreed to go first. And, therefore, the order will be modified somewhat.

THE TRANSPORTATION CORRIDOR AGENCY (TCA)

MS. HALL: Thank you. With that, may I reserve some time at the end to respond to some comments?

CHAIRMAN MR. MORALES: Of course.

MS. HALL: Okay, great. Thank you.

Good morning, Chair and Members of the Board.

My name is Valerie Hall. I'm Director of Environmental Services for the Transportation Corridor Agency. The project before you today for consideration is the SR 241 Tesoro Extension Project.

Just to provide some background on our agency, we are a public agency. Many of you may have heard we're a private for profit, but that is not the case. We're actually a public agency governed by 18 public members, as well as the
County of Orange. All of our board members are from cities that are within our corridor areas. They lie adjacent, directly to our -- our transportation facilities. Our board members also represent more than 1.8 million residents of the County of Orange.

To date, TCA constructed 51 miles of toll roads within Orange County. This represents over 20 percent of the highway and State System in the county. We're also included in the Southern California Association of Government, as well as the San Diego Association of Government Long Range Regional Transportation Plan for a Regional System and have been there for over 20 years.

We're also part of the South Coast Air Quality Management Plan. All of our profits are listed as "Transportation Control Measures for Air Quality Benefits."

Some background on our projects, as a whole. The TCA, again, has constructed 51 miles to date. The slide before you represents they -- the extensions that we provided, as staff noted, the SR Ter- (sic) -- 241 has been constructed in over seven -- uh -- through seven extensions. All this pining effort that went into account, taking -- took into consideration the planned community -- communities for Orange County and the needed infrastructure to support this development and this plan, as well as planning for large flocks to contin- (sic) -- tin- (sic) -- excuse me. To
contiguous open space, to accommodate the plan growth as well as set aside open space. We were also one of the nation's first comprehensive State and national reserve areas for open space.

This comprehensive planning has made Orange County one of the bests counties in the nation, based on ratio's open space development. And this long range planning accounted for and all of the regional development in the county similar to the existing toll roads, the Tesoro extension project will be account for the level of the required planning and permitting to accommodate this planned growth.

Now, getting to the project before you, it -- as staff explained, it will extend the existing SR 241 3.2 miles from the current terminus of Oso Parkway. Previously, we -- the last extension was known as the Oso Project. And that was 3.2 miles. It opened in 1999.

The current traffic on that section of the 241 is roughly 7,000 vehicles per day. Oso Parkway, the arterial that 241's connected to currently provides 24,000 trips per day. Similar to the connection at Cow Camp -- that would be part of the Tesoro Extension Project. Cow Camp is planned to carry 58,000 vehicles, almost twice of what Oso Parkway currently has.

The County of Orange has several
transportation projects to accommodate this planned growth. One of them is known as "The Script Program," the South County Roadway Improvement Program. But then there's -- there are three categories of -- from -- to provide for these improvements, including providing regional improvements to its existing State facilities such as SR 241.

The 241 Tesoro Extension Project plans to expand the 241 5.5 miles south, from the current terminus of Oso Parkway, down to the City of State Route 74 Orty (sic) -- Ortega Highway to Cow Camp Road. As staff explained, there are only two lanes in each direction with an open median and -- and -- uh -- median improvement for water quality.

The project is also locating with the approved Rancho Mission Viejo Ranch Plan. Forty-eight percent of the project is located within areas already approved for development under the Ranch Plan. And the project does avoid all jurisdictional areas of the U.S. Army Corps of Engineers.

The Tesoro Extension project has a logical terminus. As some may have you to believe, the Tesoro Extension Project will not connect to a dirt road. Cow Camp Road is under construction. It is before you, pending a -- a 401 certification and it is planned to begin construction for the portion that will connect to the 241 this summer. They will be ahead of the Tesoro Extension or built concurrently
with our project.

Cow Camp Road is also planned to be the major bypass for the existing State Route 74. State Route 74 currently has one lane in each directed -- uh -- each direction and constrained, topographically. It cannot be widened any further. Therefore, Cow Camp Road will -- will be the new primary east-west arterial.

The slide before you shows the portions of Cow Camp Road that are already constructed. Again, Cow Camp Road is on -- is in the -- has been constructed and of -- the remaining portions of the 241 will begin in summer of this year.

Getting to the project needs. The Tesoro Extension Project provides a critical alternative route to Orange County. It will increase mobility and provides public safety in one of the largest areas that are planned for growth within Orange County's District. In addition, the Center for Demographic Research, at Cal State Fullerton, projects that same area of Orange County is gonna experience a 27 percent growth in population, 22 percent growth in housing; and a 32 percent growth in employment.

Additionally, the transpor- (sic) -- the Tesoro Extension Project is part of the US EPA as well as the Federal highways and FHWA's approvals in the long range transportation plan; and it's important for regional air
quality conformity requirements.

This graphic before you is a typical example of what occurs on Interstate 5, on a daily basis, and has increased even more so on the weekends. To put a little bit in perspective for you, imagine what San Diego would be like without SR 56, SR 76, SR 78, the 805 or even Interstate 8 or any other freeway, and all the three million residents have in San Diego was Interstate 5. That's what Orange County -- South Orange County faces, every day. Our only way in and out is Interstate 5.

This results in numerous concerns for public safety. Our project overrides an important major alternative provided a much need redundant alternative for emergency events, as well as every day commuters.

The Tesoro Extension Project delivers traffic re- (sic) -- relief without any further extensions needed to extend beyond Cow Camp Road. Similar to the Oso section that I talked about previously, that roadway has been in operation for more than 16 years. The Tesoro Extension can function without any future extension as well. In addition to the -- the Rancho Mission Viejo Ranch Plan will provide for -- more than 44,000 new residents to the county. The existing circulation system cannot absorb that growth without any negative impact to traffic.

As part of the approvals for The Ranch Plan
Development, the same parties that will speak af- (sic) -- shortly after the TCA, today, are the same individuals that settled with The Ranch Plan to allow for the development of 14,000 units and millions of square feet of commercial space within the ranch planning area.

The main difference between and The Ranch Plan and the Tesoro Extension and the roadway that The Ranch Plan will build as part of their system is ours provide free flowing system versus an arterial highway, which makes it -- uh -- traffic and mobility much efficient.

The project system, a system that the infrastructure agreed to. And, as part of this settlement that the -- uh -- screen before you shows, we've been able to be consistent with -- with the terms of the settlement and have also minimized all environmental impact, again, to provide consistency for these prior approvals.

This is the -- the shot of The Ranch Plan. Again, 14,000 new homes. The growth has been agreed to by the NGOs. It is not happening at some undefined date. It is happening now.

There's development occurring, right now, within the first planning area. And Planning Area 2 will begin later this year.

Additionally, there's the Habitat Conservation Plan that set aside thousands of acres of open space with the
U.S. Fish and Wildlife Service. As well as a stream land --
uh-h-h -- stream land alt- (sic) -- a -- stream Land
alteration management plan -- test alteration management
plan. I'm sorry. It was finalized with the Army Corps of
Engineers. And just -- and it allows for a watershed base
planning document.

Currently, as mentioned a moment ago, Planning
Area 1 of -- of The Ranch Plan is under development and will
result in 1200 homes. That's the photo on the left
(indicating). The photo on the right is in a typical area of
development, just north of the 241 Extension Project. This
is known as Ladera Ranch. Again, this new development within
The Ranch Plan will bring over 44,000 people to Orange
County.

As a recent article noted, in Orange County
Register, the Ranch Plan will be the largest city ever
constructed in Orange County. It will be much larger than
the existing City of San Juan Capistrano and will even have
its own Zip Code. Again, as agreed to by the parties that
will speak later today, this road -- this development needs
the supporting infrastructure system to serve it.

To accommodate all of this planned growth, TCA
has conducted an extensive outreach process. We've worked
with supporters. We've worked with members of the public.
We've worked with public agencies. We've worked with
environmental groups.

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

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

MR. BOB: Thank you, Valerie.

Thank you, Board Chair and Members of the Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Now, a study was performed by the University of Texas. And what's shown here is, when a porous overlay was installed on a highway between the rainy seasons of 2004 and 2005 -- so, that's where the red arrow is pointing (indicating). Before the '05 season, you can see there was a large amount of total extended solids coming off of the road. Once the overlay was put in place, the TSS reduced significantly -- not only for that one year, but for a long
period of time afterwards. And then the total -- looking at
the total suspended solids is an excellent indicator for
measuring pollution from highways. And because it -- because
it measures both metal and other solids and to see the porous
pavement have this much production is very significant. And
that's why we're employing it within our roadways.

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

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

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

MS. HALL: Thank you, Paul.

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

Since receiving our board's approval of 2,011
to move forward with the West Indies (phonetic) area environmental analysis, we have continued to meet with all of -- (inaudible) -- resource agency.

And today, TCA has been -- (inaudible) -- to receive approval from the U.S. Army Corps of Engineers and the EPA to confirm that there is no waters in the U.S., subject to their jurisdiction, negating any need for a 404 permit for this project. We have also consulted and received a 1602 Stream Bed alteration (sic) -- Alteration agreement from the California Department of Fish and Wildlife. The Fish and Wildlife Office have also approved TCA's Comprehensive Mitigation Plan. The same plan that has been submitted to your staff for review and approval.

TCA is currently in the process of consulting with the U.S. Fish and Wildlife Service under the Federal Endangered Species Act. And it is -- uh-h-h -- planning on receiving a biological opinion for this project.

Lastly, we've also been working with your staff, very closely, since 2,011, to permit this project and receive a Waste Discharge Requirement Permit for placement to fill in .4 acre (sic) of waters of subject to the State of California. As you can see from this list of agencies, we've conducted a very extensive amount of coordination, not only with public but with very agencies responsible, providing oversight for their jurisdictional areas.
Again, the Army Corps EPA confirmed that no 404 Permit is required. This avoidance is achieved through a project designed nature that included providing bridges that span waters and adjusting the alignment to further avoid jurisdictional fee- (sic) -- features. This resulted in avoidance of 97.5 percent of water subject to the State.

TCA is proposing an in kind and within watershed mitigation program. Again, the impacts of this project are a total of .4 acre per minute impacts. The TCA is proposing over 33 acres of mitigation. This approach provides a net best fit to all species. A portion of our mitigation is within the upper Chiquita Canyon Watershed. That results in a mitigation ratio much higher than normally seen for projects similar to the Tesoro Extension.

To compensate for unavoidable -- unavoidable impacts to Regional Water Quality Control Board Areas and Department of Fish and Wildlife, TCA is proposing two mitigation areas, as noted by staff earlier: Mitigation Area A and Mitigation Area B.

Mitigation Area A is directly below Tesoro High School, just south of the Oso Parkway. It's approximately 15.9 restricted acres. The photo on the left is an existing area that's been grazed by Rancho Mission Viejo.

And TCA plans to come in and enhance and
create some Markarian (phonetic) or -- and wetland areas.

And it will be representative of the fee- (sic) -- of the future photo that is shown there. The Markarian future photo is a reference site that's also located in that -- and illustrated in the mitigation plans that's within review for your staff, right now.

Mitigation Area B is located within TCA Upper Chiquita Canyon Conservation Area. To respond to your question, earlier, the Upper Chiquita Canyon Conservation Area is an easement owned by the TCA with the Fish and Wildlife Service and the Department of Fish and Wildlife, formally Fish and Game. They are a third party beneficiary that have full rights and authority to require TCA to come in and do retroactive measures; and we're responsible to report to them.

For the Mitigation Area A, below the High School, that will be folded into the reserve at Rancho Mission Viejo, which is a nonprofit entity that were designed to manage the 16,000 plus acres of the reserve. Again, all the resource agencies have agreed to this and they have enforcement provisions within those easement documents.

To date, TC (sic) has ses- (sic) -- successfully restored 2,100 acres. These acres comprise wetlands, coastal sage scrub, rare (phonetic) plan, Markarian oak -- woodlands. We have a very successful track record.
We have one well-respected restoration specialist that will perform this work, Dr. Mark Redwell (phonetic). And Tesoro will be an example for others to follow in how to build and -- and minimize impacts associated with the roadway.

This is one example of our projects we've created. Along with Bonita Creek, there's a 40-acre wetland, a Markarian area. You can see in the very top left photo, that's what it looks like when we first began the project. And what it looks like, today, is the larger photo on the right.

These -- this mitigation site contains le-spells-mirago (phonetic), a federally listed species, as well as southwestern fly catcher and the California net catcher. Also important to note, this mitigation site was selected because it was a critical wildlife research between the San Joaquin Hills and Upper Newport Bay.

BOARD MEMBER MS. KALEMKIARIAN: How many years does this represent? What's the present from year zero?

MS. HALL: The present photo was taken in 2011.

BOARD MEMBER MS. KALEMKIARIAN: And when was year zero?

MS. HALL: Year zero was 1997.

The next photo is a typical example of all of our coastal sage scrub restoration sites, similar to what we're proposing on the Tesoro Extension. This photo
(indicating), here, is just north of where the Tesoro Extension Project will begin. And it provides coastal sage scrub. All of our sites, along where sites close to our airways, have met conforming standards enlisted by the U.S. Fish and Wildlife Service, provide habitat for the federally listed California net catchers. All of our sites are self-sustained and resilient.

Beyond the minimum requirements, TCA has also been very instrumental in launching initiative -- an initiative for the County of Orange. This is one example of -- as to one of their problems. The cactus salvage translocation project that was undertaken within TCA's upper Chiquita Canyon Conservation area. This project was done in anticipation of a reservoir being constructed within the project area. We helped them salvage all the cactus.

We designed the plan. And we implemented the -- uh -- the cactus and have been monitoring the prob- (sic) -- the program since. And, again, it's for the recovery of the cactus friend. Not of a species. The spill is something that TCA monitors and plans for.

This is another program that TCA -- we actually partnered with a nature reserve in Orange County. There is a land manager for 38,000 acres. TCA is an active board member on that rock and partner. They're all the partners where the University of California Irvine's
implemented project began, going beyond what we're required
to do and implementing projects for the benefit of these
various species.

In summary of the mitigation, TCA has
committed to your staff and your board that we will monitor
and report, on an annual basis, for a minimum of ten years
under all of our mitigation or until all of our performance
standards have -- have been met. We've also committed to
providing these annual reports to all of the agencies. And
we will provide financial assurances to give your board a
level of comfort that our mitigation sites will fulfill their
requirements.

I would like to turn this over to Rob
Thornton, now, to discuss CEQA.

MR. THORNTON: Good morning, Board Members. Robert
Thornton. I'm counsel to the Transportation Corridor
Agencies. And I'd like to specifically address a number of
questions that have been raised regarding the California
Environmental Quality Act Compliance to the Project.

Next line, please.

This project has been the subject of
extensive comprehensive evaluation pursuant to the California
Environmental Quality Act, dating back to 1981. In fact,
it's been the subject of no less than four separate certified
environmental impact report documents. First, a program
level document approved by the County of Orange, certified in 1981; followed by a (sic) EIR, certified by the Transportation Corridor Agency 1981; followed by the 2,006 subsequent EIR, certified by the Transportation Corridor Agency; a Comprehensive Environmental Impact Report, required by the County of Orange, in regard to the Rancho Mission Viejo Development; and also evaluated the general effects of the SR 241 project; and, finally, the 2,013 addendum which is before you today. So, there is a mountain of CEQA compliance on this project.

Next slide, please.

Now, the -- the issue's been raised -- and I'm sure will be raised today and subject for question -- that, somehow, the consideration of the Tesoro Extension constitutes piece mealing. So, I want to talk about that in some detail. The -- the term "piece mealing," for those of you -- those of you who don't live with CEQA, typically refers to where you -- you proceed with evaluating one portion of the project without looking at other possible future extensions or enlargement of that project. Piece mealing did not occur in the circumstance.

As we've just documented, the entirety of the SR 241 was evaluated in three separate certified EIRs. It was evaluated comprehensively and associated with Ranch Plan EIR. An EIR, by the way, which resulted in the settlement
agreement with the same groups that are opposing this project, as -- (mumbled) -- all noted and, finally, in the 2,013 addendum.

So, contrary to the assertion that there's piece mealing, there's been no piece mealing of the environmental analysis.

Next slide, please.

This slide shows the variable alternatives that were evaluated within the various environmental documents. Actually, this is only a portion of alternatives that were evaluated in 2,006, subsequent EIR. And as the slide indicates, there are numerous alternatives available for extending SR 241 south of the proposed southern terminus of the Tesoro Extension. So, there's no foreclosure of alternatives. Those alternatives all remain open.

They're all available to be considered, further, as part of subsequent proceedings. We're not foreclosing any of those alternatives. The board wouldn't be foreclosing any of those -- those alternatives by approving the staff recommendation with the proposed WDR.

Now, let me talk a little about how transporta- (sic) -- how environmental compliance is carried out, in the State of California, with regards to transportation project.

Next slide, please.
There are numerous examples, throughout the state, where transportation projects have been evaluated in precisely the way that this project has been evaluated. Here's a list of ten representative samples of projects where there was a larger project, but there were decisions made to phase construction portions of the project in advance of the completion of other phases of the projects. I wanna focus on two specific very recent examples for the Board's consideration.

First, is the California High Speed Rail Project. The largest project in the State, as we all know, from the Governor's State of the State message, a project very near and dear to the Governor's heart. That project is proceeding with ten separate segments. In fact, in separate sections within ten separate segments. The construction is about to commence on portions of the project in the Central Valley, even though the alignment in that project, the location of that project on the north and the south has not been fixed and, indeed, is controversial in some circumstances.

So, a very similar circumstance to here, which is a recognition that we identify segments where you can reach a decision -- uh -- reach -- reach -- uh -- or complete the environmental analysis, but preserve options open for future extensions of the project. And that's
exactly what we're proposing to do here.

The second example highlighted on this script -- on this slide is the Exposition Corridor Light Rail Project. And I know a little bit about this project, because I'm counsel to that authority and represented them in -- in CEQA matters, too. A very very similar circumstance to what we have here is. This is a light rail project that ultimately will connect downtown Los Angeles with Santa Monica. Initially was -- was a (sic) environmental evaluation; was conducted for the entirety of the length of the project.

There was controversy about alternatives within Santa Monica, between Culver City and Santa Monica. The Board made a decision to simply proceed with the first phase of the project and to postpone the decision on alternatives of south or -- or rather west of the first phase. Almost an identical circumstance to the process that's been followed by the Transportation Corridor in this county (mumbled).

Next slide, please.

Now, it's important for the Board to understand the role that the court has under the California Equal Quality Act. CEQA makes a very important distinction between the responsibilities of lead agencies -- in this case, the Transportation Corridor; and the responsibilities
of the re- (sic) -- the responsible agency and the regional board here is sitting as a responsibility -- responsible agency. The California guidelines make it clear that determination of a lead agency to prepare an EIR negative declaration shall be final and conclusive for all persons, including responsible agencies.

Next slide, please.

CEQA goes further to provide that, when the lead agency has prepared an EIR, the responsible agency shall assume that the EIR complies with CEQA. So, the region board has no discretion under CEQA. You're obligated, as a matter of law, to assume that the 2,006 subsequent EIR complies with CEQA.

Next -- next slide, please.

The only limited exception that's recognized in the CEQA guidelines is, in those circumstances where there is a new information or a significant change in the project or significant change in circumstances, that causes new significant impacts or a substantial increase in the severity of the impact that was not previously evaluated. And, as your staff testified today and as we documented in our submission, the 2,013 addendum that's been provided to you through and by the TCA documents that there is no significant impact and no increase in the severity of any significant impact identified in the 2,006 subsequent EIR. Indeed, as
the testimony here today indicates and as the documentation
dicates, the modifications of this project actually reduce
the impacts that were described in the 2,006 EIR. We've
avoided all Federal waters. We've shifted the alignment to
minimize the impact of State waters to an extraordinary
level.

And, as your staff has indicated, we have a
gold standard -- to quote your staff -- a gold standard of
mitigation several times more rigorous than is typically
applied to projects. We have stated a science best manager
(sic) practices. I wanna make a point about that. This
project has proposed to incorporate best management practices
that has not been applied to any other highway in the State
of California. That's what's before you in the new -- that
is proposed for the construction -- (mumbled) -- order.

No other highway in the State of California
has adopted the requirements that the TCA has stepped up and
said, "We will adopt those requirements."

Now -- next slide.

What this means to the Board. What this
means to the Board is, you're required to assume that the
2,006 subsequent EIR complied with CEQA. And the Board does
not have the discretion to require a subsequent -- or
supplement of EIR. Because the facts before you today, as
confirmed by your staff, indicate that the project will not
create any significant effect, will not substantially
increase the severity of a significant effect.

Now, the next slide.

Okay. You've heard a -- you've heard about
this Department of Commerce decision. Your staff testified
about it. And I'm sure you will hear substantial testimony,
later today, about the Department of Commerce decision. The
Department of Commerce decision did not preclude the TCA from
modifying this project or from adopting alternatives.
Indeed, as indicated in this slide, the decision states
explicitly it in no way prevents TCA from adopting other
alternatives for modification of the project.

And I want to point out that the project that
was before the -- the Department of Commerce and the Coastal
Commission had a connection within the coastal zone, ten
miles south of the southern terminus of the Tesoro Extension.
It's about a half mile of that larger project that was in the
coastal zone, management act coastal zone. And it therefore
triggered the coastal zone process. All of the issues that
were raised before the Coastal Commission and that were
raised before the Department of Commerce all related to that
last little piece of the project, concerning coastal zone
resources. None of those issues are relevant to the Tesoro
Extension.

Next slide, please.
The key fact before the board, on this. This project complies with CEQA. The project extraordinarily, in my experience of waste, all Federal waters of United States, it has a minimal impact on State waters. It has -- the TCA has submitted to a gold standard of mitigation. It has -- it is committed to implementing BMP that no other highway in the State has committed to.

The State of California, as we all well know, has gone through a very tough economic period, which we're -- we continue to experience. We have some of the most highest unemployment in the nation. This -- this project will put 2,000 people to work with good paying local jobs. Some of those folks are represented in this hearing today and I suspect you'll be hearing from them.

The project has a logical terminus, at Cow Camp Road. It has independent utility and it does not foreclose alternatives further to the south. We appreciate the Board's attention. And we look forward to the opportunity to -- uh-h-h -- to subsequently submit rebuttal testimony, as the Chair indicated.

We respectfully request that the Board of -- when it does consider taking an action, that it adopts your staff recommendation. We request that, for purposes of preparing responses to comments, that you close the public hearing at the end of the day; but leave open the
opportunity, obviously, for your staff -- uh-h-h -- and in addition to the applicants to prepare responses to comments. Be happy to answer any questions.

Thank you very much.

CHAIRMAN MR. MORALES: Thank you.

I think what we will do is, the Board will have its opportunity to ask questions of you all.

Now, with respect to the -- to the CEQA issues that our staff is considering further, I think we'll defer questions on those until the extent necessary. And I hate to admit to do this, but we'll ask that any testimony on the CEQA issues, it occur at -- at our future meeting. Quite possibly, May. We don't currently have a -- a staff recommendation to adopt the order, because of the new information that came in. So, this goes for the -- the NGOs, as well, that will be testifying later.

We will be hearing any -- you know, presentation that you have. With respect to CEQA, we are going to be conducting further analysis on that. We expect to -- at the end of the hearing, if we haven't formulated at that time, give you specific questions that we may want you to address and further written briefing with it -- uh -- a schedule on that.

MR. THORNTON: I think that -- that would be fine, Mr. Chairman. We'd be happy -- happy to do so.
CHAIRMAN MR. MORALES: Yeah.

And so all you folks know, our intent at the
future meeting will be to hear testimony related specifically
to CEQA. And, to the extent we can get the rest of the
public and other testimony in, today, on -- on any other
matter, we want to get it heard and taken care of and done
with, today.

STATE BOARD STAFF COUNSEL (MS. HAGAN): (Raise of
hand).

CHAIRMAN MR. MORALES: Yes.

STATE BOARD STAFF COUNSEL (MS. HAGAN): Would you
allow me to ask one question to TCA, regarding a specific
CEQA issue?

CHAIRMAN MR. MORALES: Of course. You can ask the
NGOs the same question, later.

STATE BOARD STAFF COUNSEL (MS. HAGAN): The
question -- and it may be for Mr. Abarbanel to follow. But
-- um -- it is whether TCA intends to submit or to make any
further approvals before carrying out the project or if the
approval was made in -- essentially, in 2,006?

MR. THORNTON: No. There will be -- uhm-m-m -- the
TCA continuing to stretch their authority and has not made a
final -- issued a final discretionary decision with regard to
the Tesoro Extension. But we -- we would expect to bring
that back to our board later in the year.
STATE BOARD STAFF COUNSEL (MS. HAGAN): Do you --
do you have any -- uhm -- do you intend to do that, then,
after you receive regional board approval? Or -- uhm --

MR. THORNTON: That -- that --

STATE BOARD STAFF COUNSEL (MS. HAGAN): -- I guess
I mean --

MR. THORNTON: -- that -- that's -- that's our
expectation, obviously, depending on the regional board
schedule. That would be our expectation.

STATE BOARD STAFF COUNSEL (MS. HAGAN): And would
that approval rely on the 2,013 Addendum Act?

MR. THORNTON: That -- that approval, in all
likelihood, would rely on 2,013 addendum, as -- as maybe
supplemented with any new information up to the date of the
Board's consideration, obviously.

STATE BOARD STAFF COUNSEL (MS. HAGAN): One -- one
follow-up. Would that decision or the further approval be
made by the Board of Directors or by the -- the project
manager who signed the addendum?

MR. THORNTON: The -- the decision would -- would
be required to be made by the Board of Directors. Under the
TCA adopted administrative code, the -- the manager of the
Environmental Services had the authority to approve the --
(inaudible).

STATE BOARD STAFF COUNSEL (MS. HAGAN): Okay.
Thank you (nod of the head).

CHAIRMAN MR. MORALES: And that was just one lawyer question.

EN MASSE: (Laughter).

CHAIRMAN MR. MORALES: Thank you, sir.

And -- uh -- thank you to the TCA staff members.

And I very likely will have some questions. We'll take a five-minute break after we're done with those questions. And we will begin with the NGO presentation, at that point, just so everybody has a sense of timing. My guess is we will take an abbreviated lunch, since we have -- we don't have the matters, as I understand, that we're going to be --

BOARD MEMBER (MR. ABARBANIEL): (Nod of the head).

CHAIRMAN MR. MORALES: -- dealing with, that we normally do during lunch. And try and get started again at 1:00, for the -- the time shortened for our elected officials.

Any questions from the Board?

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

CHAIRMAN MR. MORALES: (nod of the head).

Dr. Abarbanel.

BOARD MEMBER (MR. ABARBANIEL): The transpor- (sic) -- the type of your organization, the Transportation Corridor Agency, what other modalities of transportation do you implement, besides roads?
MR. THORNTON: Well, they -- the -- the corridors are actually planned and designed to incorporate both highways and transit usage. And in the regional transportation plans, both for San Diego and the Southern California Ses-(sic) -- Association of Governments, the corridors are designed to include high operative the vehicle plan and its equivalent usage. But those -- those determinations of modality, frankly, were made by those regional transportation planning agencies. That was -- that -- that -- those decisions are made at the regional transportation planning process level.

BOARD MEMBER (MR. ABARBANEL): From what you've said, I would infer that TCA agrees that the Tesoro Extension is part of a larger project.

MR. THORNTON: It is part of -- it's part of the SR 241, which it -- it begins, actually, in Riverside County, as you may recall from the map. And extends, as is designated on the State Highway System, all the way to Interstate 5. So, yes, it's part of the larger system and part of that larger project; correct.

BOARD MEMBER (MR. ABARBANEL): What --

MR. THORNTON: But -- but, as we've also indicated, Dr. Abarbanel, is that's very typical to look at transportation projects and -- (interrupted)

BOARD MEMBER (MR. ABARBANEL): Thank you. Thank
you.

MR. THORNTON: -- call them straight, for them to be processed in that fashion.

BOARD MEMBER (MR. ABARBANEL): Just a -- (mumbled)

-- other question.

What is the AB-32 impact of the development and the associated road extension?

MR. THORNTON: There -- this project is consistent with AB-32. So, for those -- for those of you who are not into nomenclature greenhouse gas issue, AB-32, of course, was the -- the Global Warnings Act that was passed. That has been subsequently expanded through actions taken by the California Air Resources Board to -- (inaudible) -- the 375 and other actions. And these projects are actually included within the sustainable community strategy adopted by the Southern California Association of Governments last year.

And, so, the San Diego portion -- this portion of course resolves within the SCAG portion. However, the San Diego portion is in the SANDAG, which is sustainable community strategy. So, the project's entirely consistent with the AB-32 implementation strategy approved by the California Air Resources Board.

BOARD MEMBER (MR. ABARBANEL): Thank you.

Okay. Where are the users of State Route 241 coming from and where are they going?
MR. THORNTON: That -- that's a very -- that's a very complex question. But, in general, there is the -- the 'cause, obviously, there's -- there's a multiplicity of usage of regional highway systems. But, in general, a significant portion is regional trips -- uhm-m-m -- uh -- north-south trips. Obviously, folks using -- using these facilities as an alternative to the highway, Interstate 5. And there's a significant component of local trips.

But the projects -- the project has a very significant regional use component. And they have a very significant home-to-work component.

BOARD MEMBER (MR. ABARBANEL): So, what are the alternative plans for transporting these people and, obviously, goods to their designations?

MR. THORNTON: When you're -- when you're referring to "alternative plans," meaning it -- the alternative plans, again, are -- the -- the -- the regional alternative plans are really set by the regional transportation planning agencies. Those decisions are not made by the Transportation Corridor Agency. Those decisions, under Federal and State law, are made by the Southern California Association of Governments with regard to the five Southern California Counties.

The TCA Board is not making those decisions. And -- and -- and -- and other folks make those decisions.
But we -- (interrupted)

BOARD MEMBER (MR. ABARBANEL): I'm sorry. I --

MR. THORNTON: -- we're implementing those --

(Simultaneous speech; unintelligible.)

BOARD MEMBER (MR. ABARBANEL): I didn't ask you

who's making the plans. I asked you what the plans are.

MR. THORNTON: Well, the -- there -- there's

obviously a comprehensive regional transportation plan for

Southern California that is reflected in the regional

transportation plan. That has a -- comprehensive has a

significant transit component. I referred to one of the

transit projects, earlier. The -- (inaudible) -- corridor

project is -- is an example of that. But it also has a

significant highway component and a highway improvement for a

component as a comprehensive plan that gets updated every few

years.

BOARD MEMBER (MR. ABARBANEL): Thank you. Thank

you.

(Nod of the head), thank you.

CHAIRMAN MR. MORALES: (Nod of the head).

BOARD MEMBER (MR. ANDERSON): At this point, was

wondering if the -- (inaudible) -- if the SAMP was included

in our -- (inaudible) -- or --
THE PUBLIC (UNIDENTIFIED): Can't hear you.
Can't hear you.

BOARD MEMBER (MR. ANDERSON): And -- and --

CHAIRMAN MR. MORALES: One second.

BOARD MEMBER (MR. ANDERSON): I was just checking
to see if the SAMP was included in the -- in the material.

UNIDENTIFIED SPEAKER: I just missed it.

TCA COUNSEL (UNIDENTIFIED FEMALE): (Inaudible) --
not from. San Diego has -- (inaudible).

(Heretofore noted, for the record,
disturbances throughout; simultaneous speech;
testimony somewhat inaudible, unintelligible
11:16 a.m.)

BOARD MEMBER (MR. ANDERSON): Okay. Okay.

CHAIRMAN MR. MORALES: Can -- uh -- can we have one
of our staff at the door, can you just let the folks outside
know that their volume is sort of interfering with our
ability to hear.

UNIDENTIFIED STAFF: Okay.

CHAIRMAN MR. MORALES: Thank you.

BOARD MEMBER (MS. KALEMKIARIAN): I -- uh --
Mr. Chairman, tell me if my question is verging into what you
wanna hold for later.
The EIR for this portion, in 2,006, was for the entire portion down to Oso Parkway? I mean, down to 5 to Camp Pendleton or just this portion?

MR. THORNTON: No. It was -- it was for the entirety of the -- the larger project.

BOARD MEMBER (MS. KALEMKIARIAN): Okay.

And then, Catherine, I -- this may be something you wanna defer. But, for my education, the point that was just made that we are not the latitude. It's the Regional Board to make the decision to not respect the -- (mumbled) -- the EIR or whatever, but our responsibility to look at this other area of significant impact.

Can you just, in layman's term, again, explain that? Because when I read the staff order, on Page 9, there's some discussion of that. But I still didn't quite understand what it says that "The unavoidable environmental impacts --" I'm reading from the stack -- "triggering elite agencies to adopt statement of overriding considerations are within the areas of the San Diego Water Board."

So, if you could just explain.

STATE BOARD STAFF COUNSEL (MS. HAGAN): Well, yeah. The -- the finding that is in your current tentative order is not accurate. It's not that -- it may, in fact, end up being accurate, but we're still evaluating. That -- that's the -- assignment that was included in the draft, when
it went out for public comment, without additional further
evaluation. And we recognize that -- that findings will be
dependent on it.

BOARD MEMBER (MS. KALEMKIARIAN): So, then, the
comments for me -- 'cause I think it would help the audience
also. And so, that way, in turn, it will help me.

Structurally, our area of responsibility as
it relates to what's been done before.

STATE BOARD STAFF COUNSEL (MS. HAGAN): Well, if --
if the board is acting as a responsible agency, generally,
your -- the scope of environmental effects you would consider
would be within your jurisdiction of the Water Board.
However, if circumstances were to change and you needed to
evaluate and -- and consider doing a subsequent EIR on your
own and potentially shift to lead agency -- and I don't know
that that would be the case. That's something that we're
evaluating. But, in theory, then, the board's obligation
would be to look at all environmental effects, even without
your -- outside of your jurisdiction.

BOARD MEMBER (MS. KALEMKIARIAN): Okay.

So, as to responsible agency, it's limited to
overriding environmental, new -- new overriding environmental
impacts? So, what's the standard?

STATE BOARD STAFF COUNSEL (MS. HAGAN): It would
be -- uhm -- well, it would be looking at water quality
impacts and -- and making findings about significant effects
on water quality and, potentially, doing a statement of
overriding consideration. But we really are still lacking of
the -- of necessary information. And I -- I'm sorry to give
you a -- an incomplete answer, (nod of the head).

BOARD MEMBER (MS. KALEMKIARIAN): No, I
understand. That -- that was the Chair's point, then. On --

CHAIRMAN MR. MORALES: Okay. I have -- uhm -- just
one or two questions. Just for my own information and --
it -- it -- and nobody should read anything into the -- the
questions that I ask. I just have these intellectual
curiosities, sometimes.

Now, the Cow Camp Road -- I guess, extension,
is that going to occur, regardless of the -- whether 241 is
extended to Ortega or not?

MR. THORNTON: Yes. Cow -- Cow Camp Road is part
of the Rancho Mission Viejo approved development plan and --
and will -- is an independent project; correct.

CHAIRMAN MR. MORALES: Okay. Now, is -- have --
uh -- I guess, two other questions.

The -- uhm-m-m -- the Rancho Mission Viejo,
the Ranch Plan, I think your testimony was something along
the lines of they estimate 40,000 new residents. Do we know
if -- if that Ranch construction is likewise going to occur
without respect to what they're the extension gets
constructed or not? Or is it a chicken in the egg thing?
Like -- uh-h-h -- it'll happen if the extension; is there or
it'll have to happen.

MR. THORNTON: They -- their approvals with the
County of Orange require them to have an arterial system in
place and it has various time deadlines for various pieces of
the arterial system. And if the SR 241 is not constructed,
that they have a separate obligation to -- to build --
uhm-m-m -- the -- basically -- and the arterial system that
Dr. Bob showed, basically, in the identical location of the
SR 241.

CHAIRMAN MR. MORALES: Okay.
And then, I guess -- uh-h-h --

MR. THORNTON: The on- (sic) -- the only different
-- the only difference being, I might point out, is that it
would be -- you know, your standard local arterial with soft
lights, et cetera, and would not provide the regional
functions that our project is assigned to provide.

CHAIRMAN MR. MORALES: All right.
And, then, I don't know if this is a question
for you all. Maybe it's for the staff, I guess. Just one of
the -- these curiosity things.

Uh-h-h -- where's the water for all the extra
folks gonna come from? The -- (inaudible) -- and bear with
them, now.
EXECUTIVE OFFICER (MR. GIBSON): That's a very good question, Mr. Chairman, one that has been contemplated by the legislature. There is a law on the book that requires communities like Orange County to consider that question and to make that a part of -- (interrupted)

THE PUBLIC (UNIDENTIFIED): What was the question? I can't hear?

EXECUTIVE OFFICER (MR. GIBSON): Yeah. The question was, "Well, where will all the water come from for the community plans, like the Ranch?"

THE PUBLIC (UNIDENTIFIED): Yes. Thank you, yes.

EXECUTIVE OFFICER (MR. GIBSON): And, so, it is really up to the County of Orange and for the districts that provide that service to ensure that there is an adequate water supply as well as waste water treatment function for those communities.

CHAIRMAN MR. MORALES: Okay, thank you.

Okay.

MR. THORNTON: Mr. Chairman, I -- I also wanted to make sure, did -- did we answer -- uh -- ask -- adequately answer Board Member Kalemkiarian's question about the conservation easement?

BOARD MEMBER (MS. KALEMKIARIAN): Yes. But I think it was also Mr. Anderson's question.

MR. THORNTON: Yes.
BOARD MEMBER (MS. KALEMKIARIAN): Yeah. I --
I guess I have a follow-up, just -- as I understood your --
the answer.

So, if the toll road isn't approved, for
whatever reason, or permits or whatever, then there will be
an arterial road which will be a more local two- or four-lane
road with stop lights, et cetera?

MR. THORNTON: Correct.

BOARD MEMBER (MS. KALEMKIARIAN): So, the -- the
Regional decision, transportation-wise -- which I know is not
what our responsibility is. Is it going to be a toll road or
is it gonna be just a regular?

MR. THORNTON: That would -- that would be a reg-
sic) -- regular standard arterial, like the ones you see
outside the street here.

BOARD MEMBER (MS. KALEMKIARIAN): Okay.

And will -- uhm-m-m -- will the builders of
who have responsibility for the arterial road, which I assume
is the developer, have to then come back again to go through
the same approval process for the water impacts?

MR. THORNTON: That, I can't answer. I can't
answer as to what the -- uhm-m-m -- not sufficiently, what
they're in process, to know the answer to that question.

CHAIRMAN MR. MORALES: You shouldn't have said
anything about the NGOs, because it made me think of
something.

EN MASSE: (Laughter).

CHAIRMAN MR. MORALES: Now, the nonprofit that it
manages the -- the portion near the high school, that's
already in place -- (interrupted)

(Simultaneous speech; unintelligible.)

MR. THORNTON: I had to clarify that. The -- the
TCA holds the conservation easement. And, for those -- for
those of you who may not be into the nuances of the
conservation easement, that's a creature created by State
law. It has to be held in perpetuity. Basically, it runs
with the land. It precludes any future development and other
uses that are incompatible with conservation purposes.
The TCA is the grantee. Ultimately, our
objective would be for all of our mitigation properties to
have any nonprofit trust, being responsible for managing
that. There is a trust that was set up as part of the
Habitat Conversation Plan, Rancho Mission Viejo Plan that was
referred to. Again, a system approved by the environmental
groups that are opposing our projects. So, they've already
approved that system, signed on to it.
The Fish and Wildlife Agency, both at the
State and Federal level are beneficiaries of those easements,
those conservation easements an added -- (mumbled) -- force and authority.

CHAIRMAN MR. MORALES: And -- and thank you.

My -- my question was, it will be managed by
the trust or a -- a nonprofit. And it sounds like it's
already been generated. Who's managing it and how is it
funded? Because a management is only as good as --
(interrupted)

MR. THORNTON: The TCA has commitments in all of
its approvals and agreements, with the resource agencies, to
fund the ongoing maintenance and management of those
properties.

CHAIRMAN MR. MORALES: Thank you.

Okay. Any other questions?

Okay. Let's take a -- uh-h-h -- I've got
about 26 after. So, reconvene four or five minutes, folks,
no later.

Adjourned.

(Hereafter, short break commenced 11:26 a.m.
Proceedings reconvened 11:36 a.m.)

CHAIRMAN MR. MORALES: Let's go ahead and get
start, folks. We're gonna start off with more testimony,
now, from the NGO. But, before we do, one of our Board
Members, Gary Strawn -- who is basically helping and he's in charge of the public comments -- has a few things to say.

VICE CHAIRMAN MR. STRAWN: If I can make a request, please.

If we -- we've had a lot of complaints about people not being able to hear -- uh-m-m -- we've had a lot of that, because of all the noise coming from the back of the room. People trying to get in here and hear. My understanding is there are TVs and audio right around, to my left (indicating). And they can hear fine, in there. And then we'll be able to hear in here. And, so, I really encourage the people that are stacking up by that back door to please step around here, to my left, and we should all be able to hear.

Thank you.

CHAIRMAN MR. MORALES: Okay.

So, we're -- we're going to begin, now, with a testimony from the NGOs. We said that you all have about an hour to do your presentation. Let's go ahead and take this past the noon hour. So, we would like to keep it as close to an hour as possible. If you can come in slightly under an hour, we would appreciate it.

We'll take a condensed lunch and try to reconvene as close to 1:00 as possible. Although it may be a bit later, by a few minutes. At 1 o'clock, it is -- we have,
as I mentioned, a time certain for government speakers.

So, with that -- please state your name, that you've taken the oath and proceed.

(Heretofore noted, for the record, official surnames and spellings were not received. Therefore, names and titles are phonetically spelled throughout testimony.)

NON-GOVERNMENT ORGANIZATIONS

MS. FALDEN: Good morning. My name is Sarah Falden (phonetic). I'm the vice president for programs for the California State Parks Foundation. And I have taken a oath. This morning I'm here representing the entire San Onofre Coalition. Which has worked closely together for nearly a decade at the San Onofre State Beach.

Our coalition is made up of the following groups: The California State Parks Foundation, Endangered Habitat's League, the Natural Resources Events Counsel, Surfrider Foundation, Orfices (phonetic) Coast Keeper, Sierra Club, California Coastal Protection Network, (mumbled) wild coast, Defendants of Wildlife, Greenbelt and Auto Bog (phonetic) California.

Together, I've instructed over a million citizens in California. And I would like to speak a little
to that. But, before I do, I have just a very quick
clarification I'd like to request. Earlier, when the board
was addressing testimony and questions relating to CEQA, I
wanna confirm that you were referring to -- deferring
questions related to CEQA as opposed to testimony related to
CEQA. In other words, we, the engineers will have an
opportunity to present our testimony relate to CEQA, today,
as the TCA did. Is that correct?

CHAIRMAN MR. MORALES: That is correct. And, in
fact, at -- at the end of the day, we may have more specific
questions that we have for you all to address or brief
further. And we'll give you a schedule for that.

MS. FALDEN: That's fine.

CHAIRMAN MR. MORALES: And --

MS. FALDEN: We'll -- we'll be prepared.

CHAIRMAN MR. MORALES: And to the extent that we
have follow-up questions, there will be an opportunity at the
future meeting for testimony on that as well. That, yes,
you -- you may present on that -- on CEQA. We'll try not to
spend to much time on that.

MS. FALDEN: Thank you.

Our members of San Onofre, many times, from
this state beach from this constructive toll road.
Approximately a thousand people attended the California State
Park and Recreation Commission for a period, in San Clemente
in 2,005. Over 3500 attended the 2,008 Coastal Commission here in Del Mar. And 3,000 more were at the Department of Commerce hearing later that same year.

In the year since the 2,008 decision of the U.S. Department of Commerce to uphold the Coastal Commission's denial or permission to proceed with building the toll road, our coalition and its members have carefully monitored the evolution of the TCA's efforts to circumvent the Oso Commission (mumbled).

Today -- those same members have stepped up to the plate, once again. You have received approximately 5,700 letters in support of stopping this ill-advised toll road segment. A high level of concern demonstrated by our members, both through their letters and their attendance of this meeting speaks volumes to the community's opposition to this project. Today's representatives of our organizations will address specific concerns related to the toll road of -- and the Water Board's upcoming decision. First and most importantly, we will discuss the improper segmentation of the toll road and its impact on the larger project and surrounding area.

Next, we will talk about water quality and then biological imbalance. Last will be addressing procedural issues related to this process, including timing, notice and public participation.
Thank you for giving us the opportunity to address you today and for your close attention to any issues raised in our -- (inaudible).

MR. WHITE: Good morning, Board Members. My name is Bill White. I'm an attorney with (inaudible) and Weinberg. And I wanna talk to you today about CEQA and why we think this board should refrain from taking any action on this project. So, if supplemental or sub-sufficient (inaudible) to be prepared for the toll road projects.

Now, we've already heard a lot about the Tesoro Extension. And we've heard that the Tesoro Extension is very similar, almost identical to the first phase of the toll road project that was analyzed in 2,000 and 6. But this is the wrong question. The question is not how similar the -- that project is the focus study. But rather how similar the entire toll road project, as it is now conceived is the focus studies in 2,006.

From virtually the moment that TCA was created, in 1986, it had -- has had one sole and overriding effect. That has been to construct the toll road all the way from Route 91 to the I-5. The problem has been that this last -- the 6 -- the last 16-mile segment of that toll road, which we -- it has been re- (sic) -- called the Foothill south portion of the toll road. That runs almost entirely through pristine open space and important habitat and is
being considered by many as one the most destructive --
environmentally destructive projects in the State of
California.

Now, it is true that, in 2,000 and 6, the TCA
prepared an Environmental Impact Report of Foothill South
Project that analyzed the impact of that project. The groups
that were -- that I represent did object and did file a
lawsuit, along with the attorney general's office,
challenging adequacy of that EIR.

Mr. Thornton earlier referred to the
settlement agreement that -- that the parties entered into,
following the Coastal Commission's decision rejecting the
toll road project. That was not a settlement agreement
resolving the CEQA issues. It was simply a dismissal of the
lawsuit, because the coast- (sic) -- the Coastal Commission
and -- and the Department of Commerce subsequently stopped
the project. And we agree that the lawsuit was now moot.
And we agreed to withdraw it, but with a right to refile it,
if TCA ever decided to proceed with the toll road project.

Now, we had thought -- most people thought
that the Coastal Commission's action which held that the last
segment of the toll road, impacts were so severe and --
and -- and that the TCA had failed to adequately consider
alternatives to that -- to that project, that it violated the
Coastal Zone Management Act. That position was upheld by the
secretary of Commerce for the Bush Administration. And we felt that that resolves this issue. But it seems, now, that it did not.

The effect of those decisions was that, if the toll road were to proceed, it will need to find a different connection to I-5. The last segment, at least, of the -- the toll road project, as it was described in 2,006 EIR, were no longer legally viable. But the TCA's strategy to move forward with this project has been to simply ignore that position. It has been five years, since then. And we still don't know what the project is that TCA is proposing.

We don't know where it would go. We don't know where it would connect to the I-5. We don't know who would be effected. We don't know what the environmental impacts of that project would be.

Why? Why is this? Well, it seems that the TCA has adopted a new strategy for moving this project forward and, that is, to just start building. What the TCA wants for this board to do is to move forward with an approval of the first segment of the toll road, based on the 2,000 and 6 EIR. Even though that project analyzed a proj-- (sic) -- a total of configuration that has been invalidated by State and Federal Agencies.

They want you to act as if those decisions never happened and -- and -- and that they don't matter.
Well, they did happen and they do matter under CEQA. Because when a project, like the toll road, changes or when the circumstances under which it is to be undertaken change — uh-h-h — in a way that will cause new significant environmental effects or substantial increase, given the severity of it, it is what's considered environmental effects. The supplemental or a subsequent EIR is required. And the first step in this making that determination is to identify the way in which the project has changed.

We can't even get to that first step, here, because the TCA has refused to tell the public or to tell this board what is the proposed project. We know that it's not going to include the last segment that was previously approved by TCA. What -- where will it connect to the I-5? What -- follow one of the alternatives that were studied in the EIR? We don't know.

The TCA has previously found all of those alternatives were infeasible, for various reasons. Are they changing their mind on that? Are they gonna modify those alternatives? Or are they gonna do something completely different. They've spoken in the past about realigning the toll road so it goes further east, through Camp Pendleton.

Is that the -- is that the new project? We don't know. Until there's a actual stable project description for the toll road, whose impacts have been
analyzed, the board is really not in a position to take action on the project.

And that brings us to TCA's final argument, which is, well, we should -- this board should just ignore -- even though it's asking you to rely on the EIR for the toll road project, it's asking you to ignore the toll road project and, instead, treat the Tesoro Extension as a separate project. And, as was described earlier, this is called "piece mealing" or "segmentation." And the reason that segmentation or piece mealing is prohibited, under CEQA, is because the fundamental purpose of CEQA is to consider totality of potential impacts of an action before resources are committed to that action; before, not after. And we did see some slides, earlier, of other transportation projects which supposedly were adopted -- were -- were approved with a similar process as this.

We haven't looked at all those projects. But I can tell you, most transportation projects are constructed in phases. That doesn't mean the environmental review for those projects is done in phases. And, in fact, the toll road project had earlier been reviewed that the first portion of it had earlier been reviewed in environmental document. And the entirety of the second portion of the project, the Foothill South, had also been reviewed in environmental documents. But each individual phase didn't get its own
separate environmental review.

The question is not whether some large
transportation projects proceed with environmental review,
sometimes, in segments. But whether -- whether a particular
segment stands alone and makes sense from a transportation
perspective. That is the question. Now, TCA wants you to
believe that the Tesoro Extension meets that test, that this
five-mile portion of the 16-mile toll road -- which had never
previously been considered as a standalone project --
suddenly, after all these years, has all this -- uh --
significance on its own and is important, from a
transportation policy perspective.

They say that it's needed to serve the Rancho
Mission Viejo Project. In particular, that it's needed to
serve the build out of the project or, at least, the -- the
development of phase -- of Planning Area 2. Well, Rancho
Mission Viejo was approved nine years ago. And they still
are only beginning to construct homes in Planning Area 1. We
have no idea what's gonna happen in Planning Area 2.

It's -- uh -- it's -- although she say it
makes it seems as if -- they've just submitted an application
for development of the -- of the planning area, recently. It
would take years before they actually pull any permits. And
we -- we don't know whether the -- the market will support
demand for that or when or what the absorption of those units
is gonna to be and yet TCA wants to build a 200 million
dollar limited access toll roadway to serve that project?

The Corps of Engineers has said, given the
uncertainty of the development, that -- as they put it, this
could be a, quote, "road to nowhere." And that is certainly
an accurate description of the project. But even if we knew,
for sure, that the development of Rancho Mission Viejo would
be completely filled out and we knew when it would happen, it
still -- this project still does not have utility. Because
the question is not whether that project requires a north-
south access road. The question is whether that project
needs this toll road, this limited access tollway to support
it.

And the answer to that question is clearly,
"no." Rancho Mission -- as it was noted earlier, Rancho
Mission Viejo has its own north-south access road that will
be built. It's called "F Street." It is an arterial road.
It will provide for all the transportation needs of the en-
sic) -- of the project. Nothing more is needed to support
Rancho Mission Viejo. So -- not -- so -- and it would
accommodate that development better than the toll road.

We heard a lot about the need to have free
flowing traffic. Well, when you're -- live in a residential
development, you don't have a road that's got limited access
and that can't be developed as -- uh-h-h -- for bicycle use
or for pedestrian use. And you don't wanna have to pay to use it. What you want is an accessible street. And that is not what the -- what the toll road would do.

The only rationale for building something in that location, to -- and that is limited access and that is -- requires you to pay toll, is to extend the toll road to the I-5. But you don't have to just take my word for it. TCA, in 2,000 and 6, considered an alternative that was almost identical to the proposed Tesoro Extension. It was called the "Far East Corridor Ortega Highway Variation Alternative." And here's what it says about that.

"That alternative performed poorly for the traffic measures, because this alternative terminates that Ortega Highway. It does not provide a connection to I-5."

So, why are they taking this new approach all of a sudden? Uh -- well, read the TCA's staff report. What they said was that they came up with this idea of, quote: "Constructing the project in segments, as a way to move the project forward, while the whole alignment was," quote, "being adjusted."

Ya know, I've seen a lot of things in the staff reports that are funny in -- over the years. But this is really a shocking and candid statement. And -- and it's accurate. That is exactly what's going on. They want to
start constructing the beginning of the project before they
know where the end of the project's gonna go.

You know, Army Corps staff, before they
determined that they didn't have jurisdiction over this
project, was considering the identical issue underneath NEPA
(phonetic). And what they said about this is -- the TCA's
approach is that it would, quote, "present major NEPA
problems" and also that it's, quote, "beginning to look like
the classic case of segmentation."

Under CEQA, the prohibition against
segmentation, if anything, is stronger than under NEPA. It's
a standard that's been in place for twenty-five years. And
laurel Heights position is CEQA doctrine has got to study the
impacts of development that is, quote, "reasonably -- of
reasonably foreseeable consequence of the project." That's
the standard, "reasonable foreseeable consequence."

Everything that we know about the history of this project
leads to one conclusion. And, that is, the extension of the
toll road all the way to the I-5 is and always has been TCA's
one and only objective for this project.

And it is clearly a reasonably foreseeable
consequence of approving and moving forward with the Tesoro
segment. So, what we ask is -- and we ask for TCA to come
clean with the public. Sit down and do the work of figuring
out what they wanna build, so that the public can analyze it,
discuss it and understand the environmental impacts of it.

And, until that time, we ask that the Board refuse to continue processing TCA's application.

Thank you. And I'm -- I'm happy to answer questions here or -- or at the next meeting.

CHAIRMAN MR. MORALES: I think, with respect to questions pertaining to CEQA, we'll probably hold those to the next meeting.

MR. WHITE: Okay.

MS. SEKA: Good morning, Board Members. My name is Stephanie Seka (phonetic) and I'm with the Surfrider Foundation. I'm the California Policy Manager. As a matter of -- of procedural issues, my -- uhm-m-m -- director of legal matters for the Global Organization of Surfrider Foundation is here, Angela How (phonetic). And she asked me to clarify something. That our organization was not involved with the settlement of Rancho Mission Viejo, as has been characterized today.

It's also working on the (mumbled) individuals that were involved in that settlement, but signed an agreement that they would be able to speak out against the toll road. So, that is not even part of my presentation. But, with a little more people, I thought it was important to throw it in there.

I'm gonna give you a very broad kind of 60,000
foot (sic) review of the impacts that would happen on this watershed. My colleagues, thereafter, will -- will follow-up with very technical analysis of these impacts. But I wanna kind of start a higher level for view. I'd like to reiterate that our coalition sent you a letter, a couple weeks ago, that outline two fundamental concerns. The first is that this road will have the reduction from coarse sediment that would impact the beneficial uses of this watershed and the San Juan Creek.

And, secondly, the San Juan Creek is a coastal stream. Therefore, any reduction of sediment within that creek would impact the coastal zone and coastal resources. I even remember this from my 7th grade sedimentary class (mumbled) geology, back then.

Before I evaluate the specifics of my testimony, I -- I would just like to cut to the chase, quite frankly, and point out something very obvious. The San Juan Creek Watershed is significantly impaired. It doesn't take a rocket scientist or hydrologist to figure that out. In fact, in 2,000 and 5, the Army Corps of Engineers said that this entire watershed has a sediment start from 1974. And they said -- and I specifically quote -- "that the San Juan Creek, from Bell Canyon to the ocean outlet, is significantly degraded."

Therefore, it's incumbent upon you, as an
agency, to focus on the existing beneficial uses of this watershed and how to protect them. The TCA application does nothing absolutely nothing to protect benefit -- beneficial uses of this watershed. And I think this is a huge and critical point here, that -- that has really been skimmed over. Their -- their application -- and their staff knows, just as well, primarily focuses on pre-project flow rates. And it really really skims over the course sediment road transport.

You know, what that getting over the court -- coast -- coarse sediment transport does is, it starts cutting back your recently established hydromodification management plan. You know, I mean, I know that you guys spent copious time in 2,011 trying to create some HMP. I said the TCAs are kind of "fly in the face of that hard work" and actually really not put much ana- (sic) -- analy- (sic) -- analyzing into the coarse sediment is -- it's really disservive to all of the hard work that you guys have done in the past.

So, in addition to us being extremely concerned about them trying to circumvent the -- the HMP, we're very concerned that they've overlooked impacts to the coastal zone and to the near shore environment that's there. I mean, if you have less sediment, less coarse sediment coming from a stream that's going to B, you're going to have less sand on the beaches, over time, which will implicate how
beaches -- beach users are going to actually use the ocean and the coast there.

Secondly, San Juan Creek is the major source of sand for the beaches and around San Clemente. And that area are (sic) experiencing extreme erosion. And the City of San Clemente, right now, is contemplating spending millions of dollars putting sand back on their beach, the sediment from coming from San Juan Creek. And I think, for a surf rider and -- and most importantly is that, when you alter coarse sediment up in a watershed, that is gonna have implication on how things fork in the coastal zone. And, yes, that could be a start spot.

That could be how people go and wade in -- in the water there. I mean, San Juan Creek, I -- I -- I know that most of you know. Because it is your job to know the water territories here. But the San Juan Creek direct -- it -- it dumps right into the ocean, right there. So you have to know the -- the sediment, that's not gonna be any better for the surf.

Playing in the sand, playing on the beach, it will be altered in, immensely, over time. And I think that's a huge point that needs to be made. Especially considering that the Army Corps of Engineers has said that its watershed is suffering already. It's really incumbent upon you to protect what is there already. The last -- you know, strand
of what we have there.

And, finally, in terms of public safety, which the TCA likes to mention a lot. I think it's really critical to bring that back. Once again, we're concerned about public safety, in terms of erosion. The Army Corps of Engineers said, in 2,000 and 5, that the -- this -- you know, sediment decreasing has exposed important infrastructure and has already caused sewer and pipe lines to fail. This is already happening.

And they are gonna ask for more of the segregation of that watershed. In terms of public safety, it just can't handle that. So, in closing, we're really concerned that the TCA is overlooking coarse sediment flow. It has to be Coastal knows. And we're extremely troubled that they're trying to circumvent your HMP levels and we ask that you hold them accountable.

(Pause in Proceedings 11:51 a.m. to 11:52 a.m.)

MR. HEINSTRA: Good morning, Board Members. My name is Ray Heinstra (phonetic). And I am the associate director of Orange County Coast Keeper. I'd like to point out that we are also not one of the parties to any of the previous agreements or opinions on BMPs or anything else.
One of the things I'm -- I'm gonna -- I'm gonna focus on is water quality. That's our -- our mission. So, we're -- I'm very -- specifically focusing on water quality. In the tentative -- tentative resolution 6 -- Section 6, it states that "receiving waters shall not ex-
(sic) -- exceed basin plan or CTR -- CTR requirements."

One of the first things you wanna do is, if you're -- you're -- if you have a goal like that is, you need to design your BMPs to the -- (mumbled). And, yet, there's no baseline water quality data for the -- for these receiving waters, either the -- either the re- (sic) -- the Gobernadora or Chiquita Creek or for the -- for San Juan Creek, in the -- in the area of the project. So, this is something we've asked the TCA to produce on numerous occasions. Whenever you design the project, the first thing you wanna do is decide where you're at and then start from there. So I think one of the first things the board should do is require that the baseline data be -- be -- uh -- required.

We did a very limited study, ourself (sic), and found that fifty percent of our water quality tests for metals exceeded the CTR quality criteria. So, there is a potential for water quality issues there and I think we should be designing -- designing to those. Then talking about BMP. So, we wanna look at the past performance of the TCA on -- on BMPs and water quality protection. Well, to
start off with the -- with the San Juan -- uh -- with the San Joaquin Hills corridor.

This board was aware of what happened there. They put in, at that time, state of the science BMP that turned out to not work -- not work, at all. And it end up having to be replaced, after a -- after a court order requiring that, in order -- uh -- by CalTrans, to go ahead and fix -- and fix the problem. The -- look at -- at 261 toll road. There was a decision made there to put -- in-(sic) -- instead of putting the road on top of lines, to avoid a high water table, to de-water the area, to build the road up -- on the -- on the ground and then go 'head and de-water to keep it from flooding did that also involve the state of art at that time? Yeah, 'til you got your procedures (phonetic) facility.

Well, it turned out that the effluent from the demodification facility was wildly high in -- in solidium. And nobody had really looked at solidium as an issue. And it turns out solidium is a huge issue in this watershed. And now this is the primary source of salinium (phonetic) in -- in the -- in the watershed. It's from misty water from a dewatering operation.

It's now having to be treated by the Irvine Ranch Water Qual- (sic) -- Quality District at a cost of 900,000, a year, to the -- the tax payers. On the -- on the
Tesoro Project, they're proposing sand filters. That is a -- you know, that is a BMP. Whether it's the appropriate BMP for the wat- (sic) -- unknown water quality issues that we have in the receiving waters. I -- I don't know. I can't make a recommendation on that.

But we need to -- what we needed to do is find out what we really need to do and decide the BMP properly for those receiving waters. The permeable pavement, that -- that's this logo's nice ideas. However, what happened on the 73 is that, only about five years later, they went back and repaved the area. Probably have to here. Are they gonna receive that, with permeable pavement? Uh-h-h -- who knows?

So, moving on, on 303(d) listings that the staff report mentioned, the San Juan Creek, lower San Juan Creek is already listed for six parameters on 303(d) list. What we're really concerned about is, without proper BMPs, without properly studying the issues, we can end up with the whole creek thing -- (mumbled). And the last thing we need is a -- is more sections of creek in this (mumbled) region that's more problems to deal with. So, the monitoring needs to be done. BMPs really need to be designed to make sure -- to ensure that we don't end up in those things, not just guessing, the way we are right now.

Finally, this is a steel-head drop restoration area. So, we need to look at the impact this may have on the
steel-head drop. Copper, in specifically, has a -- had variable level, has the effect of disorienting salmonoids (phonetic).

So, it's one of those things that are related and need to be concerned about. Copper is a -- is a typical runoff in -- in road- -- uh -- essentially, in roadway runoff. And, also, this is a designated -- the -- the receiving waters are designated as cold water streams. So, what's the impact of having the freeway putting runoff into that, on that cold water designation? Is it gonna flip it over to a warm water designation? Change -- change the whole system? In which case, that takes care of its -- that -- that finishes of the steel head.

So, these are some things that I'd -- we'd really -- I'd really like you to consider. And I think you should put off adopting this permit. And, at the very least, baseline the water quality, this is done. I really think a very specific EIR needs to be done to address the specifics of this project, rather than just using something from the past. Thank you.

(Pause in Proceedings 12:07 p.m.)

MR. PAULSON: Good morning. My name is Andy Paulson (phonetic). And I'm the principal geomethologist
(phonetic) for the (mumbled). And I’d like to add to your already bulging pile of paper, if you don’t mind, by giving a handout that would cover the slides to that. Thank you very much.

So, I’m the director and principal geomathologist of (mumbled). And, in that capacity, I was the lead geomathologist in San Diego County HMP and also the Contra Costa County HMP; and, then, also several additional HMPs from municipalities and developers. And, so, a lot of my work is focused on hydromodification. And that’s gonna be the main focus of my testimony today.

I’m going to be talking about the adequacy of the TCA technical documents and addressing hydromodification impacts. And also looking at the impacts of beneficial uses of receiving water in this system.

If you’d go to the first slide.

So, a fundamental concept in the channel geomathology is that stable channels are imbalanced between the amounts of water that’s delivered by the watershed and the amount of sediment that’s delivered by the watershed. And that balance maintains the channel form. So, a channel that is stable is evolved to be in equal agreements. Being that the sediments in this water are delivery coming from the watershed.

Next slide.
So, it also follows that, if you disrupt either the supply of water or the supply of sediment, you throw the channel out of -- out of equilibrium. And, so, channel instability and channel erosion problems tend to arise from a dramatic shift in the amount of water or the amount of sediment that's being delivered to the stream channel. And the next few slides show some examples of that.

So, for example, if we increase the amount of water going into the -- uh -- so, if we increase the amount of sediment going into the channel, then that tends to shift the balance over on one side. And the next slide will show a typical response from that. So, if you increase the amount of sediment supply into a watershed, you will tend to get aggravation. The channel will fill up with sediment. The next slide shows the converse of that, which is more relevant to this situation.

If you get an increase in water or an decrease in sediment, then system will tend to degrade. So the balance will shift over onto the other side. And the next photo shows the look -- the response. So, when we talk about hydromodification, we're talking about these channels on the left, that is down and eroded and started to suffer the impacts for their beneficial uses.

Go to the next slide.
So, most people understand very clearly that the increase in the amounts of water that runs off the development project into a creek can cause a situation like the one we see on the left-hand side. But it is less apparent and it's really something that we've only recently (mumbled) come to terms. But we can get the same effect by reducing the sediments. In particular, by reducing the amounts of bed sediment that gets into this -- into the creek. And this is sometimes referred to as "hungry water effect," where we have water that doesn't contain sediment running off the development projects, which is a freeway.

Getting the -- excuse me. Getting into the creeks without pairing (phonetic) sediments. It needs to get back its sediment load -- sediment load. It needs to take up additional sediments to use up that capacity.' So it fills that, by mining the beneficial impact of the receiving waters. It does it by causing -- by causing precorrosion. And so that's the hungry water effect that we get from sediment starvation.

Go to the next slide.

And, so, there is a typical response that channels go through when that effect takes place. Basically the channels initially, starting at the top of this figure, are an equilibrium. They start to cut downwards into their bed, initially. 'Cause they're taking up -- the hungry water
is picking up bed sediments. Then, once the banks become too high and the (inaudible) collapse, we then get up the loaded grain fine sediments because the banks tend to be fine material being released into the stream.

That fine sediment, for example, can show us fine habitat fish downstream and it tends to change the dynamics of the stream between the relatively coarse system to much more of a fine expanded sediment system. So, this is a typical response that we see.

Next slide.

So, Hydromodification Management Plan is specifically designed to prevent these things from happening, to protect the beneficial uses of the stream. And I've been working in HMPs for the last ten years in this State. And, so, I've seen the evolution of HMP planning. The initial HMP is all focused on the waterside of the equation. So, most of the HMP is developed up-to-date, are very focused on things like doing LIDs and having detention basins, controlling ranges of critical flows and -- and, essentially, trying to get the -- the waterside of the equation, after development, to match pre-project condition.

Much less attention is being put on the left-hand side of the equation on the southern transport side of the equation. And that's really something that's suddenly just starting to happen at the moment. And, so, some
comments were made earlier by the TCA regarding the SAMP, the "special area of management plan," which my company was involved with, as part of the Orange County planning. And, so, I want to just sort of make some points about how SAMP fits into this evolution. We can think that SAMP is sort of an early topographic modification management plan.

The technical work that SAMP discussed, in 1999, it was completed less than 2,003. And, so, although SAMP has only come out in 2- (sic) -- 2012, there's been a big delay in the process for implementing SAMP. The technical studies were done between 1999 and 2,003. And, during that time, they were the states of the art. That was where hydromod (sic) was.

It was really focused on the waterside of equation; but it was not focused on the sediment side of the equation. Indeed, the San Diego part of the mod (sic), which was only implemented a couple of years ago, also focused primarily on the -- on the waterside and only began to look at sediment.

The next slide.

Orange County, however, has actually taken a step forward. It's not just looking at the -- at increases in water that you get from an incopious (phonetic) development, but it's also looking at the reduction in sediment. It's looking at sediment starvation. And, so, in
that respect, the Orange County agency really is sort of the state of the art for the -- for this period, for 2012, 2013. So, it's been able to fold in a series of measures which people have been talking about for the last ten years, but which haven't made it through its permit process until now.

And it -- it is no coincidence that this is -- this is the County. Orange County is a very sensitive environment. It has, amongst the highest sediment, not just in the State of California, but in the United States. So, it's a -- an environment that is particularly vulnerable to changes, even more so, in sediment delivery.

And the applicants, in their response to our initial study, said that the -- their initial study focused on the use in the Orange County Hypographic (sic) Modification Management Plan as a -- uh -- as the permit process. They were trying to conform with the HMP.

When we raised some comments pointing out that they could not actually conform to the sediment transport side of it, they said, "Well, actually, we're gonna look at a CalTrans sediment instead. We'll look at the CalTrans hydromod (sic) permit. And they stated that the CalTrans hydromod permit is functionally the same as the Orange County permit.

Now, in fact -- this isn't the case. The
Orange County -- the Orange County permit, first of all, has this provision where applicants are required to look at sources of sediment and then try to preserve that sediment and mitigate for it. That isn't present in the CalTrans Hydromod Program. The hydro -- the CalTrans Hydromod Program also is focused on contention basis and it's focused on retaining the (inaudible) percentile storm, whereas the -- uh-h-h -- the Orange County HMP is focused on much more sophisticated flow duration controls.

So, it's really not an apples-to-apples comparison to say that these two pieces of stone water are permitting a design to cover the same processes. So, we would argue that the Orange County Agency is both much more protective of beneficial uses and also it's much more applicable to this particular type of landscape.

Next line, please.

So, in reviewing the TCA's application, this is the language that comes out of the Orange County HMP, simply talking about separately management. It lays out three steps that applicants are required to do, in order to make sure that they are not causing sediment starvation in the system. Essentially to identify watershed, the high source of the sediment. To then go in and look at their vulnerability (phonetic). And either to avoid them, if possible or if -- if it's impossible to avoid them, to
mitigate avoiding them. This is not found, these steps to be carried out in the applicants permit application.

Next line.

So, if we look at the alignment -- the proposed alignment of the road, it cuts right through a series of very steep head water areas. I think the next line shows this just a little bit better. This oblique area shows the type of head waters that we're talking about. So these are exactly the locations that are a main source of sediment or cause sediment in the system.

I also wanna talk little bit of types of sediment. TCA, in their response earlier on this morning, said these systems -- the SAMP system, they're not coarser. They refer to them as "SAMP systems" rather than coarse or gravel or pebble systems.

Finally, it's bed load. The illicit and SAMP is the bed material. The San Juan system is a -- primarily a sand driven system. So, the -- the high -- the HMP for Orange County is designed to protect the bed material. It's the material that makes up the boundary of the channel, not the fine suspended material that washes in, for example, sheet wash. So, this is still very relevant. The fact that this is a sound system does not mean that it's not bed material.

Okay, next line.
So, the other part of this, then -- so, first of all, the TCA studies did not look at the sensitivity of these watersheds. They hadn't done those studies that are required to see whether they are sensitive. And, if so, seem to -- seek to avoid those areas. They have proposed mitigation for some of those areas. But we did not find the mitigation site that's being proposed to be equivalent, from the sediment delivery perspective to the areas that are being impacted.

And the next graphic, I think, shows that.

So, again, if we look at the oblique area of the photos, at the areas that are being affected by the alignment and then, on the right, the mitigation areas, we can see fairly large distances in those areas that lead us to believe they would not be significant sources of the type of material that would be cut off by the road development. So, we feel that there are inadequacies in the proposed mitigation and also in the analysis that goes to that.

So, finally, conclusion.

Next slide.

Having looked at these studies, we don't feel that they complied with the Orange County HMP. The HMP was specifically designed to protect beneficial uses in this particular type of environment. And, so, we feel that these studies are not sufficient to do that and that the mitigation
methods that are being proposed are also insufficient to
mitigate the likely impacts of the (inaudible) see this.

And, with that, I'd be happy to take
questions.

BOARD MEMBER (MS. KALEMKIARIAN): I -- I do have
just a couple of questions. And I think you can answer my
questions for this one. It's the -- where are the steel-head
trusts, in this picture?

MR. PAULSON: (Hands to ear), where are the what?
Sorry?

BOARD MEMBER (MS. KALEMKIARIAN): The "trout."

MR. PAULSON: Excuse me?

BOARD MEMBER (MS. KALEMKIARIAN): The "trout." The
fish.

MR. PAULSON: In that -- in that picture, I would
imagine they are some distance down the stream.

MR. HEINSTRA: (Raise of hand), excuse -- excuse
me. They're -- they're -- uh-h-h -- they're located in the
entire system. The entire system to -- (unintelligible) --
restoration.

BOARD MEMBER (MS. KALEMKIARIAN): So, in the San
Juan Creek, as well?

MR. HEINSTRA: Yes. San Juan Creek, Trabu- (sic)
-- Trabuco.

BOARD MEMBER (MS. KALEMKIARIAN): I'm not a
fisherman, so. Okay.

MR. PAULSON: And, so -- I mean, the critical point would be that if those systems were to -- you were to -- if you were to have hungry waters in the head waters and then a lot of mining at the banks, that material potentially could be finer than the bed material that had previously been going down the system. And it has the capacity then to bury, for example, direct to the nest of the -- somewhat slay (phonetic) their exit of course.

BOARD MEMBER (MS. KALEMKIARIAN): Okay.

So, going back, if you could, to the slide that -- that showed the impact area of the mitigation.

Yeah, that one.

You're a scientist. So, you get this stuff like this. I need a little more information.

MR. PAULSON: Okay.

BOARD MEMBER (MS. KALEMKIARIAN): So, the -- the impact area is showing us where the roads are gonna go; correct?

MR. PAULSON: (Nod of the head).

BOARD MEMBER (MS. KALEMKIARIAN): Okay.

And the mitigation is being proposed, you're saying, at somewhere where -- would -- that would mitigate the sediment issue?

MR. PAULSON: (Nod of the head).
BOARD MEMBER (MS. KALEMKIARIAN): Or, if it was to be mitigated, that's one of the areas that it could happen?

MR. PAULSON: Yeah. That is the area that's been -- (coughing) -- excuse me -- that's being put into plan as far as the mitigation's concerned about.

BOARD MEMBER (MS. KALEMKIARIAN): So, it -- I mean, this looks, to me -- and, so, tell me why your -- your conclusion that it produces less sediment. And it looks like dirt. The -- the water's just gonna take the dirt all in the trunk of that -- (interrupted)

MR. PAULSON: Yeah, the mitigation site.

BOARD MEMBER (MS. KALEMKIARIAN): Yeah.

(Simultaneous speech; unintelligible.)

MR. PAULSON: Well -- so, the mitigation site -- yeah, it looks like an area that would generate wash -- that would generate very -- (interrupted)

BOARD MEMBER (MS. KALEMKIARIAN): It might be good.

I don't know that, so. But --

MR. PAULSON: Yeah. I mean, it -- it -- it -- we're talking about sediment. I sometimes use the analogy of (unintelligible), that's kind of good cholesterol and bad -- bad cholesterol. There's good sediments and bad sediment.

In general, bad material tends to provide a high function for
the beneficial uses in streams. In particular, bad sediments are what create things like ripples and pools within the stream. It's what creates blood -- the habitat leeches (phonetic).

It's what creates a lot of the diamondism (phonetic) and pathology within the stream system. Finer sediment, in particular, the Spaniard sediment tends to have less positive effects and not the negative effects, because it's -- for example, fantasies problems, if you fill in the fine spaces within the bed of the creek, you began, spoiling, and so on.

So, it's kind of a generalization to -- to talk about good and bad -- for a simplification, to -- to talk about good and bad sediment. But it is helpful to distinguish between the bed material and the material that washes in off the hill slope. Because --

BOARD MEMBER (MS. KALEMKIARIAN): So --

MR. PAULSON: -- it tends to be finer and -- and less beneficial.

BOARD MEMBER (MS. KALEMKIARIAN): So, then, the conclusory statement up at the top, I assume there's -- or is there a study that needs this? Because, just by looking at these pictures --

MR. PAULSON: Mm-hm.

BOARD MEMBER (MS. KALEMKIARIAN): -- you're saying
one stream is less better than the other. I -- I don't understand how that --

MR. PAULSON: No. We've not had the opportunity within this sort of time scale and -- and -- and the budget that we're -- we've been looking at this. We are essentially in review -- we're sort of in review mode. We're reviewing documents, looking to see if they are adequate and meet the -- the standards that would be required. And -- and we're finding questions that we can -- I -- I'm basing this on a kind of qualitative assessment, based on 20 years of going out into the field and looking into the modifications and then hyping those up by technical studies.

But this looks, to me, that the area on the west is -- is more likely to be a source of type of material. And the area on the right-hand side is more likely to be a set (mumbled) of course that will keep flow and we'll find sediment delivering processes.

BOARD MEMBER (MS. KALEM KIARIAN): Okay.

CHAIRMAN MR. MORALES: I have a question. And I'll approach it by saying I think we have excellent staff for our board. In their presentation, I believe that the tentative order, they state that they account for both the CalTrans post-construction BMPs and the South Orange County requirement, which assuming that --

MR. PAULSON: (Nod of the head).
CHAIRMAN MR. MORALES: -- that they're the HMPs.

MR. PAULSON: Mm-hm, (nod of the head).

CHAIRMAN MR. MORALES: Now, I'm hearing you say something different. So, is this one of those cases where they're saying "toe-may-toe" (tomato) and you're saying "toe-mah-toe" (tomato)? Or --

MR. PAULSON: I'm saying "toe-mah-toe" (tomato) --

(Simultaneous speech; unintelligible.)

CHAIRMAN MR. MORALES: Or do you believe that they -- miss them?

MR. PAULSON: I believe -- uh-h-h -- I -- I don't wanna put words in their mouth. And I -- I -- I've worked with them. I have lifetime (mumbling) -- and I respect them, as well.

And I believe that they're focused on the waterside, when they made that comment, in that they're looking at the adequacy of the BMPs in meeting the whole duration control requirements which are part of the hydromodification plan, the Orange County HMP, and the detention basin requirements which are part of the CalTrans.

And, so, those -- uh -- those BMPs on the water site, although they approach the problem from different angles, they tend to take a huge showing, in some cases, to
both where, unavoidably (phonetic), you can achieve the same
effects in some, using either of those same measures. So,
I'm having a -- I'm having to infer, a little bit, from --
from what they just said. I'm guessing that they focused on
the flow duration control which is -- that's safe, when most
of us have been looking for most of the last ten years, but
not looking at the specific provision which is in the Orange
County HMP, to look at the sources and then sensitivity, etc.

SENIOR ENGINEERING STAFF (MS. DORSEY): But --
Chairman Morales, Kelly Dorsey, down here. (Raise of hand),
hi.

I just wanna clarify that this order says to
require that they comply with CalTrans and the Orange County
Compliancy Law. So, it does require them to comply with the
Orange County HMP that we've talked about.

CHAIRMAN MR. MORALES: And that was my
understanding. So -- I'm a little confused when they --
appear to be hearing something different.

MR. PAULSON: We believe that they -- I -- we
believe that they have done the studies to the hycology
(phonetic) side of it, so the waterside; but not from the
sediment transport side. We've not been able to find
evidence within the submittals that we've seen that shows an
assessment that sediment generation out of these head water
areas.
CHAIRMAN MR. MORALES: Thank you.

VICE CHAIRMAN MR. STRAWN: Can you tell me, actually, for -- just for example, these two areas. Have there been bio assessment done on either of these? And, in recent history, do you have a record of that? 'Cause that does -- definitely, one of the things to measure is -- is embeddedness (phonetic) and that's gonna talk about signs versus -- more normal size sediment. Can you address that? Or is -- IS that -- (interrupted)

MR. PAULSON: I -- I can't address the biological side of that, I'm afraid. I'm strictly a soil and water guy.

VICE CHAIRMAN MR. STRAWN: Okay. Well, that's where your soil goes into -- (inaudible) -- bugs down there and including the fish. Thank you.

BOARD MEMBER (MR. ANDERSON): Earlier, I think the TCA has -- uhm-m-m -- attacked your presentation, by saying -- by saying that that -- that your overlay of the SR 241 Extension, if I understood it correctly, was incorrect in the one watershed overlay over the -- (inaudible)

MR. PAULSON: Sir, (hand behind ear) I can't hear you. Do you mind --

BOARD MEMBER (MR. ANDERSON): Yes.

MR. PAULSON: -- repeating that?

BOARD MEMBER (MR. ANDERSON): Earlier, the TCA, I believe, attacked your presentation by saying that your
overlay of the SR 241 Extension was incorrect one watershed over?

MR. PAULSON: (Nod of the head).

BOARD MEMBER (MR. ANDERSON): Could you address that?

MR. PAULSON: I -- yeah. I'm afraid I can't address that, here. The -- uh -- the GI Expert was done by a colleague who's not -- present here, today, and he's actually traveling. And I'm -- I'm here, instead. I can look into that and address that question, either at a future meeting or by -- uh -- by correspondence -- (mumbled).

But I think, this point -- I mean, the -- the -- uh-h-h -- the significance there is that it's the head waters of the San Juan System and their topographic relation to one another -- uh-h-h -- that is kind of the key thing here, the -- the geographic connection.

CHAIRMAN MR. MORALES: You -- you can't -- I -- I'm sorry. You can't look at the -- the existing pictures and say, "Yeah, based on my study of where the 241 is going to be -- you know, the picture's wrong?"

MR. PAULSON: I'm afraid I can't, no.

CHAIRMAN MR. MORALES: Any -- (Pause).

Thank you.

MR. FIPPS: Good afternoon. I -- good afternoon.

I think it's afternoon, now.
My name is Michael Fipps (phonetic). I serve as staff attorney for the Endangered Habitat League, part of the sediment -- Safe Sediment, the coalition.

Before I begin my written testimony, I would like to make a clarification. EHL was a signatory to the settlement agreement with Rancho Mission Viejo. We would not have entered into that settlement agreement, if the SAMP were part or -- what -- if the toll road or any segment of it, the -- the Tesoro Extension were part of that -- uh-h-h -- SAMP. It was not part of the SAMP. F Street was part of the SAMP.

CHAIRMAN MR. MORALES: I might be able -- sorry.

Might be able to save you some trouble. We're well-aware of section 11.47 HFP (phonetic).

MR. FIPPS: Okay.

CHAIRMAN MR. MORALES: So, we understand it's your right to participate, because these are not prejudice.

MR. FIPPS: Thank you.

Okay. The core function of a waste discharge requirement's permit, under the Port of Pomona Act, is to provide assurance that beneficial uses identified in the basin plan for this region are not impaired by any discharge. The board must also ensure that existing waterfall be maintained. Has -- has been demonstrated, by the previous testimony, TCA has failed to provide this assurance, in two ways. First, the TCA failed to account for
or properly analyze potential for reduction of sediment or receiving watershed. Without a thorough understanding of this adverse impact, it's impossible to design and implement a mitigation program adequately accounts for this impact. Just common sense.

Secondly, as Andy pointed out, there is no mitigation on the effective watersheds or any depletion of sediment in those watersheds. The staff correctly determined that the regional board's South (sic) County Hydromodification Management Plan must be fully implemented by the way charge -- discharge requirements. And this is correct, for a couple of reasons. First, the HMP applies by the very terms of this project. Tesoro Extension is functionally a freeway.

It's a non-exempt priority development project. The applicant consist of local jurisdictions, many of which are -- are co-permittees that help develop the HMP and it is within the geography location. Strikingly more fundamentally, even if the HMP doesn't technically apply, the elements of the HMP constitute this board's final word as how best to protect beneficially use projects of this type and the board has the discretion on projects, subject to CEQA, to require the analysis contained and required by the HMP, independently of what their tech requires. As Andy has pointed out, that TCA has failed to implement the HMP insofar
as it relates to analysis of sediment transport.

    The TCA has submitted comments to the effect
that project discovered by the CalTrans channel (mumbled).

This is true. But, again, as staff correctly notes, only
partially so. Once the CalTrans assumes responsibility for
operating the facility, post-construction elements of the
permit would -- uh -- would be governed by the CalTrans
permit. This does not mean that the HMP does not apply.

And, for the reasons state (sic) above, permit
does apply and the TCA has failed to implement it. For these
reasons, post-application for discharge requirements, the
Tesoro Extension should be denied. Thank you very much.

    CHAIRMAN MR. MORALES: Thank you.

Are there any more NGO? How many more do we
have here?

    (Show of hands.)

    CHAIRMAN MR. MORALES: Two more?


    CHAIRMAN MR. MORALES: Very short?

    UNIDENTIFIED SPEAKER: (Nod of the head).

    CHAIRMAN MR. MORALES: Okay.

    EN MASSE: (Laughter).

    MR. SYLBERN: Good afternoon. I'm -- Chair,
Members of the Board, Dan Sylbern (phonetic), with the Nature Habitats League.

I will simply be summarizing the written comments of biologist Rob Hamilton. He found two major defects in the Habitat Mitigation Monitoring Plan or HMP. Because that plan does not mention two very significant species: The Coastal Cactus Realm and the Arroyo Toad. The HMP (sic) makes no mention of -- uh -- of -- of the cactus realm, recent surveys or any mitigation for the species.

This is egregious. Because this cactus realm has crashed in population. Since the TCA prepared the environmental impact report, the fires have devastated the species. This crashed 90 percent decline of population and is on the verge of exportation in Orange County. There must be analysis and mitigation for the species.

And the project impacts a hundred and eighteen acres of Coastal Sage Scrub. It's important to note that mitigation for the nat capture, which is in the HMMMP, is not equivalent to mitigation for the cactus realm.

Secondly, the HMMMP makes no mention of the Arroyo Toad. This is a federally endangered species listed in San Juan Creek, just south of the terminus of this proposed extension. And this animal, the Arroyo Toad, requires forging habitat up to two kilometers from the creek. This highway would pave over the forging habitat and
block access to forging habitat. Yet there is no mention, in
the mitigation plan, for -- uh -- of the impact or mitigation
for this specious.

Finally, you were asked earlier about the way
the TCA would manage, in perpetuity, all these easements.
That takes money. You should be aware that the TCA, for many
years, has had shaky finances. Its bonds are near a junk or
one step above junk rating. The State of California is
currently investigating whether it is prudent for the TCA to
take on additional debt.

So, I want you to, at least, consider that as
you consider the questions of how this property would be
managed in perpetuity. Thank you.

CHAIRMAN MR. MORALES: Thank you.


So, you were summarizing the -- those letter
from Hamilton?

MR. SYLBERN: Yes.

BOARD MEMBER (MR. ANDERSON): Okay. That's it.

Thank you.

MR. ADAMI: Good afternoon. Danny Adami, senior
attorney with the Natural Resources Counsel and the Director
of NRDC Southern California Resources Project. I'm the last
speaker for The Saint -- Safe San Onofre Coalition. I
believe we kept it an under an hour. So, thank you very much
for affording us the time to present our comments in a logical order and -- and together. We appreciate that, very much. I'm just gonna wrap up our preparation with a couple of observations and requests of procedural issues.

But first, on behalf of the Coalition, I wanted to thank Regional Board staff, including Dar- (sic) -- uh -- Darren Bradford, Kelly Dorsey and -- and everyone, for their responsiveness; they're being available to answer our questions; providing us access to documents. We really appreciating any other working hard. And -- uh -- if -- we really appreciate your efforts.

We would appreciate the opportunity to augment our comments, in the future, based on the fact that neither we nor the public have had much time at all to review some key documents in preparation of this hearing. For example, TCA waited until just a few weeks ago to release the CEQA addendum. And then, even then, the agency did not make the key supporting documents, as a (sic) addendum, available for review. One example of this is that we only obtained TCA's traffic studies yesterday. And that was pursuant to a request under Public Records Act.

So, we re- (sic) -- need some real -- we need some additional time to take a look at these documents. For this reason, we'd like to request that this public hearing not be closed today; but that it be continued to a future
board meeting. We further request that continued public
hearing takes place in San Diego. Sounds like that's the way
you're leaning, anyway.

Many of our -- uh -- many stakeholders live in
San Diego, San Diego County, including many members of our
organization would do -- would like to have their voices
heard on this issue. We also would like to reiterate our
request that we made in our February 22nd letter. The public
commentary be extended, both through today, to include the
almost 6,000 comments that came in from our members and
activists, opposition to this project. But also, through the
next public hearing, in order to give us and others a full
and fair opportunity to review all the key documents and
comment on them. And some of those documents, as I have
mentioned, have been only been made available very recently.

Finally, we would like to request the
continued public hearing take place at least sixty days from
now or -- in other words, so these two regional board
meetings count. Also sounds like that's the way it's
leaning. Please consider that TCA's board has not yet taken
action to improve this project or consider the CEQA
addendum. The CEQA issues have not yet fully been gone
through and understood, as we can -- as -- it's clear from
the discussion today. And there's been very very little
public participation allowed or reported, in fact, none at
all on the CEQA agenda.

There've been no hearings. No ability to
weigh in from public and with TCA's board or with any agency,
up to this point. Again, that document has only been made
available very recently.

In conclusion, we hope that this board sees
this project for what it is. This is clearly a last ditch
try by T- -- TCA to bring back the full 16-mile toll
road, at which both the Coastal Commission and the Department
of Commerce definitively rejected, five years ago, because of
the long list of the kind of (mumbled) environmental
impacts. None of those impacts -- impacts can be cured by
segmenting the road, illegally, which they're planning to do.
So, all this building the road, in pieces, doing anything to
alleviate mobility concerns that are essential to South
Orange County residents.

Following the agreement, we think that the
best approach would be for the Board to deny the Waste
Discharge Application, at this point, and let TCA reapply
when it has all the information that it needs or to support
its application, or you choose not to do that.

And we appreciate that the Board is
considering putting this off to a future hearing. Again, I
would reiterate that -- that public hearing not be closed,
that comments can be taken at that time. This concludes or
presentation and we thank you, again, for allowing us to
testify in concert. Thank you.

CHAIRMAN MR. MORALES: Okay. We're gonna wrap up.

But -- it -- you know what the (mumbled)
procedural defeat from the gentlemen's victory. We're doing
most of what you have stated you would like. Now, I'll point
out that we decided to go ahead with this meeting and we had
received request from -- frankly, if you look at the -- the
papers, both sides, that the meeting be put off altogether.

But we felt the public comment, especially by the folks here
in Orange County, was very important. So, we proceeded.

We will not take up this issue, next month.

So it will be made, at the earliest, that we do any -- any
more and take a final vote on the matter. Prior to the end
of the day, as I mentioned earlier, we will give you
questions that we would like you -- (inaudible) -- and a
briefing schedule. So there will be more information taken,
with respect to that. And we will also make it a public
document and we'll like to place it up on -- on -- uh -- our
website and send it to the interested parties. So, to the
extent possible, know, folks, that we try and keep everything
open to the public.

And -- and this board's stated that one of our
main goals is -- is public participation and -- uh --
(mumbled) -- you know, everything being secret. Okay?
With that, I know that we did give TCA the opportunity to respond. And I would ask, how long do you anticipate that will take?

MR. THORNTON: Mr. Chairman, if I might suggest, since you were -- you -- you have gone beyond your lunch hour.

CHAIRMAN MR. MORALES: Yes.

MR. THORNTON: If -- if I might suggest, you take the -- whatever lunch break you were taking and we can come back, after that, subject to the public official executed -- (inaudible) -- after.

CHAIRMAN MR. MORALES: Excellent suggestion. That's exactly what I was thinking.

And it's -- we'll -- (Pause). It's now 20 'til. Let's reconvene at 10 after. And I will, at that the point, ask that the -- the public and governmental officials what their preference is, whether they rather wait. Or we may have them go and then have you conduct your -- your rebuttal, prior to the remainder of the -- the public.

All right? So, let's break for lunch, folks.

(Heretofore, lunch break commenced 12:40 p.m. Proceedings resumed 1:19 p.m.)
CHAIRMAN MR. MORALES: All right. I'm gonna call
the meeting to order. And we're about to begin the public
presentation portion. TCA is going to be given the
opportunity to provide a response. Their estimate is five to
ten minutes.

So, we decided to take it and have that
portion of the hearing concluded, prior to beginning all of
the public comment. And, as soon as they are done, we will
immediately jump to our public and governmental officials;
since we're a little bit past their time, certainly. And we
appreciate your -- your patience.

Mr. Thornton.

MR. THORNTON: Thank you, Mr. Chairman, Members of
the Board. And I -- got a long day and this will be brief.
I wanted to respond to a number of specific points. And I'll
respond to several and then Dr. Bob will probably respond on
some of the -- uh -- hydromorthology (phonetic) and other
technical issues.

First, with regard to the regional needs for
the facility and regional need for transportation, in
particular. It's noteworthy that Mr. White, counsel to the
opponents here today, flew to this hearing from San
Francisco. He used regional transportation. But he -- he
had some trouble -- some difficulty getting here, as I
understand it. If you ever wanted evidence of the need for
region transportation facilities, he's an example of that.

Indeed, I suspect a lot folks in this hearing room, today, used regional transportation facilities to access this public hearing. So, that's why we need regional transportation facilities.

Secondly, the point that was made that, somehow, we should enlist society: let development occur before we deal with our infrastructure issues is a completely bankrupt suggestion. Development is a reality, in California. We have 38 million people. All the demographers tell us we're going 50 million people. We have to have an infrastructure that serves our population.

It is, frankly, just incredibly disingenuous for the same groups who entered into a settlement agreement, with the land owner developer, to approve 14,000 homes and five million square feet of development and infrastructure all supporting that, at a scale several times -- many times larger than what is before you with regard to this project, to suggest that this project is something -- that somehow gonna have a significant affect, when those same groups agreed to that development. And to come in here today and suggest, "So that development may not happen. After all, there might be a market down" -- (unintelligible). Some folks, I suppose, would hope for a continuation in recession. Most us don't.
Most of us want to have the economy improved until all of us can participate in a robust economy. But the notion that you would -- would just hope that development doesn't occur or wish that development doesn't occur and not to be prudent and responsible, planning an infrastructure in anticipation of that is frankly irresponsible.

Next point. Points were made about the presence of Arroyo Toads. The so-called "protocol surveys" carried out in accordance with U.S. fishing laws service requirements have documented no Arroyo Toads in (unintelligible). And, again, the same groups who are here today complaining about potential impacts on Arroyo Toad (sic) have agreed to a ranch plan development -- many times larger than what we're talking about today, are ranch plan developments that include a comprehensive habitat conservation plan that treats -- that addresses the Arroyo Toads conversation needs over a larger area, as well as the cactus realm needs. Both of them are covered species under ACP (phonetic). The TCA Mitigation Program includes 60 acres of cactus, cactus scrub creation to address potential cactus range inhabitants (phonetic).

Finally, with regard to -- or, not finally. But with regard to the questions -- (mumbled) -- frankly, in every one of our hearings, it suggested -- uh-h-h -- Dr. Sylbern suggested today, "Gee, the TCA's finances are
shaky," et cetera. The transportation corridor agencies has been in existence, since 1986. They have successfully financed over two billion dollar of regional transportation improvements without a single penny of Federal dollars. Not one penny of federal dollars have gone in. And, frankly, very few State dollars have gone into these projects.

The TCA have met every single financial obligation. To the entirety of their life, they've never defaulted on an obligation. And to cavalierly suggest that TCA's finances may be shaky and they may be able -- not able to fulfill their commitments in this permit -- frankly not supported by the record, I might add, if your staff has a condition, the permit is required a $750,000 escrow arrangement.

Frankly, I wanted bring back to -- to the slide, 21167.3. Mr. White referred to a litigation that -- uh-h-h -- that his firm commenced against EIR. They did submit litigation. They did dismiss the -- the case -- uh-h-h -- without prejudice, which means that they can refile. But they made the select (sic) -- they made the election to dismiss that lawsuit.

They could have prosecuted that lawsuit to the determination regarding adequacy EIR. They elected not to do that. And, under CEQA, as we've described, very clearly provides that once litigation is initiated Section 21167.3(b)
of CEQA obligates responsible agencies to assume that that EIR complies with the requirements of the California Environmental Quality Act.

So they can't come in here, today, and suggest that somehow that EIR is not adequate. And, as we've documented today, in our presentation, there are numerous examples throughout the State where other transportation agencies -- including the (unintelligible) -- are proceeding in precisely the way that this project is proceeding.

Now, finally, we've heard statement that you hear in every public hearing and every project I've ever represented: "Let's not make a decision. Let's do the -- more analysis."

Mr. Chairman, Members of the Board, the construction of regional transportation facilities, in Orange County, to address the needs of a growing population, has been under evaluation, for now, over three decades. As we documented, four separate Environmental Impact Reports have been prepared with regard to this project. Frankly, the Governor stated at the State Address -- addressed this particular issue. CEQA has been abused. And the suggestion, today, are an example of abuse of process the governor's addressed and discussed.

We respectfully suggest that the Board should not -- should not fall prey to those suggestions of
suggesting that additional analysis should be (unintelligible). And I'd like Dr. Bob to respond to some of the more technical comments. Thank you.

MR. BOB: Thank you, again, Board.

I'm just gonna touch on, real quick, the comments that Mr. Paulson made about the Orange County HMP and the base load analysis requirement in it. RWDR has required that we comply with not only the CalTrans requirement but also the Orange County HMP requirement, to control the hydromodification concern. If you -- you identified that as a board, but -- but, yes, that is something that will be done.

And we know that we will concur with the OCHMP, because our lead consultant that worked on this project wrote the manual for that. We concur that, as part of that, you have to look at both the water side and the sediment side of the equation. We also concur that, with the South Orange County HMP process, there are three steps that are required. And I'll read from the slide that Mr. Paulson had.

Step 1 is to determine whether the site is the significant source of bed material or to receiving the stream; and, 2, avoid significant sedimentary (phonetic) supply area in the area.

So, we've looked at this analysis. And what
we used were the maps that Mr. Paulson's company, PWA (phonetic), prepared that show the soil mapping in the area. And I'm gonna quickly just go through this. The red area and the blue area are the clays and silk (phonetic). As you heard from Mr. Paulson, they're not concerned about that. It's the sand that makes the bed load material.

So, go 'head and advance the slide.

So, this is a blowup of where we have the Tesoro Extension.

And go ahead and advance it, one more time.

You'll see that the planning areas are on this.

And advance it, once more.

And the road is on this. And where the road is located is in the blue and the red areas. The reason why it's located there is because the ranch went through the SAMP process. And they specifically put their developments in these impervious areas of silk and clays. So, we have identified the -- this area of significant bed material and the areas where the source will be.

Again, we looked at another map -- go 'head and advance it.

That was prepared, as part of the SAMP. And, in the red, are the chronic sources of the bed materials that are of concern. And those red areas are in San Juan Creek.
and in Gobernadora. We're in -- we're -- our footprint is in neither of those areas.

And, in fact, go 'head and advance that slide.

A footnote, on this graphic, it specifically says that the -- uhm-m-m -- "Ranch Plan Development will not impact or obstruct any of the coarse sediments applied." So, utilizing the information from the SAMP, we have been able to make the preliminary evaluation. And that we do and will comply with the three tenants that Mr. Paulson cited.

So, we are very confident we can comply with the sediment side of the equation for the OCHMP. And, ultimately, the board has the assurance we will comply. If it isn't -- it is a regular -- it is a regulatory requirement of the WDRs. Thank you very much.

CHAIRMAN MR. MORALES: Thank you.

And -- uh -- I think, at this point, I'll ask the -- let's see. The folks that are here from the government agencies and the elected officials, go 'head and come up. And Mr. Strawn will be (indicating).

VICE CHAIRMAN MR. STRAWN: For lack of any other order, I wanted to put these in -- in alphabetical order.

So, Mr. Allevato, I believe you'll be first. And -- uh -- Ms. Nelson (phonetic), you'll follow him. And we have almost 20 government folks here. So, we're gonna watch that 30 -- or that three-minute limit, or we're gonna
be here for a long time.

MR. ALLEVATO: Good morning, Chairman Morales and Board Members. (Clearing throat) -- excuse me.

My name is Sam Allevato and I am the Mayor Pro Temp for the City of San Juan Capistrano. I represent the community with the oldest continuously occupied residential area in the State. Our historic city is perversed by four creeks, the I-5 Freeway, State Highway 74 and the Metrolink-Amtrak Railroad Line. We are virtually the funnel for all major transportation systems traveling between Los Angeles and San Diego.

Our city has consistently sought solutions to transportation issues, by supporting projects that divert traffic around our town and not through it. That is exactly what the Tesoro Extension, the State Highway 241 will do. And that is why my community, overwhelmingly, supports its construction.

The new community, called "Rancho Mission Viejo," is currently constructing their master plan community with houses -- uh -- upper construction, this summer. This is a reality. This is happening, as I speak.

This project will encompass 14,000 new dwelling units and over five million square feet of commercial property. The Tesoro Extension will guarantee that these new residents will have the ability to leave and
return to their new community, without having to travel to San Juan on the already impacted State Highway 74. This extension will actually divert traffic off of Ortega Highway, away from San Juan and onto the toll road system and Antonio Parkway.

I'm a retired law enforcement officer, with over 40 years of public service. I am especially attuned to the lack of redundant transportation systems in our area. Other than the I-5, the next closest interstate is 40 miles east of us, and it's the I-15.

We have already experienced closures, on the I-5, for emergencies, that have caused our area to be completely closed off to adjacent communities and to adjacent counties. In the event of a natural or a manmade disaster, we have no alternative evacuation route. The Tesoro Extension would help deal with issues, by providing redundancy to the I-5.

Also representing a community with four creeks; its own ground water recovery plant; the Trabuco Creek, the only natural wildlife corridor in Orange County, one that is home to the endangered steel head trout, I am especially sensitive to the use -- or to the issue of water quality. I know the care for which the TCA has undertaken on all their construction projects. Their attention to treating the runoff in the existing 51 miles of roadway is a model for
all transportation agencies and has received approvals from all major resource agencies. I would not approve any project that would endanger the quality of the water that flows through our streams.

In conclusion, approximately two years ago, my city council voted to support the Tesoro Extension. I would like reiterate the support of the San Juan Capistrano City Council, for the Tesoro Extension. Because we know it will divert current and future traffic around our community; will provide a much needed redundant collateral roadway to the I-5; and will do so in a scientifically approved manner sensitive to environment of our community.

Thank you for your attention.

THE PUBLIC EN MASSE: (Clap of the hands). Here, here.

VICE CHAIRMAN MR. STRAWN: (Inaudible) -- then Pat Bates will be next -- (inaudible)

MS. BARTLETT: Good afternoon, Water Board Members. As chair of the Foothill Eastern TCA Board --

(interrupted)

(Simultaneous speech; unintelligible.)

CHAIRMAN MR. MORALES: If -- if -- I'm sorry.

Excuse me. I'm sorry. I hate to interrupt your
presentation.

But, when you folks come up, I -- thank you for stating your name. Please reiterate that you've taken the oath that we administered earlier.

And I would ask the -- the public, there are gonna be a lot of people supporting and -- in fact, opposing some of the comments that are made. If we could hold our applause until the end, it might allow things to flow a little smoother.

I'm sorry.

MS. BARTLETT: Thank you.

Good afternoon, Water Board members. I'm Lisa Bartlett. As Chair of the Foothill Eastern TCA Board, it's my responsibility to hold the TCA Engineering Staff to the highest standard, to ensure that the 241 Extension complies with all environmental regulatory requirements.

Our staff has met or exceeded all environmental requirements. We have included Austin Sand Filters, to purify the water runoff. Extended this -- the tension basin will capture and treat water. Flow splitters will assure that the water flow rate of the runoff will mimic pre-development conditions.

The project will use coarse pavement, which allows water to seep into the ground water through the -- (inaudible) -- and will also prevent water spray, on the
roads, during the rain (unintelligible). The need for the
project is clear. With 14,000 homes planned for Rancho
Mission Viejo, the terminus for the extension and with more
cars and trucks, every day, using of the I-5 Freeway, an
alternate route is crucial to the region's economic success.

This project will create more than 2,000 jobs
at a time when State unemployment is generally 10 percent.
Quite frankly, we need the work. And we have the quality
project that complies with all environmental regulations.

With this permit, we can then begin the
construction process. Therefore, we ask for your approval.

We support our military through "The Helmets
True Heart" -- "Helmet to Hard Hats Program," that offers
good paying jobs for our military veterans. This project not
only provides traffic related to millions, but will provide
jobs to those who have honorably served our nation.

The staff has analyzed the technical studies
prepared for this project and we will respectfully request
that we have your vote and approval for this permit. Thank
you very much, today, for you time and consideration.

VICE CHAIRMAN MR. STRAWN: Okay. And -- uh-h-h --
Tony Beall.

MS. BATES: Good afternoon, honorable Chair and
Board Members. My name is Pat Bates. And I am the Orange
County Supervisor that represents what we call "The Fabulous
5th District," which means South Orange County. I'm also chair of the Environmental Oversight Committee for Orange County Transportation Authority.

You have heard from scientists and water quality experts that testify to the state of the art features that will protect the water quality within the watersheds throughout South Orange County. When first elected to this office, I heard many concerns from my constituents. Policy concerns, topping the list, included traffic relief and protection of our national resource. It is true that there are times when improving infrastructure and building roadways conflict with protecting the environment.

We are fortunate that this Tesoro project is one that meets traffic needs and, as importantly, it addresses our environmental concerns. I understand your role is to assess the water quality impact. Your board staff has studied the water quality issues intensely and initially determined that the TCA state of the art mitigation measures ensure a high level of water quality.

Additionally, from an air quality perspective, the regional impact of cars idling in traffic, on I-5, are far greater than cars flowing at the speed limit. This project will help alleviate freeway congestion and flow is -- provide drivers an alternate route. The total surface water impact of this project is minimal, less than a half acre.
Regardless of the scope of impact, year pleaded (phonetic), your board must diligently review how a project will affect water quality and we are certainly pleading that this board takes your job seriously and is looking at this project from all view points.

Once your review is complete, I think you will -- (inaudible) -- consider that the Tesoro Extension is the project that needs some stringent guidelines for protecting our water. I want to thank you for your service and your careful consideration of this project and the independent analysis that your staff has provided. Thank you and, most importantly, for the opportunity to address you today and coming to our community to facilitate many of the speakers today. Thanks, again.

VICE CHAIRMAN MR. STRAWN: Mr. Beall.

And I understand that Chief Brown may have departed. And, so, if that's -- that's -- if not, it'll be Mr. Campbell next.

MR. BEALL: Good afternoon, my name is Tony Beall. I'm the Mayor of Rancho Santa Margarita. I'm here today to speak strongly in support of the Tesoro Extension.

Rancho Santa Margarita a great community with 50,000 residents. As the mayor, my key priorities include ensuring a high quality of life, continued economic growth and the overall vitality of our community. Our city council
has repeatedly and unanimously supported this outward
extension of the 241, for a number of reasons. Rancho Santa
Margarita residents use this roadway more than any other
people (shake of the head), (shrug of shoulder) period. And
it's a life line to our community. And this extension is
crucial.

It's crucial to the mobility of our
residents. And it's crucial to the economic growth of our
local business community. This five-mile extension will
allow an entirely new customer and client base to have easier
access to Rancho Santa Margarita. In our city, local tax
revenue is very critical to our success, our viability, our
sustainability in Rancho Santa Margarita. And, so, our
business community -- which accounts for a significant amount
of tax revenue, it supports the importance of government
programs that allows us to provide necessary services to our
residents.

We need this roadway extended. The 241 will
create more than 2400 jobs, relieve traffic in a time that we
need both, desperately. I care deeply about the environment
and clean water, and so do my residents. And the
environmental impact studies will show this is a great
project. The storm water runoff system that is proposed
here, it is state of the art.

It creates a runoff flow that mimics nature,
both in water quality and in a water flow rate. The TCA has
gone above and beyond a delivering a state of the art roadway
that will both protect the environment and provide needed --
badly needed increased mobility for the people of all the --
Southern Orange County in Southern California. So, on behalf
of the City of Rancho Santa Margarita, our 50,000 residents,
I urge you to support the TCA's Waste Discharge Requirement
Application and allow the Tesoro Extension to move forward.

This extension is crucial to the economic
growth and improved mobility for the people of South Orange
County. Thank you.

THE BOARD (MR. ABARBANEL): MR. BEALL, may ask you
couple of questions? Did you support the previous toll road
extension that was considered about five years ago?

MR. BEALL: Our city has consistently and
unanimously supported the extension on the roadway.

THE BOARD (MR. ABARBANEL): Is this the policy of
your city to consider acting on 1/3 of a project, when it
comes before you? Or do you wait until the entire project is
over?

MR. BEALL: This particular extension that we are
contemplating, today, is unlike any that's come before it.
This entire roadway has been built in portions such as this.
So, from our city's standpoint, this makes perfect sense.

This particular extension -- I appreciate the
opportunity to answer your question. It stands on its own, as a viable extension. Because -- uhm-m-m -- it has been carefully studied. It doesn't limit, in any way, future extensions to go in any other direction. It pencils out, from a financial standpoint, on its own.

And, so, it has been viewed, analyzed, studied and approved based upon its own merits as it is. So, if I don't view this as viewing -- or approving something as -- piece meal. We had looked at it on its own. It stands, on its own. And it passes mustard by a clear margin.

BOARD MEMBER (MR. ABARBANEL): Thank you.

MR. BEALL: You're welcome.

THE PUBLIC EN MASSE: (Clapping of hands).

MR. LOCKREY: As you mentioned, Chief Brown couldn't be here. He had to leave. Would you like me to read his comments into the record?

VICE CHAIRMAN MR. STRAWN: Could you state your name, sir?

MR. LOCHRIE: My name's Brian Lochrie. I've been asked to read his comments into the record, if -- if it pleases. Otherwise, I can have them submitted?

STATE BOARD STAFF COUNSEL (MS. HAGAN): You should read them into the record.

CHAIRMAN MR. MORALES: Very good.

MR. LOCHRIE: Okay.
Chief Brown is the Battalion Chief of Emergency Medical Services for the Orange County Fire Authority and strongly urges you to approve the application before you, on behalf of the Transportation Corridor Agency.

The Orange County Fire Authority serves close to 1.4 million people in our 500 and 60 square mile service area. The OCFA, along with our residents, have benefited greatly from the existing toll road network in Orange County, specifically during emergencies. State Routes 241, 73, 133 and 261 have provided a means for us to quickly move fire fighters throughout our county, to evacuate large numbers of residents quickly, at risk -- who are at risk. And the roads have served as good control points for advancing wildfires.

Over the last several years, there have been numerous occasions where the roads have played an important role in achieving better than expected outcomes from fires. Specifically, the communities affected by brush fires off of the Cleveland National Forest, to the east, were helped by the 241 toll road. As we have -- as we have seen, when it comes to protecting lives and property from fire, whether we're safely evacuating those at risk or getting sufficient number of fire fighters into our neighborhoods to stand and fight, time is of the essence.

Should you grant this permit to TCA to proceed with the next
five-mile segment, the Tesoro Extension, OCFA would expect that the benefits we experience along with the existing networks would be realized when the next brush fire, earthquake or major disaster hits.

On behalf of the Orange County Fire Authority, we sincerely appreciate your attention to the public safety in this matter. Thank you.

VICE CHAIRMAN MR. STRAWN: (Nod of the head).

Mr. Campbell and then Mr. Chun.

MR. CAMPBELL: Good morning, Board Members. Thank you very much for meeting in Orange County. It saves us all the drive. I appreciate your efforts to come here.

I represented the area in question, for six years, as a State Assemblyman. And for the past 10 years, I've served on the Orange County Board of Supervisors and, by virtue of that, served on the Foothill Eastern TCA. I was chairman of the Foothill Eastern TCA when a decision was made, by the board, to request SAMP to study this extension. I'm hear to speak to you about the environmental impact, of the need for the extension and the job's benefit (sic).

From an environmental perspective, to me, the project should be a slam dunk. The project does not impact any wetlands under Federal jurisdiction and has less than a half acre of impact with waters regulated by the State. The project has extensive water runoff protection, including
extended detention basin to recapture your water runoff.

Porous pavement, to reduce water runoff and offer safety protection for our motorists. Austin sand filters, to remove any impurities from the water that runs off the roadway.

The flow splitters, to manager the runoff flows so that it mimics predevelopment conditions. The project meets the critical need for congestion relief in a region that will soon experience tremendous growth. The new terminus will be near Ortega Highway where Rancho Mission Viejo company (sic) is building 14,000 homes. Thus, this nearly five-mile extension is designed expressly to meet the regional community needs and offer relief to (unintelligible) families -- this is the using the system commuters, along with the neighboring fire, police and medical workers to respond in a timely fashion, to emergency. But it's com-(sic) -- combat gridlock, it will promote smoother traffic flow that will reduce air pollution, a win-win for everyone.

This project will create more than 2,000 jobs, just here in Orange County. Moreover, the project qualifies for "The Helmets to Hard Hats Program," which will find work for returning military veterans. Your staff has analyzed the technical studies prepared for this project and recommends approval of the project -- uh -- for approval of the permit. Please, listen to them and approve this permit. Thank you very much.
VICE CHAIRMAN MR. STRAWN: Mr. Chun.

If not, Mr. Evert.

Mr. Feller.

THE PUBLIC (UNIDENTIFIED): Yes.

VICE CHAIRMAN MR. STRAWN: Moving along fast, now.

Mr. Herzog.

THE PUBLIC (UNIDENTIFIED): Got someone coming.

MS. HODGES: Good afternoon. I'm Sherry Hodges, native of San Diego County. I live in a beach community of Encinitas. And I'm reading a statement for Oceanside City Councilman, Jack Feller.

He thanks you for taking the time to hear this important matter. And his -- uhm -- and he asked that his comments be read into the record. He strongly urges you to approve the application before you, on behalf of the Transportation Corridor Agency. This project will be a model for environmental sensitivity. It does not any -- impact any wetlands, under Federal jurisdiction. And has less than half an acre of impact to waters (unintelligible) by the State.

I understand, too, that there will be no final determination today as to whether or not you will approve this permit. It's extraordinarily difficult (unintelligible) how you could ignore the extensive water runoff protection. The TCA has engineers for this project. And, furthermore, the economic impact is significant in creating over 2,000
jobs. As a member of SANDAG, I know that SR 241 is part of our Regional Transportation Improvement Plan. Eventually, the SR 241 will be the only alternative to connect San Diego County with Orange County.

But, in the meantime, this next five-mile segment will benefit the residents of San Diego and Orange County, in relieving traffic congestion. I sincerely appreciate your attention to approving the permit for this environmentally sensitive five-mile extension of SR 241.

Thank you.

Signed the City Councilman, Jeff Feller.

VICE CHAIRMAN MR. STRAWN: That will bring us to Mr. Herzog.

MR. HERZOG: Good afternoon, Mr. Chairman, Members of the Board. My name is Peter Herzog. I'm the City Councilman in the City Lake of Forest. And the 241 affects our community. In fact, we were the founding area of the 241.

On behalf of the 70,000 plus residents of Lake Forest and the additional 12,000 that are coming to my community, we strongly support and have long supported the extension and as well as the improvement that's gone into the 241 Corridor. Our city -- uh -- just about three years ago, grew 4200 new housing units to deal with the housing needs in Orange County. That will bring an additional 12,000
residents to add on to what's going on with The Ranch Plan. And I am aware you've heard a lot of the technical discussion, so I will not go back into that.

You do have the letter from our City Council that -- which was unanimously improved, dealing with those technical aspects. But I do wanna touch on two things. First, is the segmentation CEQA issue. And it's an absolute red herring. I -- and I know that, because I've lived through it.

As I mention, the 241 first stretch was built in Lake Forest. It was in Lake Forest. It went nowhere else. And, since then -- those were the last 20 years, because I've lived there since 1982, I have watched this be built. And what you have, now, is one of the major success stories in transportation in the country.

You have 51 miles of this highway infrastructure, which is 25 percent of the Orange County infrastructure that's been built on it, by the TCA, through nonrecourse bonds at no cost to the tax payers. Paid by the users. And has been proven, time and time again. And, again, it's been done. So, there's a very extremely environmentally sensitive land.

And so, as I mentioned with it, they found it and then they're done in parts. Because it didn't start at 51 miles. It started about three or four. This is very
common. And, if you know any transportation projects and having served on the TCA for a period of time, no major construction project was built all at once. They are built in parts.

It is a classic well-known, well-accepted methodology of bringing infrastructure to the California and to the nation. Eisenhower's an -- an international -- our national highways were not built at once. They were built in parts. And, why? It's called "funding."

You don't have the money to do it all at once. You do it in parts. It's a rational logical well-accepted planning approach to major infrastructure projects.

Secondly, this project stands on its own.

Absolutely, positively. Right now, where does it end? Tesoro High School. The kids at high school have a great toll road to get to school.

THE PUBLIC EN MASSE: (Laughter).

MR. HERZOG: God bless 'em.

But, guess what? We need transportation improvement in Orange County, not just getting high school kids to school. So, what are we -- what has been designed is an extension to get you down to a major east-west arterial, I-74, where people come into Orange County from the Inland Empire. And what will this project provide? It'll provide them the ability to get off Ortega Highway, well before San
Juan Capistrano, and head north.

Instead of going through San Juan clogging their arterials, heading on the I-5, clogging I-5 North in the morning -- which, if any of you drive it, is a nightmare. That is what this road will do. It has independent significance, independent importance and independent success in it now. This is a sound environmentally friendly project. I urge you to close this public hearing today and vote, promptly, on approving this permit.

Thank you, very much.

THE PUBLIC EN MASSE: (Clap of hands).

VICE CHAIRMAN MR. STRAWN: Mr. Erkeneff.

MR. ERKENEFF: Hello. My name's Rick Erkeneff. I'm the Director of North and South Coast Water District Board -- uhm -- chairman board. Thank you, so much, for -- for hearing passionate testimony, on both sides. And I'd -- I would like for you to really look, in detail, at the NGOs and what they presented and how detailed and precise their -- their argument is against this ill-fated road. But it has been ill-fated from the start.

Years ago, I was part of the -- the Orange County Transportation Authority Stakeholders Group. And they identified that this segment of this road, the entire length would be the least traveled road in Orange County. So, the
solutions really needed to come from east-west improvements, not north-south. And I would encourage you all to -- to take a look at the 30,000 foot view and look at what needs, in that area, are -- are -- really need to be there.

From a road point of view, this does not solve traffic issues in the region. So, fast forward to -- uh-h-h -- last November, being elected onto the board. I've become very aware of the water quality issue. And it's kind of the tale of two watersheds. When you look at San Mateo Creek, that's not urbanized and you look at the San Juan Capistrano region, those -- those are two very -- (pause) -- different watersheds. And the main reason is the urbanization and what has built up those watersheds.

So, this road at the top of the -- the -- the founding waters of the San Juan Creek is really negatively affect it, as the NGOs have presented to you. So, as that water comes down the watershed, both on the surface and underneath, there's -- uhm-m-m -- the City of San Juan Capistrano that uses that resource for drinking water. And the Southwest Water District has one well that produces around ten percent of the -- the -- uhm -- drinking water within the area. And the second well, right now, is being put in. So, it's not just the surface water but it's also the ground water that can be very much negatively affected by contaminants and by these types of projects.
And -- and so, again, I would urge for you to reject this -- this road in this segment. And -- uh -- thank you for your time.

THE PUBLIC EN MASSE: (Clap of hands).

VICE CHAIRMAN MR. STRAWN: Mr. Hill.

And then -- uh-h-h -- Mr. -- or Ms. Kring.

MR. HILL: Board Chair and Board Members, good afternoon. My name is Rush Hill. I am the Mayor, Pro Temp, for City of Newport Beach. I would like to welcome you to our county and I'm pleased you made the trip north.

I am also the Chairman of the San Joaquin Transportation Agency. We are the board that strikes (unintelligible) the 73 toll road. Orange County Toll Road System is absolutely critical to the improved mobility through our region. This project has been studied as a standalone extension and is needed to accommodate, not only the natural population growth as you've heard about today, but also to provide an alternate to our already congested I-5.

The water filtration system, for its pavement, and other water quality features are exactly the types of state of art water pollution prevention features that should be used on all new road construction. Once completed, the water prevention system used to develop this roadway will be used as a model for future roadway
construction projects. And your board will be able to take the credit for setting a newer and higher standards (sic) for road building projects.

I've heard some people say that California is dying; that the regulatory process has become so burdensome that even good projects cannot be approved any more. I disagree. This is a great project, environmentally sound, needed for traffic relief and will create thousand of jobs.

By voting to approve this permit, you can show us, here today, California is still a state where we can build projects that will, quite literally, move us all forward. Don't allow your good board to be used by special interest groups for anything other than judging water quality. I urge you to support approving this permit, so that both your board and the TCA can celebrate the future of green roads.

CHAIRMAN MR. MORALES: Just one minute

(whispering).

BOARD MEMBER (MS. KALEMKARIAN): I think he'll know the answer to this.

There was some comment made, during the NGO presentation, that 73 had been resurfaced but not with the permeable surface. Did -- do you have any knowledge about that? Has there -- has 73 been resurfaced? And was it with the same permeable asphalt?
MR. HILL: I do not have the answer to that.

CHAIRMAN MR. MORALES: We have -- staff, nobody has --

MR. LOWE: I'll just quickly go over the history of the 73. We opened it, in 1996, through CalTrans. They decided, about two years after that -- (interrupted)

EXECUTIVE OFFICER (MR. GIBSON): Mr. Chairman, if you'd -- I may suggest that the speaker approach the microphone, so we can get the recording and the audience can hear it.

CHAIRMAN MR. MORALES: And if you would state your name, sir.

MR. LOWE: My name is David Lowe. And I'm the Director of the Diamond Construction for TCA. And I -- and I did take the oath, earlier this morning.

The CalTrans took over the road in 1996, from 73. And that project was designed and built according to their standards. Subsequent to that opening, there were some problems with hydro planning and they decided to go 'head and install a permeable overlay throughout that entire project and that -- that went in, in stages, over the years. But there has been no removal of that overlay, since that time. Always been permeable overlay. Become a much much safer project for the -- for the system of Orange County.

CHAIRMAN MR. MORALES: Thank you.
MR. HILL: Further questions?

CHAIRMAN MR. MORALES: Thank you, (shake of the head).

MR. HILL: Thank you.

VICE CHAIRMAN MR. STRAWN: Would the gentleman that just spoke, if you didn't do a card before, if you would for -- for the record.

Ms. Kring.

MS. KRING: Yes. Good afternoon, Chairman and Board Members. My name is Lucille Kring and I'm a council woman from the City of Anaheim.

We're a city of approximately 300 and 50 thousand residents. And we -- uh -- the 241 actually begins -- the northern part begins in Anaheim. So, with the addition of the 241, the five extra miles, our residents will be able to get there to South County a lot quicker. And this project is very environmentally sound. It not -- does not impact any wetlands under the Federal jurisdiction and has less than a half acre of impact to waters regulated by the State.

Few roads, in California, provide such a high level of environmental protection against the water pollution. This project means a cry- (sic) -- a critical need for congestion relief, in a region that will soon experience tremendous growth. As was mentioned, several
times, Tesoro's terminus will be near Ortega Highway where Rancho Mission Viejo is building 14,000 homes. It amounts to a new city of approximately 30,000 people in South Orange County. And, if this does not justify the extension, then nothing else could.

The traffic is suddenly to show the project State works on a standalone basis to serve this new town, along with a 500 million square feet of new commercial space it wants. That's the equivalent of two South Coast Plaza shopping centers. That's the nearly five-mile extension. It is designed, expressly, to meet regional community needs and offer relief to relieve your family, businesses and commuters along with enabling fire, police and medical workers to respond in a timely fashion to emergency. As to combat gridlock, it will promote the smoother traffic flow and also reduce the air pollution, a win-win for everybody.

It also will provide over 2400 jobs in a county with an unemployment rate of nearly 10 percent. And when con- (sic) -- the construction begins this year, the project can't begin soon enough for the thousands of unemployed construction workers and engineers that look forward building this roadway. Moreover, the project qualifies for The Helmets To Hard Hat Programs, which will find work for returning military. These men and women deserve the best that we can offer, as far as providing them
jobs. They have served our country so valiantly.

So, when Hill said you'd take a look at the people who speak on behalf this project and be positive for your response. Thank you for your time and consideration.

CHAIRMAN MR. MORALES: Ma'am, one quick question.

Are you speaking on behalf of your entire city council or --

MS. KRING: Uhm-m-m -- yes. Several us have been -- I was on the TCA board for many years and I'm back on it now. And the people -- all of the council agrees that this TCA extension should be approved.

CHAIRMAN MR. MORALES: (Nod of the head). Thank you.

VICE CHAIRMAN MR. STRAWN: Mr. LaMotte.

And then -- uh-h-h -- Mr. Ming.

UNIDENTIFIED SPEAKER: (Nod of the head), (indicating).

VICE CHAIRMAN MR. STRAWN: Mr. LaMotte is next, I believe. And then Mr. Ming.

MR. LAMOTTE: Chairman and Board Members, thank you. My name is Steve LaMotte. I'm reading this letter submitted on behalf of Assembly Woman Diane Harding (phonetic).

Dear Acting Chairman Strawn, as the California State Assembly member representing the 73rd
District, which includes the Cities of South Orange County favorite Aliso Viejo, Coto de Caza, Dana Point, Ladera Ranch, Mission Viejo, Laguna Hills, Laguna Niguel, Rancho Santa Margarita, San Clemente and San Juan Capistrano, I ask you that you support the Foothill Eastern Transportation Corridor Agency's Waste Discharge Requirements. Residents and businesses throughout my district are directly impacted, every day, of the lack of viable al- (sic) -- by the lack of a viable alternative of the Interstate 5. Because there is no alternative route from the I-5, completing the Tesoro Extension is a crucial component to the over issue (phonetic) mobility plan designed to help mitigate end the traffic congestion route outwards. Included with the traffic that would benefit the residents, businesses and visitors construction of nearly five-mile extension off the premium (phonetic), 2,000 Orange County jobs and an additional 400 and 7 jobs statewide. Job creation and traffic relief are both desperately needed.

In addition to the jobs and it has mobility throughout the region, Tesoro Extension has extremely minimal impact on waters regulated by the State, less than half an acre. This project will also benefit the region's air quality, as identified in South Coast air quality management district's 2012 air quality management. I strongly encourage you to approve the TCA WDR application. Sincerely, Diane
Harding, Assembly Woman. Thank you.

MR. MING: Chairman and Board Members, my name is Robert Ming. I am the Mayor of the City of Laguna Niguel. I would love to give a you wake-up call, if I could. I know it's been a long day, already. And I won't take too much more of your time.

I wanted to remind you that Laguna Niguel has implemented a number of novel and effective water quality projects in our city. These include everything from -- from repairing right-of-way (phonetic) projects to wetland -- (inaudible) -- projects. Now, we place a great deal of importance on green belts and waterways and -- and of preserving the view of national environment for our residence. As I reviewed this project and the mitigation site on the measures TCA's taken to mitigate special water quality and issues, I'd like to strongly recommend that you approve this permit.

I would -- as I look at the approaches that they have taken, I see the same kind of dedication to (unintelligible) exclusion, the comprehensive approaches that we've used in Laguna Niguel that has served us well. And it may be tempting, today, to focus on other issues. I know endangered species are a concern (unintelligible). I encourage you to focus on your primary issue, which is water. And, as you look at the water quality control
measures in this project, I think they are impeachable and
they're what people should be doing in these projects. And I
expect others to follow this example in the future.

I think it'll be a good precedent. It
contains a strong investment and innovative solutions while
implementing all of these (unintelligible) measures to
produce the balanced and simple results. And I strongly urge
you to grant this permit so that we can have this Tesoro
project proceed. The City of Laguna Niguel would appreciate
it. So, thank you, very much.

VICE CHAIRMAN MR. STRAWN: Mr. Pain?

MR. LECKNESS: Actually -- uh-h-h -- Leckness.

Councilman Leckness, from Mission Viejo.

VICE CHAIRMAN MR. STRAWN: And do we have a card?

The green one -- (mumbled)

MR. LECKNESS: Uh -- uh -- no, I do not have a
card.

UNIDENTIFIED SPEAKER (FEMALE): He should have. He
should have -- (inaudible) -- Dave should have the -- they
should have one. They should have the pack.

(Simultaneous speech; unintelligible.)

MR. LECKNESS: Okay, thank you.

Good afternoon, Chairman Morales, Vice Chair
Strawn and Board Members. My name is Dave Leckness. I have
the honor serving for the City Council for the City of
Mission Viejo. I'm here to speak, today, in support of TCA's
WDR application. In Mission Viejo and other cities, TCA has
a very impressive and long history of environmental
sensitivity. I'm also on the board of the Orange County
Vector Control.

That's the rats, birds, mosquitos, all the
bugs.

THE PUBLIC EN MASSE: (Laughter).

MR. LECKNESS: I remember, 20 years ago, when
people voiced their concern over the construction of the
first toll road, that they feared the water waves and the
wildlife would suffer from the roadway. Uh-h-h -- they
figured that the dears and the gnats and the -- uh-h-h -- the
mosquitos would all disappear. Have proved not to be true.

THE PUBLIC EN MASSE: (Laughter).

MR. LECKNESS: We used to have pockets of still
standing water. That was the occasional water source for --
uhm -- for our animals out there. And it was a breathing
ground, the still water was the breathing ground for the
mosquitos.

Today, 20 years later, with the building of
the toll roads, now we have our official water sources that
are -- uh-h-h -- they provide all of the -- a lot of the
water for the wildlife and is the year around water source. And these animals have benefited from this and we see that with the robust population. We call that "artificial, but beneficial."

And mosquitos from that area are virtually nonexistent, now, because of the -- well, how we've taken care of that the waterways and wildlife are in better shape today than were -- than they were before the roads were built. If progress is done correctly, it's beneficial to both the animals and the bugs. The toll roads might be artificial but they're very very beneficial to our people, our residents and the animals. They're artificial, but beneficial. Just a reminder, this project has less than a half acre of impact to the waters regulated by the State.

I urge you to support TCA's Waste Discharge Requirement Application and get the Tesoro Extension on the road to completion. Mission Viejo thanks you.

BOARD MEMBER (MR. ANDERSON): Do you mind? David, do you mind just filling out the form?

MR. LECKNESS: Yes, I will.

BOARD MEMBER (MR. ANDERSON): Thank you.

MR. LECKNESS: I get it back here (indicating)?

BOARD MEMBER (MR. ANDERSON): (Nod of the head).

VICE CHAIRMAN MR. STRAWN: Now, Mr. Pain.

MR. PAIN: Apologize to the -- uh -- council
members and mayors I'm jumping in front of you.

Good afternoon, Chairman Morales, Vice Chairman Strawn, Board Members, my name is Martin Pain. I served as District Director for California State Senator Mamie Walters. And, of course, we'd like to welcome you to the 37th district for which she represents. It is my pleasure to be here, today, and to speak strongly in support of the Tesoro Extension.

This project meets the critical needs for the congestion relief in this region that will soon be experiencing all the growth that we have already discussed in the Rancho Mission Viejo area, with upwards of 30,000 people eventually residing in that area. This clearly reinforces the need to improve the mobility in this area. The extension offers much needed relief for the malingered (phonetic) families, businesses and commuters. And, more importantly, speaking as the -- for our first responder, the ability for our first responders: the police, fire and medical personnel to respond to those who are in need of their services when seconds count and lives literally hanging in the balance.

The Tesoro Extension utilizes the multi-conventional approach to strong water treatment that should be a model for other highway projects, including the porous pavement that has been brought up numerous times.

The extension -- uh-h-h -- extend --
detention basins that are designed to capture, hold and gradually release the storm waters to reduce the possibility of downstream erosion. The flow splitters, to direct water into the Austin sand filters, that will remove the harmful pollutants before they reach the water waves. And, of course, the vegetative slopes. The -- uh -- will also filter the storm water before reaching the major water ways. On behalf of Senator Walters, I stand with those who live and work here in the 37th District and urge you to strongly approve the TCA's application for the WDR ap-- -- application and enhance the mobility of the transportations here in our area.

Thank you very much.

VICE CHAIRMAN MR. STRAWN: Okay.

And -- uh -- Mr. Puckett, City of Tustin.

MR. PUCKETT: Mr. Chairman and the Members of -- (unintelligible). Thank you for coming north, so we can have an opportunity to speak.

My name is Charles Puckett and I am former Mayor and current Mayor Pro Temp for the City of Tustin. I moved to Tustin in 1975. The population was only 22,000. The population is 76,000, now. And we needed roads to -- (Pause) -- go along with that growth.

We're -- we have the I-5 and the I-55 intersect, in Tustin. In 1991, when I was mayor, we
completed the Jamboree extension through the Marine Base, which took a lot of the traffic off of the roads. This year, we will complete Tustin Ranch Road, through the Marine Base, which will eliminate a lot of the traffic congestion.

The toll road extension is necessary and required for this -- the community, at 30,000, which is going to be completed in South County (sic). It's going to help traffic flow through this -- to move a lot more smoothly and, therefore, reduce a lot of air pollution. So, we greatly wish that you would support this -- uh -- this permit. 'Cause this project is definitely needed. Thank you.

VICE CHAIRMAN MR. STRAWN: Ms. Reardon, City of Mission Viejo.

And then Mr. Scheffel, from Dana Point.

MS. REORDON: Good afternoon, ladies and gentlemen. And I wanna thank you in having sat and presided over public hearings. This is probably the longest public hearing that I can even imagine. So, thank you for patience.

My name is Rhonda Reordon. I am currently the Mayor of Mission Viejo. Be reflective to the chairs up here now, was also a former mayor. So we do speak on behalf of the entire city council of Mission Viejo.

We are a city of 95,000 plus residents. And we love living in Mission Viejo. And I have to tell you that
the Tesoro Extension is absolutely essential to us as a community; but it is also essential to the other communities that we provide arterial for, as they come and -- they go to and from where they live to the I-5.

We have -- we have four arterials, direct arterials: Crown Valley Parkway, Oso Parkway, La Paz and Alicia. Those are four direct ones. And we have two indirect ones, which are Avery Parkway, by way of Margarite; and Los Aliso, by way of Alicia and El Toro Road. All of those, ladies and gentlemen, are impacted. All of them congested. And I would not say, would not guess but they are on their way to being gridlocked.

We serve parts of Foothill Ranch, Rancho Mi-
(sic) -- Rancho Santa Margarita, Coto de Caza, Las Flores, Ladera Ranch and the new community of Rancho Mission Viejo that are coming with 14,000 new homes. I'm a reality vehicle (phonetic) elected official. I believe in solving problems. We have an opportunity to solve our problem. For all of those communities, including Mission Viejo and including any of the residents who uses the 5 freeway, I'm supporting the Tesoro Extension.

I support everything that my colleagues elected officials have said. I don't wanna repeat that and waste your time. But I will say this to you: It is our responsibility as elected officials to look out for today,
tomorrow and our future of or residents. It is absolutely

essential that we do what we can, on our part, to help with

our infrastructure to support development.

    If people are against development, that is a
whole 'nother issue and that needs to be dealt with up
front. Okay. But once development has been approved, like
Rancho Mission Viejo, we have to deal with that. The reality
is there's going to be 30,000 people out there in the next
few years. That is -- or that is my -- one of my main

concerns.

    We do not have the luxury of being myopic
(phonetic). Short sightedness is not something that we can
do right now. I ask you, I beg you on behalf our residents,
to please grant our application. Thank you very much.

    THE PUBLIC EN MASSE: (Clapping of hands).

    VICE CHAIRMAN MR. STRAWN: Mr. Scheffel.

        And then Mr. Schwing (phonetic)?

    THE PUBLIC (MR. GARDNER): I'm not Schott
Scheffel. I'm Richard Gardner. I happen to live in
Capistrano Beach, which is part of Dana Point.

    VICE CHAIRMAN MR. STRAWN: Did -- do we have a
card?

        Could you -- (interrupted)

    THE PUBLIC (MR. GARDNER): I stated at a Holiday
Inn.
THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MR. GARDNER): Yes, you do have a card from me. I have a -- I signed a card and --

VICE CHAIRMAN MR. STRAWN: Mr. Gardner, we're --

(Laughter commenced throughout. Simultaneous speech; unintelligible.)

VICE CHAIRMAN MR. STRAWN: -- dealing with government official persons --

THE PUBLIC (MR. GARDNER): I'm no longer elected. I -- I was unsuccessful, in my campaign.

THE PUBLIC EN MASSE: (Laughter).

VICE CHAIRMAN MR. STRAWN: Can we -- (laughter). Could you -- well, if you have a card in here, we will get you -- to you at the end of --

THE PUBLIC EN MASSE: I'll wait. I'm patient.

VICE CHAIRMAN MR. STRAWN: Thank you, sir.

Appreciate that.

So, who's next here? Mr. Schwing (phonetic)?

MR. SCHWING: Mr. Schwing, yes.

THE PUBLIC (UNIDENTIFIED): Good try (giggle).

MR. SCHWING: Good afternoon, Chairman and Members of the San Diego Regional Water Quality Board. My name is Mark Schwing. In my 17th year of service on the Irvine City
Council, four of those years were served as mayor. I'm here to urge your approval of the water quality permit, submitted by the TCA, for the Tesoro Extension.

I'll be brief as possible because you've heard many of these things before. The environmental water issues considered for this extension are state of the art. The extended detention basin, the porous pavement, the Austin sand fillers (sic) and the flow splitters, you've heard all that before. Very few roads in California have this many current features.

As elected officials, we have to deal with the problems of today and the needs for tomorrow. The Tesoro Extension does that. It'll meet the transportation needs of 30,000 residents of a new community, occupying 14,000 blowing (phonetic) ins. It will provide emergency access for first responder units. It will provide jobs for over 2,000 Orange County residents and returning veterans.

It is indicative (phonetic) to review this permit and approve it as soon as possible. Thank you very much.

VICE CHAIRMAN MR. STRAWN: Mr. Sal aria.

And then a Mark Wyla.

And that's all I have for government cards here. If there is --

UNIDENTIFIED SPEAKER (FEMALE): (Raise of hand).
MR. GIBSON: (Raise of hand).

VICE CHAIRMAN MR. STRAWN: You -- your name, sir?

MR. GIBSON: Charles Gibson, Santa Margarita Water District.

VICE CHAIRMAN MR. STRAWN: We'll get you next.

MS. BIAS: Hi, my -- my name is Heather Bias. And I am used to being up and giving this out. I'm here representing my boss, Senator Mark Wyla. And I wish to read his firm request for your approval of the circulation of transportation (sic) -- Transportation Corridor Agency's Application for the Water Discharge Requirement Permit, mitigation for the Tesoro Extension Project in Orange County.

Our district includes the Cities of Rancho Santa Margarita, Mission Viejo, San -- San Juan Capistrano, San Clement and unincorporated area Ladera Ranch; and then, currently under construction, Rancho Mission Viejo. These communities only have one route, north and south, I-5. It's dangerous for any community to rely on only -- on only one freeway. And an alternate route is desperately needed. And trust me, I know, because I live there.

Not only would this extension create an alternate route for residents, it will create more than 2400 jobs. Now, at this time, the tax payers in this State are being gouged in every direction. This project can be built
without using tax dollars for planning of construction. The Tesoro Extension has a minimal impact to the waters regulated by the State. Project will also benefit the region's air quality, as identified by the South Coast Air Quality Management District 2012 Air Quality Management Plan. Strongly encourage you to approve TCA's Water Discharge Requirement application.

Thank you.

VICE CHAIRMAN MR. STRAWN: Mr. Gibson, I have your card.

MR. GIBSON: Thank you. I'll -- I'll be brief. I wanna thank you, very much, for the courtesy of allowing me to appear.

My name is Chuck Gibson, I was recently elected in November as a non-incumbent to the Santa Monica Water District. I'm the new kid on the block and I don't represent the entire district. I'm speaking on my own behalf and on behalf of the 155,000 customers, as we don't represent districts, we represent at large. So, I'm speaking on my own behalf on this. And, as a resident of Ladera Ranch and co-founder of the City Council in Ladera Ranch and they have -- I know they have a letter on file with you in this regard.

I wanna say that I've read the entire litigation report and many of the comments have been
presented. We sat through your hearing. And I believe, very strongly, that the water quality -- (mumbled) -- storm water management -- uh-h-h -- measures that are being taken will leave the area better off after the project. One must ask oneself, "Will we be better, after this project, than we are today?" If we leave this alone and don't do anything, we'll take a few members. The answer is "absolutely, they won't be better. They will only be better with this. We have the resources to do the project, now. I do encourage you to take your time. I respect your judgment. I heard some very great questions. But, please, I implore you to approve the discharge permit.

Thank you.

VICE CHAIRMAN MR. STRAWN: Thank you. Anybody else.

Unless I missed somebody we have had all the government speakers.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Are there anymore speakers that are here from the governmental agency?

Sir?

THE PUBLIC (MR. GARDNER): I'm not government speaker -- (interrupted)

VICE CHAIRMAN MR. STRAWN: Oh, well, we have more
we have the rest of the speaker cards. We're just trying to get to the --

UNIDENTIFIED SPEAKER: Here's one.

(Simultaneous speech; unintelligible.)

VICE CHAIRMAN MR. STRAWN: Do we have a card?

MS. RAMSEY: Yes.

VICE CHAIRMAN MR. STRAWN: And your name was?

MS. RAMSEY: My name's Lisa Ramsey. I'm from CalTrans.

VICE CHAIRMAN MR. STRAWN: Okay.

MS. RAMSEY: Good afternoon, board members. My name is Lisa Ramsey. I'm the act- (sic) -- Acting Deputy District Director of the Capitol (phonetic) Program in CalTrans District 12. Existing 51 miles of toll road have been planned, financed, aligned and built by TCA and then turned over to CalTrans as part of the State Highway System. It is anticipated that Thetor- (sic) -- Tesoro Extension will become part of the State Highway System, State Route 241. And will follow a similar development process, as we have had in prior segments of this facility.

Once TCA completes the designed construction, they will relinquish the facility to CalTrans for operation and maintenance. The creek will -- water quality orders and
the signing (phonetic) of the Tesoro Extension include the
statewide general construction permit, which CalTrans has
become subject to in July 2010. And for the post-
instructions, the CalTrans NS-4 permit, that was adopted by
the State Waters Board of September 19, 2012 as Water Quality
Order of 2012.011 will become effective on July 1, 2015. The
Orange County toll road extension, a successful partnership
between CalTrans and TCA, this provides a great relief from
congestion in the South County (sic), (nod of the head).
Thank you.

VICE CHAIRMAN MR. STRAWN: Thank you.
If you could spell your name for me, so I can
-- (interrupted)

MS. RAMSEY: R-a-m-s-e-y.

VICE CHAIRMAN MR. STRAWN: Okay.

MS. SKORPANICH: Good afternoon. Mary Ann
Skorpanich, OC Watershed Manager from the County of Orange.
I'm here, today, to speak on an item before you.
Specifically, with respect to the Municipal Storm Water
permit issued by your board to the cities in South Orange
County, the County of Orange and the Orange County Foot
Control District. And, specifically, in support of the Post-
Construction Best Management Practices that you added for
this project to include compliance with the modert wall (sic)
-- Model Water Qualities Management Plan for South Orange
County, as well as the South Orange County Hydromodification Plan. It was developed by those permittees as their compliance program for your permit.

The County thinks it makes absolute sense to have the same standards apply to both the municipalities as well as this project and other projects like it. We think that -- that our product is -- is very good. You heard quite a bit of detail about it, from one of the speakers this morning. So, I won't go into much detail about it. But we do support having the project comply with that same plan that we do.

Thank you.

CHAIRMAN MR. MORALES: Thank you. And I -- I'm sorry. But we're gonna take a brief break, 3 to 4 minutes, so that our court reporter can change out her paper. Your comments are so great, they're taking up a lot of space.

THE PUBLIC EN MASSE: (Laughter).

(Hereafter, break commenced. Off the record 2:27 p.m. Proceedings resumed 2:35 p.m.)

CHAIRMAN MR. MORALES: We're going to get started in a couple of minutes, in order to talk about the presentation's going to proceed. At this point, I'll let Gary Strawn explain our procedures and -- (giggle) --
everything that we've received in terms of cards and so forth.

VICE CHAIRMAN MR. STRAWN: Yeah, I -- I'm gonna start here with a -- with an explanation. The next group up will be the red cards. And, again, I put it in alphabetical order.

And I heard some complaints about the ordering of things today. But I -- I wanna make it clear and I guess I shoulda known this ahead of time, based on the amount of duplicate paperwork we got to read before this committee. 'Cause I have this (show of document) many duplicate cards today. Okay?

Many cards were filled out three times. They were the same person with different colored cards. I know it was -- somebody sort of did it in some automated fashion. But it's made it very difficult for us to deal with the speakers. And, basically, if you have a complaint about the -- the order of things, take it up with whoever did all these cards for ya.

With that said, if -- if you -- the -- the next set of speakers will be those red cards, which supposedly are densely the -- um -- proposed order. And we'll start those, again, in alphabetical order. And we're gonna go to two minutes?

THE PUBLIC (MR. GARDNER): I'll be next.
VICE CHAIRMAN MR. STRAWN: I -- I -- I would say this, if our government speakers could pretty much stay below two minutes, I would hope that our -- that my fellow citizens could take that as a challenge --

UNIDENTIFIED SPEAKER (FEMALE): Yes.

VICE CHAIRMAN MR. STRAWN: -- and try to not repeat what has been said before you.

CHAIRMAN MR. MORALES: Okay. And one final thing -- and -- uh-h-h -- it -- we will be taking folks in alphabetical order. So, while we appreciate folks wanting to speak, if you're standing in line, unless your name is coming up -- and you will hear it before it's your turn to speak, prior to the person in front of you -- uhm-m-m -- it -- it -- ya know, just -- (nod of the head). You're gonna have to wait a little bit. We're sorry to do it like the school yard, you know, starting with the letters "A." But there's really no sufficient way to deal with it.

VICE CHAIRMAN MR. STRAWN: (mumbled) -- duplicate call.

The first three in this section will be Mr. Babski and Ms. Bradford and then Mr. Carlton.

If you're here?

CHAIRMAN MR. MORALES: I'm sorry. I can't -- I believe we may have had one error --

UNIDENTIFIED SPEAKER: Two additional speakers.
CHAIRMAN MR. MORALES: -- two additional and I --

(Simultaneous speech; unintelligible.)

VICE PRESIDENT MR. STRAWN: Okay.

CHAIRMAN MR. MORALES: And I apologize, because we
broke so that we could -- uh-h-h -- and -- and your name
was?

MR. CHIDSEY: Darin Chidsey, with Southern
California Association of Governments?

VICE CHAIRMAN MR. STRAWN: Was it a green card?

Or?

MR. CHIDSEY: Green card.

VICE CHAIRMAN MR. STRAWN: Okay. Go 'head.

MR. CHIDSEY: Okay. Chair and Board Members, thank
you very much for the opportunity to address you today. My
name is Darin Chidsey, from the Southern California
Association of Governments. I'm here representing our
Executive Director Hasana Crawder (phonetic) who,
unfortunately, could not be here today.

SCAG recommends that the board approves this
permit for the Tesoro Extension, because of congestion air
quality and economic recovery benefits provided for the local
area and to the region by this project. This project has
been part of the region-- Regional Transportation Plan and
Air Quality Strategy since 1991. This project include -- was included in the 2,000 and 12 Regional Transportation Plan and sustainable community strategy which was approved by our regional council, in April, unanimously. The plan sets forth a coordinated transportation and landing strategy set to meet the regional State, Federal, mobility, air quality and greenhouse gas requirements. It was approved at the State and at the Federal level.

And, as I noted, this 2012 regional transportation plan sustainable community strategy was the most elaborate bottoms-up regional planning process in our agency -- agency's history. The project meets the critical need for congestion relief in the area and will soon experience growth. It will support approximately 14,000 new homes and associated population of employment near the Ortega Highway.

Air quality benefits are also very important for this project. It's listed in our regional transportation plan as a transportation control measure, as well as in the South Coast Ozone Air Quality Command. The Federal Clean Air Act requires transportation control measures be implemented in a timely matter. The receipt of the Water Board permit is a critical step towards the products and -- (sic) -- prod- (sic) -- (clearing throat) -- excuse me -- to project implementation.
The economic recovery benefits are also very important. The region here at SCAG has been a strong component of regional economic development. It's been more active in this area. Our regional council has studied and advocated for the benefits of the historic (phonetic) and transportation projects delivery, spur (phonetic) and maintain economic recovery.

Attuned economists recently studied the recent economy will show that Orange County might not recover all the jobs that it had at its peak employment in 2,007 until 2014. This project could help assist with that and move that number closer to today. The project would create over 2,000 jobs, in Orange County. With the construction plan to begin this year, the project can't begin soon enough for the thousands of unemployed construction workers and engineers who look forward to building this structure.

Additionally, this public toll facility does not rely on the scare -- State and Federal tax -- (mumbled). Financing was a key component of our Regional Transportation Plan and infrastructure problems -- projects with alternative financing methods (phonetic) it is key strategy -- in the adoption of regional transportation plan (mumbled).

(Herefore noted for the record, speaker mumbled at this point; unintelligible.)
MR. CHIDSEY: Yet, thank you very much for your time and efforts. And support this environmentally sound project that supports our RTPSCS. We urge you to approve the project. Thank you very much.

BOARD MEMBER MR. ABBARANEL: I have a couple of questions, if I might. Since you're from SCAG have the RTP view point of this, did you describe to us in a whole project, instead of just Tesoro Extension?

MR. CHIDSEY: Yeah, the -- the entire project was -- it had been included, as I said, in our regional transportation (mumbled) since 1991, when the entire network was built.

BOARD MEMBER MR. ABBARANEL: Right. I understood that you said it was there. Since it's been there since 1991, we've had 22 years to figure out what the entire project is.

Could you tell us what the entire project is?

MR. CHIDSEY: In -- in what -- "the entire project" is in a -- meaning the exact -- (interrupted)

BOARD MEMBER MR. ABBARANEL: Tesoro Extension does not go to I-5, would it? What is the entire project that gets this road to I-5?

MR. CHIDSEY: Uh-h-h -- I -- I -- I don't have that answer (shake of the head). I apologize for that. So, the
1    -- the -- (interrupted)

2    BOARD MEMBER MR. ABARBANEL: So, your --

3    MR. CHIDSEY: -- the extension does --

4

5    (Simultaneous speech; unintelligible.)

6

7    BOARD MEMBER MR. ABARBANEL: Let me ask my second

8    question, then.

9    MR. CHIDSEY: Okay.

10   BOARD MEMBER MR. ABARBANEL: The SCAG RTP, you say

11    it was approved.

12    MR. CHIDSEY: Right.

13   BOARD MEMBER MR. ABARBANEL: The SANDAG RTP was not

14    approved because state attorney general said it violated

15    AB-32. Part of this project, if it does go to -- to the I-5,

16    may very well go to the SANDAG region. Does that mean that

17    there is no project, because it hasn't been approved by the

18    Attorney General?

19    I'm look quite confused about what the

20    project is.

21    MR. CHIDSEY: Okay.

22    Our -- our original transportation plan was

23    approved and the project within our region was approved.

24    With that, our -- there -- there was no challenge --

25    (inaudible) -- Attorney General, for that question. So.
BOARD MEMBER MR. ABARBANEL: Okay. Okay. Thank you, Mr. -- (interrupted).

MR. CHIDSEY: Thank you.

MR. SIMPSON: Good afternoon, Mr. Chairman. I'm Dave Simpson with the Orange County Transportation Authority.

VICE CHAIRMAN MR. STRAWN: What was the last name, again?

MR. SIMPSON: Simpson.

VICE CHAIRMAN MR. STRAWN: (Nod of the head).


I'm here on behalf of our CEO, Daryl Johnson, who's regrets he couldn't be here today. But I would like to add that -- uh -- if I can, under a minute and perhaps a couple of new things.

We do appreciate the pros- (sic) of the -- process of the advancing and large infrastructure project. And there's a fine roll in it, here, in the -- (mumbled) -- today, that you're considering would be (mumbled) to you. As you deliberate on that, we wanted to let you know that OCTA has long supported the toll roads projects and, especially, this -- uh -- this specific project. It's not only a -- is part of that RTP that was referenced, which is also part of the Orange County Long Range Transportation Plan where TCA has played an active role in, over the years.
It's also modeled after a Measure "M" Water Quality Program, which we are very proud of that -- uh -- here, in Orange County. And we believe that TCA has done an outstanding job -- uhm-m-m -- on -- on all their projects. They have a long history of balancing mobility needs with the needs of the environment and -- and we applaud that in our and lock this step with them on -- on all projects. We believe also that their vision for support of our long range transportation plan and an interim program that talks about reducing greenhouse gases through BR, such things as Bus Rapid Transit and the like is something to be considered about their environmental stewardship.

And, lastly, we're -- we hope that the facts and their long history of environmental stewardship will lead this board, ultimately, to the approval of the permit. With that, thank you for your time.

VICE CHAIRMAN MR. STRAWN: Now, I think we're up to Mr. Babski and Ms. Bradford?

UNIDENTIFIED SPEAKER (FEMALE): Art had to leave.

VICE CHAIRMAN MR. STRAWN: Okay.

Mr. Carlton.

THE PUBLIC (MR. GARDNER): (Snap of fingers) Paul Carlton, not here.

VICE CHAIRMAN MR. STRAWN: Mr. Cadwallader?

MR. CADWALLADER: Good afternoon. My name is Craig
Cadwallader and I'm here representing the Surf Rider Foundation, South Bay Chapter. And I'd like to expand a little bit on what -- uh-h-h -- Surf Riders California policy manager -- uhm-m-m -- the seekage (phonetic) and the other Safe San Onofre Coalition members mentioned about coastal sediment. I've been heavily involved in coastal sediment issues, a little farther north from here, which included Broad Beach where they're trying to replenish their beach because the sand has eroded. The re- (sic) -- uhm-m-m -- we have quinate (phonetic) sand sources because of dams, because of hardening of the coast and we aren't getting new sands up.

Broad Beach is going to pay twenty million dollars to restore their beach, because they're not getting sand. I'm concerned that the San Juan Creek, any kind of sediment restriction coming out of there will impact. We also have an issue of sea level rise, which I haven't heard anybody talk about. And I remember, very distinctly, the 82/83 El Nino Storm that's carved our beaches away. We have some sediment reserves, offshore, which I consider a sand bank.

But, if we continue to half off the resources, we're gonna pay the price. The coastal -- the ocean and coastal economy is huge. We generate -- uh -- that area generates huge revenue for the State and I think
everybody in the State benefits from that. I wouldn't wanna
do anything to cut that back. I've discussed this with City
Councils, with neighborhood councils, with the State Lands
(phonetic) Commission, the L.A. County Beaches and Harbors
Commission. And, I actually -- also with the California
Coastal Commission during the public -- uhm-m-m -- comment
time.

I've gotten support from just about everyone
that agrees with that. And we need to do something to manage
the sediment. And anything, such as this project, if it's --
if it's interfering with the sediment going into the ocean, I
think you need to rethink this and I would urge you to deny
the permit and keep these curtains open for -- (mumbled).
Thank you.

VICE CHAIRMAN MR. STRAWN: Julia Chun-Heer?

UNIDENTIFIED SPEAKER (FEMALE): She also had to
leave.

VICE CHAIRMAN MR. STRAWN: Sorry about that
(whispering). Uhm-m-m --

Mr. Collamar.

Mr. Irby.

CHAIRMAN MR. MORALES: Who's after that
(whispering)?

MR. IRBY: Thank you, Board Members. And thanks
for the opportunity to speak before you. My name is Drew
Irby. I'm past President of South Coast Chapter of Trout Unlimited. And, also, I'm a glutton for punishment. I'm also the State chap- (sic) -- State chairman of -- (mumbled) -- Unlimited of California, that serves over 10,000 members in this State.

I might take a little of my time to answer some of the questions earlier. I also took the oath.

Mr. Strawn, you said, "Is there any bio assessments done?" The South Coast Chapter did do a bio assessment back in 2,006. It's called "The 2,006 San Juan Watershed Plan." And there is some habitat studies on that, in that plan. I can get that to ya, if you'd like.

Also, Ms. Sharon, you asked about the steel head. It is a Migratory Core 1 Stream (unintelligible) Fisheries. Steel heads are in there every year. Just like the swallows, in San Juan Capistrano, they come back. And it is still a viable steel head stream.

The State has spent over two million dollars in fish passage and creek stabilization projects down on Trabuco, which is a trip to San Juan. And we were very active and have been, since 2,005, our chapter, in restoration projects.

Now, the oldest -- as the oldest cold water conservation group in the country, our mission is to protect, reconnect, restore, sustain local watersheds for the next
generation; and that includes watershed enhancement for stabilization projects. I'm in -- I'm here today, as I was in Del Mar in 2,009, representing the voice of a fish. There's nobody else here to represent them. They're iconic steel head.

Uhm-m-m -- southern steel head is a re- (sic) -- remarkable resilient animal, living in 70 degree water. And they come back again, every single year, to the San Juan and Trabuco Creeks as well as other Southern California streams -- coastal streams. And our position is just like it was in 2,009, we're not against the toll road, per se, just build it some place else.

It -- it -- it's -- you know, there's alternatives. There's been alternatives on the record, since this that time and even before that time; and they're not being considered. Uhm-m-m -- ya know, it doesn't vote well for the fish as a discharge. We understand the CEQA process. We were involved in the CEQA process for our own projects down there.

We understand what it means. But we just feel that there's just not enough there to guarantee good water quality for the fish and the stream. Without a goal in site, as well as other people have brought up -- this gentleman, (indicating) Mr. Henry brought this up as well, "What's the end -- what's the end goal of this project?" If it's gonna
come -- come down and impact our streams and so forth, we
have to say that we're against this project.

Thank you very much.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: I think my fellow board
members would tell you there's other people talking for the
fish, too.

Uhm -- Ms. Elia. Penny Elia?

UNIDENTIFIED SPEAKER (FEMALE): She had to go.

VICE CHAIRMAN MR. STRAWN: Denise Erkeneff.

And then, after her, Mr. Franklin.

MS. ERKENEFF: Good afternoon, Regional Board.

My name is Denise Erkeneff. I'm a residence of Dana Point.
And I'm here also representing the Surf Rider Foundation,
South Orange County Chapter. We're one of the largest
chapters in Surf Rider's worldwide footprint.

We have over 3,000 local members in South
Orange County alone. Surf rider also has over 50,000
supporters in California and 80,000 surf rider members in the
United States. And I'm here representing the local chapter
that would be affected by this ill-fated toll road.

First of all, as a -- as a taxpayer, I think
it was really suspect that all but really one of the elected
officials didn't disclose publicly that they are on the TCA
Board. And so, you know, from the get-go, it's very suspect
that they didn't divulge that and they're predisposed and 
bias to the toll road. With that said, you know, we've 
been over this ill-fated toll road in numerous hearings, 
since 2,006. The last hearing was actually, security quoted, 
over 6400 people that showed up at Del Mar.

So, the public has speaking out -- has spoken 
out against the toll road in thou- (sic) -- in the thousands 
of numbers. This is another blatant attempt by the toll 
road, the TCA, to circumvent CEQA and to also circumvent the 
public process. And I urge to you deny that permit on that 
basis. Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Mr. Franklin and --

uhm-m-m -- Graham Hamilton.

Bill Holmes.

And a Ryan Johnson, after that.

UNIDENTIFIED SPEAKER (FEMALE): Ryan had to leave, 
as well.

VICE CHAIRMAN MR. STRAWN: Mr. Franklin here?

MR. HAMILTON: Hello, my name is Graham Hamilton. 
And I serve as the Chairman of the Board for the Los Angeles 
Chapter of the Surf Rider Foundation. Thank you for having 
us all here and allowing me the opportunity to speak.

It's clear that, in order to push through a 
project that was resoundingly rejected by the California
Coastal Commission and the Bush Administration, that the Transportation Corridor Agency is trying to circumvent State and Federal law through segmentation. And I would like to suggest today that, if the TCA and its supporters are really concerned about reducing traffic congestion, they should start thinking beyond highways.

Community leaders, today, have cried with anxiety and excitement, "Growth, growth, growth." And population growth here in Southern California shows no signs of growing. But if building more toll roads is the only solution, it will be -- it won't be long before these prized communities are nothing by highways. There's nothing wrong with building roads. We have to be clear and forthright about why and where and how they're going to be built.

TCA has been trying to utilize this toll road for well over a decade, now. And, after consistent rejection at the State and Federal level, they've chosen to obfuscate their plan and misrepresent their intention. What is clear is that TCA doesn't seem to understand or simply refuses to acknowledge the full environmental impact of this shady project.

THE PUBLIC EN MASSE: (Laughter).

MR. HAMILTON: The San Juan Creek and surrounding watershed is already severely impaired ecological system. Even if the TCA can ensure all of their mitigation proposals,
there's no question that this project will ultimately push
this highly sensitive environment beyond repair.

With that being said, on behalf of clean
streams, sediments, salmonides (phonetic), surfers and the
Los Angeles Chapter of the Surf Rider Foundation, I would ask
you to deny this permit. Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Mr. Holmes?

Mr. Machado?

Robin Pozniakoff?

Jeff Rizzie?

Robert Siebert.

UNIDENTIFIED SPEAKER: Here we go.

THE PUBLIC (MR. RIZZIE): Hi, my name is Jeff
Rizzie. I'm not affiliated with anybody. I'm just a
concerned citizen. And I've been opposed to this toll
road -- toll road extension for 10 years now. Found out all
the hearings and all the meetings and I'm -- just can't
believe it hasn't died yet.

I'm a teacher. I teach at high school. I'm
married. I live in Orange County and I'm a commuter.

And I'm also a union member. And I have -- I
mention that, because I notice a -- (mumbled) -- union
members who had a slogan on their shirt that said, "Good
roads equal good jobs." Problem is, 241's not a good road.
Plain and simple.

They make a claim that it's 25 percent of the highway in Orange County. But I notice they didn't say it carries 25 percent of the traffic. You don't have to look at a traffic flow map to see that their -- the -- their roads carry a fraction of what's on the freeways. And that -- and they also mentioned that they've been around since 1986. Yet, in 2,013, our freeways are still a mess.

So, after 50 more miles of toll road, they haven't solved their transportation needs yet. And it doesn't seem like a real good traffic route, to me. So, in my opinion, the right way to go here is to fix I-5, improve connecting roads, operate on that transit. And I realize there's some hurdles to overcome. But that -- see, that's the direction we need to be moving in.

As far as some of the environmental issues that have come up, today, I'm not Ph.D. I didn't study geology yet -- (inaudible) -- the questions. And, as I mentioned, I teach high school. But uhm -- uh -- you know, I heard promises about them creating open space. It's already open.

We don't -- we don't need you for that.

Thank you, though.

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MR. RIZZIE): I do know enough to know
that you can improve the environment with concrete, with steel. And highways don't improve water quality, ever, for the most part. All right? So, when the TCA says that this is the most environmentally -- (mumbled) -- and friendly option, I think that's not quite accurate. I think the most environmental and friendly option would be not to build this road at all, not to billdoze (sic) -- bulldoze -- excuse me -- or scam remaining open space or pay to drive highways that doesn't solve our traffic problems:

Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

BOARD MEMBER (MS. KALEMKIARIAN): One question.

Either you can answer it or someone of (unintelligible). What is the "safe trestles" (phonetic) for?

THE PUBLIC (MR. RIZZIE): "Safe trestles?" This a -- uh -- a part of the coalition. And I've -- I've been a volunteer. I'm not a -- a member of the organizations. I'm not on the board of any of the organizations. But I've been volunteering for quite a while. But this is just part of their coalition.

Trus- (sic) -- "trestles" is -- is part of the surf break (phonetic) that will be affected by the runoff from -- from their highway.

BOARD MEMBER (MS. KALEMKIARIAN): Oh, so -- (unintelligible) by itself?
THE PUBLIC (MR. RIZZIE): Yes, right.

BOARD MEMBER (MS. KALEMKIARIAN): Thanks.

VICE CHAIRMAN MR. STRAWN: Thank you.

UNIDENTIFIED SPEAKER: That's an old T-shirt.

That was 2,006.

UNIDENTIFIED SPEAKER: Quite a long time.

(Simultaneous speech throughout audience; unintelligible.)

VICE CHAIRMAN MR. STRAWN: Mr. Siebert?

THE PUBLIC (MR. SIEBERT): I live in Orange and not really close to coast. But I have visited this area, often, and like it as it is. The last speaker pointed out that the area is already open.

And a prior speaker, maybe 10 or 15 back, pointed out that -- that if TCA could manage the water so well that if it's not enough to keep the mosquito going but there's plenty for deer and bigger now, some think it's a pretty neat trick. And, if they can pull that off, maybe we can -- maybe should let them have at it.

Besides that, of course, I didn't -- I got involved in this issue back, first time and the second time; and then I got tired of it. But I don't know how many times you have to beat this thing down before you have to give up
on it. It pre- (sic) -- pretends that it -- and it -- to
some degree, it may help with the traffic; but I don't know.

If ya talk about coming west on Ortega
Highway, yeah, it would help. Because everyone gets
(unintelligible) when it gets near San Juan. But people who
come west usually go east the next day. And where that
funnel is backwards, then it makes it worst. I don't see any
big gain there, at all.

I don't wanna repeat everything that everyone
else has said. But I -- I really didn't think that better
projects can be had. Serious talks are now being held on the
San Diego to Los Angeles section of Amtrak. That -- there is
work that could be done there, substantial work, that won't
really affect the surrounding countryside, like, changing the
tunnel system down at San Di- (sic) -- near San Diego.

If you get more people on -- on trains and
fewer in cars and on freeways, I think the road will be a
better place. And that's all I have to say. Thank you.

CHAIRMAN Mr. Morales: Just -- just for the record,
that speaker's full name is Robert Siebert.

THE PUBLIC (Mr. Siebert): Robert. "S," like Sam,
i-e-b, like "boy," e-r-t, like "Tom."

VICE CHAIRMAN Mr. Straw: Jack Skinner and then a
Nancy Skinner.

And I believe, after that, there's a Mr. Taff
(phonetic). But I think he may have already left.

THE PUBLIC (MR. SKINNER): Members of the board and Chairman, my name is Dr. Jack Skinner. My interest is internal medicine, but a specially swimmer-related illnesses.

I'm here to just make a couple of focal (sic) comments. One is that, under the 404 Permit, oftentimes the -- - the Corps will allow off-site repair and habitat exchange. I have a book here (show of document) that was written by the Corps. They went back and looked at these mitigated -- mitigation projects, here in Orange County, that had been issued regarding off-site mitigation. And when they went there, some of the projects never were starts.

Some of the projects were clearly just dead trees, because water was being pumped to them at a higher level; and there was no natural flow to the waters of these areas. But what is really disturbing is that there was no real oversight of these projects. And what I would strongly ask that, if -- if one's gonna give some type of permit for off-site mitigation, clearly, they focus on -- it has to be checked frequently. It has to guarantee that it's performing its function and that it's written into the -- the agreement, so that CalTrans can't walk away from it. Uh -- whether it's in two years, three years, they're responsible and they have to keep it going.
Now, the second thing that's kind of interesting, just from a -- (inaudible) -- standpoint. And I've heard so much talk about water quality and everything. I think we all know that San Juan Creek is on a 303(d) list. We know that people that swim in water that's exiting San Juan Creek have a higher rate of swimmer-related illnesses than swimming in other parts of California. So, they -- they were the worst. And this has been proved with an epidemiological study. And the inner concite house (phonetic) and the Tico-po (phonetic) environmentalists are obviously high enough to be on that 303(d) list.

Everybody is bragging about all of these filters that are being completed. How they're doing this filter, putting in a sand filter or gravel filter. But that's not taking out the pathogens or the fecal chloroform (phonetic) or the inner concite (phonetic). I think one has to be certain that, before you put in these things that, clearly -- clearly the -- the floats that are coming off have had inner concite (phonetic) fecal chloroform removed or, otherwise, you're making a situation worse. It's -- uh -- uhm-m-m -- actually uhm-m-m -- make -- and, clearly, this needs to be clarified as to the effect -- efficacy of this, because we're talking about water quality.

We know, already, they're getting illnesses at a higher rate in this creek. And if, indeed, fecal
chloroform are in or outside are making it through this
treatment process, it -- I don't think you've made that much
head- (sic) -- headway of all this bragging with these filter
mechanisms. Thank you.

BOARD MEMBER (MR. ANDERSON): Doctor, can I just
get one?

THE PUBLIC (MR. SKINNER): Yeah.

BOARD MEMBER (MR. ANDERSON): Just a quick
question. Are you familiar with the Austin filters and if
they do reduce or increase bacteria?

THE PUBLIC (MR. SKINNER): No, I -- I'm not. But I
-- you keep talking about gravel filters. Unless it's got
some type of membrane removal technique, you're not gonna
take out the -- the pathogens that we're talking about. So,
when you're bragging about the rock filters -- uh-h-h -- uh
- it -- it -- it doesn't take much science to realize that
that's -- that's not gonna take the thing out, the things
you're worried about.

BOARD MEMBER (MR. ANDERSON): All right.

THE PUBLIC (MR. SKINNER): Normal viruses,
especially. Yes, that's what's made responsible for 90
percent of the swimmer-related illnesses that you hear about.

BOARD MEMBER (MR. ABARBANIEL): Dr. Skinner, is it
possible for you to leave the reference to the Army Corps of
Engineers document -- (interrupted)
THE PUBLIC (MR. SKINNER): Yes, I've got it right here.

BOARD MEMBER (MR. ABARBANEL): -- with our staff, so that we could have a look at it, right here?

THE PUBLIC (MR. SKINNER): Sure. Uh-h-h -- will you give it back?

THE PUBLIC EN MASSE: (Laughter).

BOARD MEMBER (MR. ABARBANEL): I -- we don't even really think we're really gonna take it from you. But we just want the title, so we can get our own copy.

THE PUBLIC (MR. SKINNER): Well, you know, it's hard to get. Because I had -- it's a thesis that was written. And, to get that thesis, I had to write to Chicago. But Mike Sudall (phonetic) wrote it, with the Corps. But let me give it to ya and somebody, please, bring it back.

THE PUBLIC EN MASSE: (Laughter).

BOARD MEMBER (MR. ABARBANEL): I'll put it on your door step. Thank you.

VICE CHAIRMAN MR. STRAWN: Mrs. Skinner.

THE PUBLIC (MRS. SKINNER): Good afternoon, Mr. Chairman, Members of the Board. My name is Nancy Skinner. My husband and I have been involved in water quality issues for about 25 years. But I'm not really -- I'm not really here on the water quality so much as I am here to
tell you that, from a private citizen's point of view, it's just very discouraging to see what has happened with this toll road.

We all went down to Del Mar to express our concerns about it and -- uh -- fortunately, the Coastal Commission and Department of Commerce recognized that it was not the right thing to be doing. And here we are -- any reasonable person recognizes that the -- the -- that the first steps to finishing probably the same design.

Now, the -- I have talked to people with the TCA -- what's the name of you, again? "Toll road," I'll just call you that -- uh -- (giggle) --

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MRS: SKINNER): -- now, today. And they are saying they don't really know what's gonna be the next part. Well, I -- how can you begin to tell what to do if you don't know what the next part's gonna be? We had a State and anti-degradation policy, that is a good one. And I don't think you should evaluate it, just on this one assessment you have.

If it's -- if we were to follow the same plan -- plan as we had before, you're going to be impacting San Mateo Creek, the trestles area, (mumbled) the end of San Mateo, a number of other areas that's on this plan as I understand it, anyway. And it seems like you have to
evaluate the anti-degradation policy based on that entire area. Let's find out where they're gonna go, first, before you approve this segment of that toll road. That's my appeal to you. I really think that's important, that we recognize what they're gonna be doing.

I would like for them to be doing something different than what they did before, but not in the same area where it takes it down to I-5. I don't think that solves the problem, anyway. I think we need to be up parallel to I-5, all the way down to San Diego that's comfortable. That would be my hope, anyway. Thank you very much.

VICE CHAIRMAN MR. STRAWN: With that, I believe we've gone through everyone with a red card?

Oh, we have one more.

THE PUBLIC (MS. HEWITT): I wasn't going to speak. But my side has been poorly represented because everybody had to leave early.

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MS. HEWITT): I'm not enjoying what you're laughing about. I didn't hear the joke. Maybe you let me hear it.

UNIDENTIFIED SPEAKER: To beat traffic.

THE PUBLIC (MS. HEWITT): Oh. No, jobs.

Thank you. My name is Gayle Hewitt (phonetic). And I'm here to oppose this permit being given
to the TCA. I don't know if any of you live in this area and
if you travel on the 241. But there is very little traffic
on that highway to justify doing another segment and to
severely impact the environment that it's going to need to
displace -- uh -- to make the highway.

We've fought this so many times and it's
just -- it's like cancer. It keeps coming back. And I feel
like I'm at a TCA fraternity instead of an environmental
fraternity, because they had to leave; they couldn't stay.
And I'm very upset about this whole process.

We've defeated it and they're trying to
circumvent the decisions that were made, previously, because
they didn't like them. There's money behind all of this, not
the environment. And I'm going to take a stand against money
and favor the environment. Because this is where we have to
live and this is what we need to care about. We need to care
about the environment more than money.

Now, this is money driven. If you want a
highway for traffic alleviation, then make it a free road in-
(sic) -- instead of a toll road; and we can do that. In
fact, they had to approve those plans prior to allowing
14,000 homes to be built in Rancho Santa Margarita. That had
to be a precursor to being allowed to build, in the first
place, a road system.

So, we don't need a toll road. We need free
roads. And we need to protect the environment from all the people that want to be greedy and just are in it because they care about money or they care about their own agenda; and they're not looking at bigger picture. I wanna look at the bigger picture and I wanna protect our environment.

Thank you very much for your time.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Thank you.

And I do wanna state for the record that, even though a lot of people had to leave early, we do have records of their speaker cards. And, so, that will be recorded that they were here to speak.

Yes.

(Herefore, board members conferred.

Pause in Proceeding 3:12 p.m.)

VICE CHAIRMAN MR. STRAWN: Next, we're gonna start down the green cards, which are people supposedly in favor. Although, there seems to be a little mix up here.

Mr. Bodenhamer. And then he'll be followed by Darren Blume.

UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): Hi. I'm actually here -- uhm-m-m -- Schott Scheffel, city council member of Dana Point. I filled out a card. But he wasn't
able to stay. So, I'm here to read the letter on his behalf.

That's okay?

CHAIRMAN MR. MORALES: (Nod of the head).

VICE CHAIRMAN MR. STRAWN: I think so.

UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL):

Okay.

BOARD MEMBER: Did -- do we have card for you?

Or --

UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): For --

(mumbled) -- for Schott Scheffel. Yeah, he told me -- he should already --

(Simultaneous speech; unintelligible.)

UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): -- have a card. I tried to called, but I --

CHAIRMAN MR. MORALES: It --

THE WITNESS: Okay, thank you.

I'm a member of the Dana Point City Council, but currently serving as vice chairman of San Joaquin Hills Transportation Corridor Agency Board of Directors. I'm writing to urge your support for the Waste Discharge Requirement Permit submitted by the Foothill Eastern Transportation Corridor Agency for the Tesoro Extension
Project in Orange County. I support needed and well-planned transportation projects, such as this one, because I recognize how good infrastructure projects help build prosperous communities. With a large scaled residential and commercial construction already underway at Rancho Mission Viejo, it is vital that the I-5 has an alternative route for people to travel.

Southbound needs to be the Tesoro Extension of the 241 corridor. Currently, I-5 is the only north-south non-arterial (sic) -- or non-arterial -- route available for residents and businesses in the South Orange County. I-5 also serves as a primary route for movement of goods to and from Mexico and Ports of Los Angeles, San Diego and Long Beach.

TCA proposes to create, restore and/or enhance 34.82 acres of habitat for .4 acres of impact the Tesoro Extension will have on surface waters of the State. Additionally, TCA has committed to building the five-mile Tesoro Station, utilizing Best Management Practices. These BMPs will maintain existing drainage flow pattern and treat all (unintelligible) runoffs the maximum extent practicable before discharging to receiving waters in order to maintain existing beneficial uses and meet water quality objectives established by the Regional Board and the Water Quality Control Plan for the San Diego basin.
I understand the need for viable transportation project and encourage you to approve TCA's WDR application. Sincerely, Schott Scheffel.

CHAIRMAN MR. MORALES: Thank you (nod of the head).

UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): (Nod of the head).

MR. BODENHAMER: Good afternoon. I'm Mark Bodenhamer. I'm the CEO of the San Juan Capistrano Chamber of Commerce. I wanted to join everyone else and thank you for coming up to Orange County today. It really helped cut a lot of people.

The City of San Juan Capistrano is unique in Orange County. We're surrounded by many communities which were master planned with roads which were laid out to accommodate certain number of residents that was planned at the beginning.

Our community and its roadways were mostly laid out over 200 years ago by the founders of the Mission San Juan Capistrano. This great preserve, though, it was laid, the Rail line, San Juan Creek, other geographical sediments (phonetic) and numerous historical landmarks. There simply isn't room to enhance or reconfigure the roadways in our town to accommodate the growth of the region.

Due to that, we're already underserved by the
transportation in the structure of town and the surrounding area there are 14,000 homes planned for Rancho Mission Viejo. A gentlemen, earlier, suggested that building this toll road will encourage new growth. It isn't about encouraging growth. It's about dealing with reality that's happening here.

Orange County is a desirable area to live in. It's going to continue to grow, whether we like it or not. Rancho Mission Viejo is going to be built. There's going to be 14,000 homes, 30,000 residents and that's coming whether we like it or not. We need this viable piece of traffic and infrastructure to help accommodate the reality of what's here now and what's coming in incoming years.

In addition to the traffic benefits, we see immense value in providing secondary route to get out of the area, if something major happens on I-5. (Mumbled) -- economic impact of this project and the jobs it's gonna create will be very helpful to our local economy. Our organization has traditionally supported the full completion of the 241. But our board wanted to take a specific look at this part of the project, because it'll have a direct and immediate impact on -- (mumbled). They voted unanimously to support this segment of the project, because it's gonna have great benefit to us, to the communities east of us, to traffic in our town, opening -- (inaudible) -- and jobs and
economic development in San Juan Capistrano.

BOARD MEMBER (MR. ABARBANEL): Since your board voted for the entire project --

MR. BODENHAMER: Yes, sir.

BOARD MEMBER (MR. ABARBANEL): -- could you tell us what that is, please?

MR. BODENHAMER: The board voted to take a position to -- (mumbled) -- the completion of the 241, all the way to the I-5 so that it connected on the eastern corridor down to an area south of San Clemente. Because they, as you know, I think -- (mumbled) -- difference is that it's not been determined exactly where. There is a process that is ongoing, dealing with a number of government agencies, municipalities, the Navy, Camp Pendleton. It's a complicated decision figuring out the appropriate place to put it. Once -- once that's been determined, we'll take a look at the specific route and make a final decision on that.

But, in general concept, we think it's necessary for the region and for our town to have that completed. Connect the I-5.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: And then -- um -- Mr. Burke.

And, after him, Mr. Davis.
MR. BLUME: My name is Darren Blume. I'm a project manager for Flatiron Construction Company. And we are the largest road contractors in California. In my 25 years of experience in the construction industry, I've had the unfortunate experience of seeing our environmental process get hijacked by a very vocal but minority portion of our population to delay the development or infrastructure process. And population growth will come, whether we like it or not.

I think that boards like yourself are -- uhm -- responsible to our community to have the development in the best way possible. And the Tesoro Project does that. Gold standard -- uhm-m-m -- uh -- for water treatment, for the runoff, for the entire environmental process. And the construction of this project will actually improve our environment by minimizing congestions throughout different parts of the community. And so, with that, I'll urge you to move the process forward so our society can improve in that area.

Thank you.

VICE CHAIRMAN MR. STRAWN: Thank you.

MR. BURKE: Good afternoon. My name is Mike Burke. I'm President of the San Clemente and Southern Orange County -- (mumbled) -- I've been for 30 years. And I'm also urban planner. I probably -- I think that I think like
hundreds of thousands of people in Orange County and, particularly, in Southern Orange County, that this roadway -- uh-h-h -- even if it's a small five-mile extension or if it's ultimately extended further than, that it's a critical part of our transportation needs. And I think, repeatedly, through various transportation planning organizations, those needs of the county have been identified and -- and the answers'll be sought by lots and lots of experts who are focused on that. And -- uhm -- it's interesting to me that the discussion today is so much about what is the right kind of highway that surfs out Orange County.

Because my opinion is we have agencies that are focused on that purpose and who, quite frankly, are -- are best suited to do that. That's not why I'm standing up here. The reason why that I came today is because I'm speaking about -- uhm-m-m -- water quality's important to me, personally, as to -- and to all my neighbors in San Clemente, you know, we -- uhm -- adopted attacks on ourselves, to -- to water quality and you think it's literally important -- (mumbled).

The toll road's extension to the Torsor (sic) -- to Tesoro, in my observation, is the best most comprehensive water quality program that's been -- on any highway seen anywhere. Currently, in the past or that I know about for the future, I think you should approve this -- our
petition, because -- not just because it merits it on its own. But it also, it's a fabulous example for other highway projects and regional facility -- (inaudible) -- projects that you can show the living breathing example of how to do things right. I'd like to share that thought with you today and that's why I'm here.

So, thank you for your time and thank you for coming to Orange County and -- and allowing us -- to make it easier for all of us just to talk -- talk to you. Thank you.

VICE CHAIRMAN MR. STRAWN: Davis. And then Brad Fowler. Followed by Richard Gardner.

MR. DAVIS: I'm shocked that there is not more than one Davis here today.

I'm Bill Davis. I'm the environmental advisor for the Southern California Contractor's Association, which is the only all union civil construction operation in Southern California. All over, our contractors employ the union people that have been at this meeting today. And several of 'em will be on this project if you will all consent to it's -- it's -- uh -- construction.

I wanna thank you, very much, for having this meeting today (indicating) here. Otherwise, I would have faced a five to six hour drive to San Diego. Because the I-5 is really hard to get through, particularly, in the San Juan Capistrano area.
As we gather for meetings like this, I -- I try to think about your role. I'm sure that you're tired, probably a little grouchy around the edges by now. And I just urge you to take a philosophy -- uh -- at this. I thought about it, this morning. And I thought that you all represented, in a way, Diogenes (phonetic).

He was a 4th century Greek philosopher who would carry a lantern through streets, in Athens, in the daylight. And people wanted to know why he was wasting all of that oil. And he said that he was looking for the truth. He was looking for an honest man. And, to find the truth, you all are gonna have to rely on the facts that are presented to you, not the opinion or passions that you've seen before you, in -- in this hearing, so far.

The facts seem kind of simple. I mean, we're talking about a five-mile road that will, in fact, service 14,000 new home. But --- and everybody talks about 30,000 people. But I'm thinking there might be more than two people in every house. It's gonna be a road to the future, for that section of Orange County.

And Orange County is rising from the ashes of the great recession. In fact, it is the leading housing construction county in the State of California, right now. That Rancho Mission Viejo project is actually getting under way. People are getting equipment out there and fill pads
and streets and sewers and waters; and then they'll build the houses. And they need access to the rest of Southern California.

And the only access they'll have, if this road is not approved, would be I-5 coming through San Juan Capistrano, which is already a mess to get through. The facts are simple. The opinions and passions are complex. And I know that you will have to sort through all that. I appreciate you taking the time and -- uh-h-h -- and granting us all the time to talk with you today. Thank you.

VICE CHAIRMAN MR. STRAWN: So, Mr. Fowler? I don't see 'em.

Mr. Gardner, followed by Mr. Hernandez.

THE PUBLIC (MR. GARDNER): You don't wanna take a break, do you (laughter)?

EN MASSE: (Laughter).

CHAIRMAN MR. MORALES: This'll be a good time, now that you mention it.

THE WITNESS: (Laughter), gee.

I'm Richard Gardner, from Capistrano Beach, a long time watershed advocate, water quality advocate. And I'm the Director of Water District for about 16 years. I'm a Southern California transit advocate, for almost as long. Also member of steel head, did the surveys for the steel head restoration plans.
I'm into the watershed, that's what I like to do. I take my grand kids hiking all the time. I, unfortunately, did not get a good review of the tentative order because I was -- I thought it might displayed on TCA website. I was looking for other information, the actual transportation part of this project or an EIR. I couldn't find it. I couldn't get a response from TCA, so that was a difficult problem.

But I did read the tentative order on your website. I thank you. The reason I have a green one there is because I think you did a great job and I think you -- you know, you should commend staff on that effort. I did come with a few comments.

And I -- I think you did a good job on the wetlands creation and also on this -- we'll call it pretreatment -- (inaudible) -- or virus wells or other wetlands treatment. Wetlands -- of course, wetlands treatments does -- can reduce bacterial concentration by over 90- -- 98 percent. So, I'm aware of what a good treatment plan you have here. But, as the state of the art, I'm not sure, because that keeps change.

For instance, in the next canyon over, the Kinyata (phonetic) Gobernadora, we now have a complete catch thing -- system, where all the runoff comes in, it's caught, captured and pumped in to be reused as recycled water. So,
maybe, that's the state of art. But that was six years ago. The real state of the art might be that some of this water could be sequestered and actually become for (inaudible).

So, for that, I just met with the San Juan Beach and authority committees for many years. And I also voted to approve ground water treatment plans in San Juan, led, captured and use 5,000 acres (mumbled) feet, a year, in drinking water. With things in perspective, we have a project here before you that involves a hundred acres of impervious or road service. At a hundred acres, figuring of one-inch rainfall, that we're looking at 8,000 or -- or -- or 8- -- uh-h-h -- I think it's somewhere around 8 acre a feet in an hour or somewhere around three million gallons of -- of water, coming down. That's how much water it is, three million gallons.

So-o-o-o (sic) -- you know, the question's how many rooms of this size are we talking about? This is your water quality. I'm trying to restrict my comments to water quality not to the transportation issues; or whether it should be free road, whole road or where the road should go. That's a different issue.

It shouldn't be even before you, even though you've asked a good question. Ya know. What's this project? But I'm not going there. I'm going to the waterside.
From the waterside, you might have a sur-vestral (phonetic), three things. The long-term watering program, I think you're over restrictive in asking for a monthly water monitoring. That might be too much. I think you need a adaptive management, so that you can modify that and reduce the monitoring requirements placed on whoever the entity is that does this. That entity, I think, should be a resource conservation district that would exist long term and not a (sic) entity, like the TCA, that could be disbanded, at any time, and being made a department under OCT or some other government function.

So, the -- the other thing is, that water I was talking about should be ground water recharge. Your tentative permit does not show that the two -- the -- the two that flow off of there is the storm flows. But what happened to the ground water recharge flows? The ground water recharge flows have been impacted.

Finally, I think you should put in the plan that it have an integrated component. We now know that doing integrated projects worked better. This doesn't have integrated. It's not integrated. It's a toll road and a runoff. Done.

You need to look at integrated, for water resource. And then, finally, that -- uh -- well, you've got the adapted management comment, so that we can keep getting
better.

And thank you for ratcheting it down,

Mr. Gibson.

VICE CHAIRMAN MR. STRAWN: Mr. Hernandez.

And, then, Mr. -- uh-h-h -- Ms. Hodges.

(Reviewing card). This one's a little hard
to read. It begins with an "L." (Giggle), something "Lek"
-- "Lekness" (phonetic) or something.

And a Mr. Lowe.

Who -- who do we have next, here?

MR. LOCHRIE: I'm Dr. Bill Lochrie. Maybe that's
what that -- uh -- L-o-c-h-r-i-e.

UNIDENTIFIED SPEAKER: Just go 'head, Bill.

MR. LOCHRIE: Okay. Anyway, I just want to --
uh-h-h -- the reason I'm here -- first of all, give you
background. My name is Dr. Bill Lochrie. Lived in Orange
County for approximately 40 years. And I'm a retired
engineer program manager for the Boeing Company.

And -- uhm -- the main reason I'm here,
you've heard all the other stuff. You've heard that this
great environmental protection, they've gone to extremes to
protect the other environment. No tax dollars are involved
in this project. It's going to immediately provide quick
jobs.

The thing I want to emphasize is, I'm looking
for the real long term. And, that is, the quality of life to
improving the quality of life for the -- the people of Orange
County, my kids that are here, my grandchildren that are
here.

And the example that I wanna give, I moved
here in the 60's. Started out in Downey, California; North
American Aviation. Little land, 200, 300 people. We picked
up, moved to Anaheim. And, in eight years, very very good
quality of life, terrific.

We got people from all over the country to
move here. We went from 300 people to 30,000 people, in
eight years. One of the largest avionics companies in the
world, actually, our next division of Northern American which
eventually became Rockwell and, now, it's Boeing.

But the important thing there is, it provides
that you had the infrastructure and everything that allowed
people to come here. When they came here and interviewed,
they wanted to work here. And, right now, we've gone from
200,000 people in aerospace industry, in the 80's. We're
down to, like, 20-, 25,000 thousand. Now, these are high
leverage jobs.

Every job like that generates four other
jobs. So, those 200,000 aerospace jobs mean a million jobs
in southern -- in California, and most of it in Southern
California. We're now down to about 10 percent of that.
And, if we don't stop the bleeding, unemployment situation is just gonna get worse for this state. Believe me, I've seen it. I've been involved in decisions since we moved out of the State.

You've got to improve. There's a lot of things you go in and make your decisions like that. But, certainly, the infrastructure's one of 'em. And you cannot have people jammed up on the freeways and say, "Oh, I'm gonna stay and I don't wanna live here in Southern California. We're gonna move to someplace else."

That's what's happening. People are voting with their feet, right now, and leaving the State. And you people can help out, by approving this and letting this project go on. Thank you.

VICE CHAIRMAN MR. STRAWN: There may be a little confusion. And some of you that are in favor are wondering why you didn't -- are not in order. It's because the same people that did all these cards, in triplicate, and put 'em on the wrong colored card. So, unfortunately, you're gonna come next.

Mr. Madrigal.

Mr. Mangione.

Barbara (phonetic)?

And then a Mr. Salerno.

THE PUBLIC (MR. MANGIONE): Good morning. Thank
you for giving us the opportunity. I wasn't going to speak. 
So, I really don't have a prepared statement. But I've heard 

a lot of talk about this -- (interrupted) 

BOARD MEMBER (MR. ABARBANEL): Name? 

THE PUBLIC (MR. MANGIONE): John Mangione. I'm a 

resident of Capistrano Beach? 

VICE CHAIRMAN MR. STRAWN: And you took the oath? 

THE PUBLIC (MR. MANGIONE): Yes, I did (raise of 

hand). Thank you. 

I heard all this talk about bacteria coming 
down. And about 20, 25 years ago, I had a boy scout troop 
down there. And I had a professor from UCI, who was an 
environmental scientist. And it was the first time I ever 
heard -- uh -- the -- the first rain water, don't put your 
hands in the water. This stuff has the accumulation of 
summer long animal, bird droppings and everything else in 
that water. 

Don't even go swimming after the first rain. 

Let it -- let it wash out there, a little bit. I -- I never 
realized that. 

But, you know, that bacteria existed long 

before the toll road did. And the toll road, the -- the sand 
swales and all that, I mean, toll roads give oil particles 
and -- and maybe some solid particles from tires and you -- 
you know, that's what that's trying to catch. Right next to
San Juan Creek is probably the largest horse boarding facility in Orange County. I've heard up to -- it was a thousand, 2,000 horses up. They do rodeos, great thing, great events.

They do rodeos. They do steeple chase things there. Those horses are walked and -- and -- uh-h-h -- in that creek bed, as far as I know, they don't use toilets. You know, the droppings just happen.

EN MASSE: (Laughter).

THE PUBLIC (MR. MANGIONE): And now I've heard that the baby beach in Dana Point and -- and the beach in Doheny, there's so many sea gulls there, that it's becoming a problem with the sea gull droppings. And -- and -- and you know, I applaud the environmentalist and the watershed folks. I live down there. I like to see these things protected. I think this -- this roadway -- I also want.

I'm in favor of this road. I think this roadway has done -- gone a long way to mitigate these problems. But those problems are there. They exist. I'd love to see us do some work in San Juan, as -- as wetlands restolate (sic) -- restoration maybe put some muscles in there or do something to get that -- that bacteria waste from animals outa there.

But I -- I'm not so sure we should be blaming the toll road for that. Thank you.
THE PUBLIC (MR. MARGO): I'm not sure that you
called my name, "Margo"?

VICE CHAIRMAN (MR. STRAWN): I think I did.

No?

Probably a blue card. And we're gonna get to
you after a couple more.

Uhm-m-m -- Mr. Salerno?

THE PUBLIC (MR. SALERNO): Right here.

Yeah. I'm prepared, also. Nice to see all
of you.

You know, I've heard about the frogs and I've
heard about the steel head trout, which sounded -- uh --
nice. But -- uh -- my deal is with the -- and I represent
Cement Masons Local 500, Santa Ana. I've been a cement mason
since 1966.

I had a detour with Vietnam and I became a
combat medic, which probably changed my whole life and the
way I see people. After you've seen the arms and legs and --
and -- uh -- uh - intestines and had to work on everything
from rotten feet to -- you -- ya know, everybody went through
me before they went to the doctor.

When I got back, there was times -- and it
(sic) still are times that a guy'll fall down in a restaurant
and I'll run to 'em and another guy runs to 'em; and I tell
them I was combat medic in Vietnam and he tells me, "I'm a
doctor." So, I get up and leave. And I'll never forget the last time. He says, "Thanks Doc," on the way out.

I work with a lot of people that are really hurting, right now. They've got three or four or five kids at home. Big families, like in the 50s where I grew up. And they need jobs. And I listened to the TCA. It sounds like they've done a really good job.

The engineers and all the scientists are figuring everything out. And -- uh-h-h -- and I'm -- I support this 241 a hundred percent. And I'd like to have our cement masons out there. Thank you very much.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN (MR. STRAWN): Phil Schwartze and then a Susan Singh.

And we're done with the green and we'll start down the blue.

We get a break, he says?

THE PUBLIC (MR. SCHWARTZE): Chairman, Members of the Board, I'm Philip Schwartze. Actually, I was standing here on Monday night. I'm -- with the Costa Mesa City Council, with the project.

Chairman, 40 years ago, I got out of graduate school. And was hired by the City of San Juan Capistrano as their first trained city planner. When I moved there, there were no signalized intersections and no supermarket. As you
can see, the place has changed a lot over those years.

Subsequent to that, I went on to run the planning department, in Anaheim. And, while I was doing that, I served three terms as a councilman in San Juan Capistrano; was on LAFCO (phonetic), for eight years; and, during that period, incorporated the Cities of Mission Viejo, Laguna Niguel and Dana Point. During that time, I was also President of the Orange County League of Cities.

And I'm telling you all this just to show you that I'm giving you 40 years of perspective. I have a long view. I believed in balanced infrastructure. And I'm providing you what I believe to be the true big picture.

Well, after 40 years of living in San Juan Capistrano, I moved to North San Diego County. I'm now a resident of Bonzo, me and my horses, down there. And I drove up, just like you guys did today.

It's very clear to me that we need the Tesoro Extension piece. A very long and complicated project. Actually, I was running the environmental impact report. Did the original 241 extension, some 25 years ago.

And I believe this extension is necessary. I think it is simple and it will alleviate a lot of traffic impacts that are there. Ultimately, it will provide, hopefully, a link that will ultimately connect down at the 5. That's a whole 'nother public -- (unintelligible) -- that
you guys are gonna have. I think it is a very viable action, I hope that this court will take some action on that. And as a separate and aside, I want you to know that I'm very irked at some something that occurred here at the podium few minutes ago. And that was, I am working as an environmental planner and a land planner for a large property owner who is trying to contribute to and be a major portion of what the folks at Trout Unlimited are doing. And for them stand here and tell you that the impacts of what's going on with Tesoro Extension are lessening the impacts being proposed by the Trout Unlimited folks is completely bogus. There's no way that that's happening. And I applaud what the Trout Unlimited folks are trying to do. I think the long range plan that they've got is gonna work. But either they don't understand what they're doing or they don't understand what they -- TCA is trying to accomplish, by doing this extension. It's a side view of something that's going on. I would hope that you would approve the extension. And I'll be back here in another 25 years, or whatever. I'll ride up. I'll ride my horse up the Bonzo. Just to come to the club (phonetic) experience. Hopefully, improve that extension also, when and if we ever get it before you. Thank you very much for having us up here today.
VICE CHAIRMAN MR. STRAWN: Suzanne.

THE PUBLIC (MS. SINGH): Good afternoon, Chair, Vice Chair and Board Members.

My name is Suzanne Singh and I serve as the President Rancho Santa Margarita Chamber of Commerce. And it is pleasure to be here, today, to speak in support of the Tesoro Extension. Economic growth and job creation has always been a focus of the Rancho Santa Margarita Chamber of Commerce. And in the past several years, this priority has been heightened due to the economic downturn.

The Tesoro Extension is crucial to the economic growth or our local business community. This five-mile extension will allow an entirely new customer and client base to discover Rancho Santa Margarita and help to sustain our businesses. Our business community accounts for a significant amount of tax revenue that supports the importance of government programs that enhance the life of our residents and businesses throughout the region. The Tesoro Extension will create many jobs and provide economic growth for our region. Businesses throughout South Orange County and Northern San Diego County are impacted, daily, by the lack of an alternative route to the I-5 Freeway.

This project will help to alleviate some of those issues. Environmental impact studies have shown that the projects have a minimal impact and the storm water runoff
is something that is being proposed is state of the art and
creates a runoff flow that mimics nature both in water
quality and in the water's delivery. TCA's going above and
beyond to ensure that this roadway is built to the highest
environmental standard while providing the needed regional
mobility and traffic relief that is required for residents
and businesses throughout Southern California. I urge you to
support the TCA Waste Discharge Requirement Application and
get the Tesoro Extension on the road to completion.

Thank you for your time.

THE PUBLIC EN MASSE: (Clapping of hands).

CHAIRMAN MR. MORALES: Okay. We're gonna take a
short five-minute break.

THE PUBLIC (UNIDENTIFIED): (Indicating), on deck.

CHAIRMAN MR. MORALES: Yes, ma'am.

THE PUBLIC (MS. MAYNARD): I'm an "M." I -- I
think I made out a green card.

VICE CHAIRMAN MR. STRAWN: Your name was?


CHAIRMAN MR. MORALES: Come on (hand gesture). Go
'head, ma'am.

And then we're taking a five-minute break.

THE PUBLIC (MS. MAYNARD): Oh, thank you. Thank
you.

My name is Penny Maynard and I'm representing
the San Clemente Chambers of Commerce. And I'm here to urge your support for the WDR permit submitted by TCA for the Tesoro Extension Project, in Orange County. The reasons for the San Clemente Chamber's support for the Tesoro Extension Project includes the fact the good infrastructure grows the economy. The Rancho Mission Viejo Commercial and Residential project is here with ensuing increase in traffic. And the fact that the I-5 is the only -- is now the only north-south route to South Orange County for business and residence.

This project would exist -- would ease the existing congestion on I-5, while seeing the route extension grow. San Clemente is a bottleneck for I-5 on weekends and the summer traffic. When there have been emergency closures on I-5, I have personally seen from my office window, bumper-to-bumper traffic on El Camino Real impacting negatively these little beaches -- (unintelligible) -- are different and on our local residents' quality of life. Tesoro Extension Project, with the previously approved Lapada Extension would significantly improve this situation.

The Tesoro Extension Project will meet work quality objectives established by the region board and the board of quality control pan -- plan for the San Diego basin and should be seen as a model for other projects with its less than a half acre of impact and a multiple method for storm water treatment that's being proposed. Again, I urge
your support for the WDR Permit for the Tesoro Extension Project. And I thank you for the opportunity to be heard.

VICE CHAIRMAN MR. STRAWN: In my defense, there is a blue card. You may have also done a green one, but I had to pick one or the other. So.

THE PUBLIC (MS. MAYNARD): Okay.

VICE CHAIRMAN MR. STRAWN: Thank you, ma'am.

When we come back, there'll be a Ms. -- uhm -- a John Adams -- or Jim Adams, excuse me. And then Mary Adams for starters.

CHAIRMAN MR. MORALES: All right. Five-minute break.

(Hereafter, short recess commenced. Off the record 3:46 p.m. Proceedings resumed 3:55 p.m.)

VICE CHAIRMAN MR. STRAWN: Jim Adams.

THE PUBLIC (MR. ADAMS): Yes, sir, Mr. Chairman.

Good afternoon, Mr. Chairman, Members of the Board. My name is Jim Adams. I'm a Council Representative for the Los Angeles, Orange County Building and Construction Trade Council. And, yes, I did take their earth -- orth (sic) -- the oath earlier today.

Our council represents affiliated construction
unions and the membership exceeds a hundred forty thousand highly skilled craftsmen and women in the construction industry. We are here, today, to support the Tesoro Extension of the 241 Toll Road.

It goes without saying that the construction industry has suffered through a devastating time, over the past several years. Unemployment is high. Ours is even higher. As much as 40 percent hard working men and women, most supporting family, were laid off with few opportunity to use their skills. However, I'm here today because we have some light at the end of the tunnel.

The 241, as you've heard earlier, will bring some 2400 jobs. We plan to break ground toward the end of this year. These are good jobs. These are construction jobs for workers, engineers and hundreds of suppliers. We live in this community and we cherish the environment, along with everyone else.

Our organizations have communicated, very closely, with the development of this project. And, based on our experience and many other construction projects, we are struck by how farsighted and professional the planning has been for Tesoro. It will use the most modern and effective method to preserve our environment. Your staff knows full well that there are few projects at this magnitude and design to protect our surroundings. This project is ready to go
today. You can make a decision which lights the fire under our economy in the many years where they appear to be no opportunity.

And, finally, I wanna make you aware that our organization's involved with the Helmets to Hard Hat Program. As a matter of fact, you heard that term used by many individuals. Our National Building Trade Department founded that organization. The building trade created it. And we are committed to hiring veterans. And that goes without saying, we do it.

Your vote, today, will help our veterans. We respectfully ask that you will approve the permit. Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

CHAIRMAN MR. MORALES: Sir, if you don't mind.

THE PUBLIC (MR. ADAMS): Yes, sir.

CHAIRMAN MR. MORALES: First of all, thank you for --

THE PUBLIC (MR. ADAMS): Yeah.

THE COURT: -- speaking into the microphone.

THE PUBLIC (MR. ADAMS): Absolutely.

EN MASSE: (Laughter).

CHAIRMAN MR. MORALES: Consider a career of sports casting, if the road doesn't get built.

But could you tell me a little more about the
-- the Helmets to Hard Hats Program?

THE PUBLIC (MR. ADAMS): The Helmets --

CHAIRMAN MR. MORALES: 'Cause we have heard about it. But --

THE PUBLIC (MR. ADAMS): The Helmets to Hard Hats was a program that got started by our national department, many many years ago. It had suffered, in these last several years, because of recession. Because we don't have the jobs to create, to turn these people on to.

Our local union still work with -- through Camp Pendleton and Los Alamitos Base. But, unless we have jobs, if there are not local jobs here, we can't put those folks to work. We can't bring 'em in, if we can't employ 'em.

CHAIRMAN MR. MORALES: So --

THE PUBLIC (MR. ADAMS): These are -- these are career paths. This is not just holding a sign, directing traffic. This is about iron workers, electricians and plumbers, et cetera.

CHAIRMAN MR. MORALES: All right. Thank you.

THE PUBLIC (MR. ADAMS): Thank you.

VICE CHAIRMAN MR. STRAWN: So, if I can follow on that, you -- you participate in the transition programs, on the bases, where the guys are exiting out of the military and you -- you recruit there?
THE PUBLIC (MR. ADAMS): The organizations that we represent will reach out to veterans on a regular basis. But when the economy is slow, (shake of the head) we can't reach out. We can't bring people in. We've got people here, that -- there was -- I'm sorry a lot of the guys had to leave.

But the labor's union was here. And it was all the guys in the orange shirts that was over here earlier here today. Had people sleeping in their cars. That's how bad it is. But we can't take our members that are sleeping in their cars and bring the veterans in.

We don't have jobs for either one, right now. That's why this project is so important.

THE PUBLIC (UNIDENTIFIED): I'm with the electricians. We go to taps out, down at Camp Pendleton. Yes, we do that.

VICE CHAIRMAN MR. STRAWN: Mary Adams.
Jancee Aellia. Sorry for butchering that last name.
CHAIRMAN MR. MORALES: Next?
VICE CHAIRMAN MR. STRAWN: Next will be Beth Apodaca.

THE PUBLIC (KAREY): Jancee was here earlier but, unfortunately, had to leave. I'd like to have her letter read into the record.

VICE CHAIRMAN MR. STRAWN: Your name, ma'am?
THE PUBLIC (KAREY): My name is Karey.

I am a San Clemente resident. I live in Toleka. I'm here, today, to voice my support for the Tesoro Extension. Having the toll road continue close to the Ortega Highway where the Lapada will soon connect from San Clemente is very exciting for San Clemente residents.

My husband, kids and I moved to San Clemente four years ago. Since then, I rarely get visits from my parents and siblings who live in the Inland Empire, because of the traffic on the 5, to get to San Clemente. This extension and the Lapada continuation would get them here much quicker and easier. It would also get those of us who -- that work out of town to work quicker during the rush hours; and help us not feel trapped in our own city on the weekends because of gridlock.

But the most important reason that I am supportive of the Tesoro Extension is because, with the Lapada Extension, it gives San Clemente residents an alternative way in and out of our city, in case of emergency. I work in Newport Beach. And, if there were ever an emergency, I could get to my kids quicker and we'd have an alternate way out of town. The Lapada Extension, alone, only gets us to the Ortega Highway where we'd be sitting in traffic once again. The toll road extension is also needed to continue the flow of traffic.
I know there are people here that are against this five-mile extension of the toll road. They feel, if you allow this portion, you are approving the continuation of the toll road all the way to the 5. Correct me if I'm wrong, but doesn't each section have to go through an approval process such as this one? Therefore, allowing the Tesoro Extension does not guarantee any additional extension. I would hope that you would approve this extension, on its own merits, for the benefit of many residents in San Clemente and the surrounding communities, instead of these "what if" concerns being raised that have no validity here today.

Thank you.

VICE CHAIRMAN MR. STRAWN: Beth Apodaca.

Hamid Bahadori.

And the next will be a Mike Balsamo.

THE PUBLIC (MR. BALSAMO): Good afternoon, Chairman Morales, Members of the Board. Sorry, I'm a little congested. So, I can't hear myself. Uhm-m-m -- been a long day.

I live in Margarita. I represent the automobile Club of Southern California, Triple A. We've been around for over a hundred and thirty years. We established in 1900 (phonetic), in Los Angeles. We have 52 million members nationally, 2 million -- 2.1 million in San Diego and Orange County. Sixty percent of households.
Therefore, the issues of traffic safety and mobility are dear and near to our heart and I'm here advocating on behalf of our members for vote pragmatic, practical and good transportation solutions; and this road is one of them.

Last year, the California Transportation Commission -- and I'm sharing this information with you, so that you know your decisions, which is focused as established by your own regulations, only the water quality issue. You have ramifications way beyond water quality. And I would like to bring that to your attention.

Last year, the California Transportation Commission identified and released their report that identified there is a $300 billion -- that's a billion with a "B" -- deficiency, the transportation system in California. It's interesting that ten years ago the same commission released the same report, identified $200 billion deficiency in -- in -- uh -- California trans- (sic) -- uh -- transportation system. In ten years, we fell behind by a hundred billion dollars. We simply cannot afford staying on the same trend that we have been on for the last three decades.

This road, in addition to providing the regional transportation, needs that are -- addressing the needs that we need in that area. It attracts private
financing. It attracts money that is not today is available. The Federal Highway Trust Fund is deficient by $17 billion, every year. California Transportation funds are practically broke. We cannot even pay the bills that we have.

They have used all opportunities to attract all the funding sources that we can to build the infrastructure with the American Society of Civil Engineers has graded in D plus, our national infrastructure. Your decision is focused on water quality. That's not my area of expertise. The experts and the reports are showing that the project is complying with your regulations and your requirements. With less than half an acre of impact, they're all mitigating over 34, almost 34 acres. So, by any measure, that is good.

TCA, we have been working with the TCA going back to late 80's, since the formation. And they have an excellent track record. Somebody mentioned here what happens to these mitigations right after they make the promises. Everybody goes home and we all go back.

TCA has an excellent track record and they would be happy -- and I'm sure they've offered -- to take you on tours of their previous mitigation sites on other projects. Again, it's late. Thank you very much for your time. It's been a long day. I just wanted to share with you
the Auto Club's perspective, as you're making your decision about the water quality impact of this project.

To bring -- just to bring to your attention that your decision, in expediting this project, has ramification beyond your issue of water quality. And we respectfully request that you vote favorable and issue the permit. Thank you for your time.

VICE CHAIRMAN MR. STRAWN: Jim Bieber.

Darren Blume.

Mike Bodenhamer.

And next will be a Wendy Bucknum.

THE PUBLIC (MR. BIEBER): Good afternoon. My name Jim Bieber. I'm a member of the South Orange County Economic Coalition. I live in San Clemente. Part of that, a little -- just up the street, in Costa Mesa is where I have my office. Just up the street, Santa Ana.

I'm a daily commuter on the 5 Freeway. I start in San Clemente and I work my way up. And, depending on the time of day and how strict I am, I'll see the whole way on the 5 or I'll take the toll road.

If you had a chance, this morning, coming up, you would have seen the strip of road on the 5, between Pico and -- uhm-m -- I would say Dana Point. And, if you look closely you'd see that the road actually looks like a NASCAR track. Where you'll see rubber marks. And go up under the
bridge and you'll see it's littered all over the place.

It is a dangerous strip of road. And it will continue to remain -- (inaudible) -- that way -- (mumbled) -- traffic, during mitigation. My wife was rear-ended on the 5.

What this road is about is about quality of life. And, this Friday, we're playing the Eyes of March Party, which is kind of a fun thing to add. We've got the -- (mumbled) -- present across the county. And we know, for a fact, half of them will not attend. Because they simply just cannot make it to south county, on the 5, during week the night.

Such a small thing. But it kinds of leads to -- you know, quality of life is the -- what the option is here. And -- uhm -- the lady on the panel asked, "What is 'Save trestles'?" I'm not sure.

It seems really weird. But that's what it all comes down to. There is a specific little strip of beach that's frequented by surfers where I live and it's very difficult to access. It is viewed by those people as their own private country club beach. And they'd like it -- and they like this traffic and they like people willing to make it as least accessible as possible to the public.

Uh-h-h -- you're two judges (mumbled) -- are not here to judge on social issues or the bigger picture of
things. It's just -- (mumbled). You've had some people, you
get lot of opinions from the opposition. Any construction
will lead to fecal matter in the streams, which will lead to
the conclusion of real science, what will it look like with
TCA and other experts?

Getting back to the original concept of -- of extending the toll road. They've screamed and hollered and cried about how it will devastate the surf life. And they had their own studies and live safer, announce -- (mumbled) -- beaten up on crime. Putting out the surf riders, bunch of bad science. I spoke to the surf rider, people live there.

Fix the strips. House of prostitution, a lot of people on pay off. And yet they cite their studies all the time. They pick tourists to strip.

So, the credibility goes back to these people are ready to put out funk science, to achieve their goal to make it impossible and detrimental for the majority of people to access trestles.

When you go down there, you'll see graffiti written -- and, if you're Black, it will say "No 909ers."

THE PUBLIC (UNIDENTIFIED): That's right.

THE PUBLIC (MR. BIEBER): And what that is code for is no brown people and no social -- uh --

THE PUBLIC (UNIDENTIFIED): That's right.

THE PUBLIC (MR. BIEBER): -- poor economic people
from the Inland Empire. They don't want 'em there.

You'll see "No Asians" written on there. And then "no Kooks," that's spelled with a "K." That's people who are conditioned (phonetic) to surfing. They wanna preserve, not "Trestles," a Trestle culture.

I'd like to wrap up by saying that those people from the surf riders, they're -- they're really nice and shiny and clean; but they're really cartoon characters from the 1960s bullies that (inaudible) on the beach, who do and say anything to keep people from accessing that spot of land by encouraging bad traffic for the rest of us.

And the vanguard of the people who are in opposition, the only thing worse than the people we saw earlier in the orange shirts who would get jobs by constructing the road would be their families accessing and participating and being on their beach.

THE PUBLIC (UNIDENTIFIED): There you go. That's it.

THE PUBLIC EN MASSE: (Clapping of hands).

THE PUBLIC (MR. BIEBER): And comment. But I consider real science and the validity of the opposition and the bunch (inaudible) that they throw out in the past. Thank you.

THE PUBLIC (UNIDENTIFIED): All right. That's what -- what I'm saying.
VICE CHAIRMAN MR. STRAWN: Denise Casad will be next.

And Duane Cave.

THE PUBLIC (MS. BUCKNUM): Hi, I'm Wendy Bucknum. I think I was next.

I am a resident of Mission Viejo. So, I'm one of those residents that's actually living the problem with this extension not being done right now. And they mentioned that our council members were on the TCA and they're here representing.

We want them on the TCA. We want our council members to represent us at a hearing like that. And I'm actually really happy two of 'em were here. So, I just wanna say that, as a resident and a mom -- and I'm gonna be really quick.

I've heard a lot of things today. I'm not gonna repeat 'em. I do definitely want to urge you to approve the TCA Waste Dis- (sic) -- Discharge Requirement Permit Application.

The Tesoro Extension, I use the toll road. I use -- I'm a working mom. So I need to get places, here and there. And, if I use them every which way -- (sigh) -- from Sunday, on the weekends, during the week, because sometimes you need to get there fast and that is the option. I have teenagers and I need to get there fast. And I will just
THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MS. BUCKNUM): Uhm -- (Pause). I --

uh -- I -- uh -- as you know, they've mentioned they think it

would be -- create jobs. Jobs, jobs, jobs are so important,

right now, in Orange County, let alone the nation. So, I --

that can't be emphasized enough. So, I had to say it again.

I do think that this is something that's
gonna put people back to work, another city that trickles
down where people that -- are being put back to work. And

it's gonna help other people, like my husband who owns a


Things -- and things like that.

I -- I really can't understand why anyone

would oppose this. I've heard some issues. I understand

it's about a half an acre of water -- uhm-m-m -- area or

wetlands area. I'm not an expert. So, please don't ask me

questions about that.

There are few roads in California that it --

that -- uh -- looks like provides the high level of

environmental protection, that this road would do. We're

talking about fish. If this road isn't finished, we're

talking about creeks and water quality. There are all those

through roads.

They were mentioned by my mayor, Rhonda
Reardon: Alicia, Oso, Jer- (sic) -- uhm -- there's also a
Geronimo that feeds through there. La Paz -- it -- the list
goes on and on, Crown Valley, Avery.

They go over Oso Creek. They go past a major
lake called the Indio Lake. You should be concerned about
the water quality, what they have in there with all the
additional cars on those roads. What's gonna happen to that
water? Those -- that's my -- that's my neighborhood. That
affects me.

Where is the concern of all these people, for
those -- for that, for those bodies of water? And that's a
lot more water. Uhm-m-m -- sorry. I was a little excited
when they said that. Uhm-m-m -- let's see.

Uhm -- I just wanna say that my kids and we
participate quite a bit in -- uhm -- the creek clean up and
the beach clean ups. That's important to us because, again,
that waterway's in our city.

My daughter's a surfer. I get what the
situation is for the surfers not wanting people in Tesoro.
She lives it. She's an inlander. She's from Mission Viejo.

She's on the other size of the freeway. They
don't want her there. I get it. So, what was said, I've
experienced it as a mom. It's kind of disheartening. But I
still go there and we do enjoy the beach.

I want to say that this private project is
14-miles from the coastline. I mentioned about the half an acre of environmental impact. I am -- I'm -- am really amazed why surf riders here, on that piece of water, when there's so much other -- if they're concerned about runoff, the stuff that's gonna happen on the rest of the roadway that I mentioned.

They also mentioned alternative transportation -- I'll hurry.

CHAIRMAN MR. MORALES: Ma'am.

THE PUBLIC (MS. BUCKNUM): They -- the railroad goes along the beach. Do they want us to widen the railroad that goes along their beach? Are you kidding me? I don't want that. I don't think they want that. Anyway, I'll leave it at that.

Please approve the TCA's WDR application. And we really wanna get this project started. Thank you so much for your time and for coming here.

THE PUBLIC (MS. CASAD): Hello, I'm Denise Casad. I'm a -- (unintelligible) -- Orange County. I'm the Chapter president. And for those of you who may not be aware of our organization, More Professional Appreciation for Advancing Women and Transportation. And for "transportation," I mean all of transportation, not just building roads. We also have people in the water resource society in our organization.

But, more importantly, probably, I am a South
County resident. I do live in San Clemente. And I do believe that the Tesoro Extension is needed for congestion relief. It's really bad traffic. 'Specially if you're going south, on -- on Friday or trying to go north, (giggle) on Sunday, it gets a little bit daunting and it's a little pretty difficult drive.

Anyway, I -- I work in North Orange County. I do take the toll road, pretty much, everyday. And, on the weekend, I see my mother-in-law in Yorba Linda. (Laughter), so.

I -- I think that the -- uh-h-h -- that, in addition to all those -- the back traffic that already exists, there is that development. It is going in, breaking (phonetic) from where I was up, going -- (mumbling) -- recycling is already started. So, we can't ignore that it's happened and that it's there.

Do you need to mitigate for what's coming in and make some traffic improvement? And that does mean, I think, this Tesoro Extension. I know it doesn't have a huge long area. But, as -- as was pointed out earlier, attachment is already going on at Lapada plus, at Tesoro, does give the people in San Clemente an extra way out.

When -- when I -- I went shopping on Black Friday. And there was a very bad accident on the 5 Freeway and they closed it for four hours. So, I had gone to a movie
after I went shopping and I got stuck for six hour in traffic. And there really isn't another way back down from Aliso Viejo.

So, I think that having an alternative at that particular time -- and, yes, it was just a little bit of headache. But, if there is ever a big emergency, it -- it -- there's a lot of residents who would have a very hard time getting out of the area. So, I -- for that reason, I -- I think it's important.

In addition, I -- I do think that we have an obligation, if we can, to have this project help create the jobs. There are jobs that are more along the STEM line, which is Science Technology Engineering and Math (phonetic). This type of project would provide those types of jobs.

And a -- a lot of them are a -- (mumbled) -- particular, from the WGS perspective, for women who work in transportation. It's a good career path for them. And it's a good opportunity to get them trained into their field.

So, I -- I do understand that you do have concerns with the environment and the water quality. I do believe, having driven the toll roads almost every day and I see them working on it and I see the BMP going on, they are trying to protect the environment control -- (mumbled). And, as pointed out earlier, on the 73, the -- they weren't state of the art, at that time. But as the state of the art
changed and we advanced, they have new ways of doing things
and they have gone ahead and -- and gone on with the new --
(mumbled) -- with them -- (mumbled) -- stuff like that, to
repair the pavement.

So, I do think that even though it -- we've
got the state of the art, now, I think as the water quality,
more -- and it's important that you do look at what we're
doing now and know that it's great, for now. But we can
improve it as the project progresses, if anything changes.

So, anyway, I wanted to be short. So, I
believe the Tesoro Extension is needed and I appreciate your
time.

THE BOARD (MR. ANDERSON): One quick question.

Do -- do you know if the City of San Clemente
took a position?

THE PUBLIC (MS. CASAD): The City of San Clemente?

THE BOARD (MR. ANDERSON): Yeah.

THE PUBLIC (MS. CASAD): Uh-h-h -- I don't know if
the City actually took this position. I've heard, today --

THE PUBLIC (UNIDENTIFIED): (Shake of the head),

that's mine.

THE PUBLIC (MS. CASAD): -- from the Chamber of
Commerce, things like that. So.


Thank you.
THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Duane Cave.

And then -- and then Carolyn Cavecche.

And, then, next will be a Don Chadd.

CHAIRMAN MR. MORALES: (Nod of the head).

THE PUBLIC (MR. CAVE): Okay. Good afternoon,

Chairman Morales, Board.

My name is Duane Cave. I'm proud to be here, today, as representing the South Orange County Economic Coalition. The coalition was formed to support infrastructure project that will enhance the economic road and quality of life in our region.

Our Board of Directors which are made up of -- of many of the large top businesses of Southern California, strongly encourages you support TCA's Waste Discharge Requirement Permit Application. Good roads, which equals good jobs, which equal quality, which equal -- (laughter) -- I'll get this. Which -- which equal a good economy and quality of life. This project far along that we could break ground, by the end of 2,013, at no taxpayer expense; and it would create, as we've heard, 2400 jobs.

Multiple projects are under way in the region, right now, that underscore the critical need for this project. You've heard of the Ortega Wining Project, in San Juan Capistrano? The -- the Rancho Mission Viejo Sendero
(phonetic) Project and the Lapada Gap Closure, which is gonna bring more people up north that need a place to go. Tesoro Extension would be the excellent route for them to take. All of these projects are slated to start and be completed between 2,013 and 2,015.

The sooner the TCA can start the Tesoro Extension, the sooner we can provide an alternate route to the freeway. The use of local streets and arterials can only cause congestion. We need to match up these projects, from a timing standpoint, and not allow gridlock to happen on our local streets. TCA -- TCA's made a commitment to water quality treatment and ensuring minimal impacts from this project. The economic coalition strongly supports infrastructure projects that strive to achieve the highest level of environmental standards in the industry.

On behalf of the South Orange County Economic Coalition, we encourage you to approve TCA's WDR application.

Thank you, very much for your time.

THE PUBLIC (MS. CAVECCE): Good afternoon, Mr. Chairman and Members of the Board. I really appreciate you coming up from San Diego into central -- South Orange County to hear us today. It's very appreciative. I know it's been a long day for all of you.

My name is Carolyn Cavecche. I'm the chairman and the CEO of the Orange County Taxpayers Association. I'm
starting to feel like I'm representing the U.S. Endangered Species and that's the California taxpayer.

The Transportation Corridor Agency has built their roadway system without tax dollars. Support through user fees -- or what we call them, "user fees." A lot of people are calling them "toll" now. This important and essential transportation infrastructure system was constructed in Orange County, again, at no taxpayer expense.

And I heard the term "freeway" used today. And I'm sure you all understand the term "freeway" doesn't mean that it's free. Uhm -- trust me, anything that the State of California builds is not free to the taxpayers. The term "freeway" comes from free movement. Uhm -- the cars are supposed to move freely.

I do not consider the I-5 in South Orange County a freeway. Because, trust me, it does not move in a free manner, real any time of the day, weekday or weekend.

Uhm -- Orange -- OC tax supports the infrastructure project, like this roadway extension, because it's gonna create thousands of jobs, expand and grow our economy, provide the traffic relief this region needs; and ease access between customers and businesses and between commuters and their homes.

Oh, I understand that your purview really is strictly the water quality impact. And I'd really just ask
that you listen to the scores of scientists and quality -- or
quality engineers who have been studying this issue and has
determined that the project's minimal water quality impact
can be fully mitigated. But I'm here, today, because I also
think it's important that you hear the perspective of the
taxpayer.

Orange County taxpayers want and need quality
infrastructure to protect our quality of life and appreciate
the projects, like this, that can be built and supported by
those who choose to use them. There are people who do not
want this project developed -- uhm -- for a number of
reasons. It doesn't matter if we can mitigate it. It
doesn't matter if we can build it safely, without using
taxpayer's dollars. They do not want this project to be
built.

Now, I've lived in Orange County almost my
entire life. And it -- uhm -- that's a long time now.
Probably a short amount of time.

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MS. CAVECCHI): Orange County has
grown, tremendously, since the mid-60s. At three million
people, we are now one percent of this nation's population.
We have to continue to invest in infrastructure. The economy
and the jobs in Orange County rely on that.

I also wanted to let you know, I served on the
Metrolink Board of Directors over the years and a lot of talk has been about improving the transit, up and down that area. The low sand (phonetic) corridor is one of the heaviest of any of the rail corridors in this nations. The problem is, we can't double track to South Orange County because the cities aren't allowing that to happen. So, it's really trying to say, "Well, let's move 'em onto the trains." But, unless we start double tracking, up and down the beach, into the middle of some of the historic quarters of South Orange County, that's not gonna help us either.

So, on behalf of the Orange County Taxpayers Association, I ask that you please vote to the Waste Discharge Requirement Permit Application before you. And, again, thank you so much for the time that you put in today.

It is very much appreciated.

THE PUBLIC IN MASS: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Thank you.

Don Chadd.

And then -- uh-h-h -- Darin "Chidsey"?

Chidsey?

And a Mike Conte.

And then a Ray Diaz.

THE PUBLIC (MR. CHADD): Mr. Chairman, Members of the Board, thank you very much for being here today. I -- uh -- honor your volunteer service. And it's very kind of you
to come to us and allow this public hearing to occur. My name is Don Chadd. And it's my pleasure to be here today to speak to you in support of the Tesoro Extension.

Anecdotally, you heard, earlier, councilman Peter Herzog talk about the Transportation Corridor Agency building in sections at the time. The first section was completed, I was an assistant superintendent Irvine Unified School District, living in Rancho. My commute was 55 minutes, because I had to go to the freeway and go to the ElToro Y. When that segment was completed, my commute turned into 20 minutes. And, so, there is wisdom to how they approach the sections.

Second, anecdotally, on January 1, I retired as the general manager of Trabuco Canyon Water District, particularly in the San Diego region. We're probably the farther most north-(sic) -- uh -- northern district that you have. I've been before your court, many times.

I appreciate water quality and I understand it. And, when I hear of the sand filters and the bio filters, I understand it. And -- uh -- I -- as I understand it, the primary concern to you today is water quality. As I've seen the project, I appreciate it. I think it's state of the art.

The capacity that I'm here today is, as president of SANMARG (phonetic), Santa Margarita Landscape
and Recreation Corporation, it's a master homeowners association in Rancho Santa Margarita. It's the largest HOA this side of the Mississippi, almost 14,000 homes. And the board of directors of that HOA took the position in strong support of the Tesoro Extension. Largely, because of the limited access in and out of Rancho Santa Margarita that they -- that would greatly benefit the home values that will allow for transportation in a southerly route, other than the limited ways that we have now. And -- uh -- provide for -- uh -- quite frankly, economic growth in Rancho Santa Margarita.

But we're convinced that we don't even know how beneficial it's going to be. But I'm absolutely convinced that it is going to be beneficial for the toll road extension to be built. And so, with that, I'm going to be as brief as I can. Thank you very much. It's so kind of you to be here.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Ray?

THE PUBLIC (MR. CONTE): Yes, sir.

VICE CHAIRMAN MR. STRAWN: Okay.

THE PUBLIC (MR. CONTE): I'm Mike Conte.

VICE CHAIRMAN MR. STRAWN: Mike.

THE PUBLIC (MR. CONTE): (Nod of the head). Yes.

Chairman, the Board, thank you very much. My
name is Mike Conte. I'm the -- uh -- a resident of Mission Viejo. I'd like to read into the record a letter on behalf of Wesley Pain, Executive Director of the Engineering Contract Association, who was unable to stay here.

Chairman Morales, fellow Board Members, since 1976, the Engineering Contractors Association, ECA, has been a recognized leader representing the public utility construction industry. Membership of the ECA is drawn from 11 Southern California Counties and is made up of contractors and affiliates. Their interests in the sewer and water line, storm drain, pipeline, underground utilities, trenching, excavating and grading tunnels, streets and highway constructions. Our 200-plus member companies represent over 3,000 workers and over 7,000 household members. Southern California's economy has suffered, for several years, as a result of a nationwide downturn.

Many sectors, including construction, have suffered significant job losses and layoffs that have led to foreclosures and far reaching (inaudible) consequences. Simultaneously, Southern California faces ongoing transportation and traffic relief challenges due to the environmental regulations and restrictions, they have brought a slow permitting process to a nearly standstill. Both of these major economic issues can be improved by investments, such as the Transportation Corridor Agency's Tesoro
Extension. Extending the 241, by five miles, will provide additional traffic relief to the region as well as supplying more than 2,000 good paying construction and engineering jobs to the local economy.

Design and minimize impacts to the watershed. This project represents sustainable designs and a tangible and long lasting improvement, the regional transportation system. Our board of directors supports the Tesoro Extension as the immediate investment and local job creation. The benefits of the project's construction are substantial and far reaching.

Beyond the immediate creation of jobs, in engineering and construction, the project wants to complete a -- a -- will offer opportunities for economic growth on a regional basis. For example, there are five million square feet of commercial space that are scheduled for development in Rancho Mission Viejo. How valuable will that commercial property be? The customers and the clients can -- can get -- can't get there.

We can't stress strongly enough how important job creation and private investment are to our membership. Indeed, if in the event of a -- such opportunities for private capital and infrastructure, maybe the key to addressing Southern California's infrastructure may be a reasonable cost and in a timely matter. We are the asking
board to vote to approve the Waste Discharge Permit that TCA
has applied for. This means jobs for all of us and much
needed support for our growing league construction suggestion
transportation system in Southern California. Sincerely,
Wesley F. Pain, Executive Director. Thank you very much.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Okay.

Darin -- uh -- Mr. Chidsey? Chidsey?

Mr. Diaz?

Mr. Esparza? You'll be followed by Emily France and a Kevin Gilhooley.

THE PUBLIC (MR. ESPARZA): Good afternoon,
Mr. Chairman and Executive Board Members.

My name is David Esparza. And I'm a business
manager, represent 3,100 members in the city and in Orange
County, here -- uh -- 3,100 members. That is, construction
craft laborers.

I'll be very blunt with you. Our members
need to work. Since 2,000 and 7, we have seen unemployment
among our members as high as 40 percent. Some occasions,
reaching -- reaching its peak up to fifty percent. That's
unacceptable. But, finally, we see light at the end of the
tunnel.

The 241 Tesoro Extension Project gives us
hope that the things are gonna be turning around. This
project would employ more than 2,000 people in this region alone. Those are fantastic numbers. Numbers that we need to put our men and women back to work. Not only will this project put food on the table for our members, but it (sic) also a vital link that will address the transportation deficiencies in Orange -- in South Orange County.

The rest that's living in this area, currently have only one route, north and south Interstate 5. It is inherently dangerous for any community to be as reliant on their sole transportation corridor as this committee is on I-5. Bottom Line, the Tesoro Extension is desperately needed.

As many people have already pointed out, the Tesoro Extension has extremely minimal impact to water, regulated by the State, less than half an acre. This project will also benefit the region's air quality, by helping to alleviate idling cars that we all know has the air pollution.

Please do the right thing, today, and approve the permit needed to construct the Tesoro Extension Project and help us put our members back to work in all the trades and craft in the construction field. Thank you for your time.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Ms. France?
THE PUBLIC (UNIDENTIFIED FEMALE): Not here.
THE PUBLIC (UNIDENTIFIED MALE): Not here.
VICE CHAIRMAN MR. STRAWN: Mr. Gilhooley.
THE PUBLIC (UNIDENTIFIED FEMALE): I believe he left, as well.

VICE CHAIRMAN MR. STRAWN: Mr. Guzman.

Mr. Haskins.
Ms. Holmes.
This just says "Staffer Buying (phonetic) Ranch Water District."

Heather Johnson.
April Josephson.
Here's one that says "labor."

CHAIRMAN MR. MORALES: Come on up, Ma'am.


THE PUBLIC (MS. JOSEPHSON): Okay. Good afternoon, Chairman Morales, Vice Chair Strawn and Board Members.
My name is April Josephson. I'm a resident of Rancho Santa Margarita, a founding member of the Rancho Santa Margarita State Park Committee, an environmentalist and an animal welfare advocate. I have been a resident of South Orange County since 1976. And I'm a graduate of Laguna Beach High School.
I supported the efforts that are incumbent --
(inaudible) -- check portions of Laguna Canyon Y. I use the 241 toll road on a regular basis and have seen, firsthand, the benefits. Which, contrary to some of the claims from those outside of the area, does have a impact on our environment.

I'm here today to urge you to approve the TCA's Waste Discharge Requirement Permit application. I am concerned about the future of our area and our environment. I feel strongly that this project is necessary. I support both planned transportation projects, like the Tesoro Extension, because I recognize that structured project helps to build a prosperous community and actually protects our environment.

We all wanna live in prosperous communities with the high quality of life. With large scale residential and commercial construction already underway at Rancho Mission Viejo, and an alternate is to I-5 is just vital. That alternate route is just too -- is the Tesoro Extension, the 241 toll road. Currently, the I-5 is the only north-south non-arterial route available for residential business in California (inaudible).

I-5 also serves as the primary route for movement and goods to and from Mexico and the ports of Los Angeles, San Diego and Long Beach. The Tesoro Extension will be one of several traffic release requirements that are
underway or planned for South Orange County, including the Ortega I-5, the interchange improvement; the Lapada Gap Closure Project; the Pico I-5 interchange improvement; and the I-5 -- (inaudible) -- edition. All of these transportation improvement projects are needed to provide for traffic relief through the region.

If you've ever had to drive the I-5 near the South Orange County, during rush hour or on weekends, you know that this route often becomes a virtual parking lot. Not only is it wasteful, but it's dangerous.

The cumulative environmental effects and, last of all, cumulative grounds emergency situations pose a great risk to everyone in the region, not just those in the immediate vicinity. The only way to improve and protect our lives, our community, our environment and our future is to properly plan for infrastructure improvement, including the Tesoro Extension 241 toll road. I urge you to support quality of life and mobility by approving the TCA's WDR application.

And thank you very much for coming up here to Orange County and allowing us to speak.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Michael Latham.

Victor Lopez.

April Josephson. I think I already read
that.

Hector Madrigal?

THE PUBLIC (UNKNOWN): I have Josephson --

(inaudible).

VICE CHAIRMAN MR. STRAUN: Tom Margo.

THE PUBLIC (UNKNOWN): Technically -- third time
down the hall.

THE PUBLIC (MR. MARGO): Thank you very much. Good
evening, Mr. Chairman. And -- it is -- uh -- almost good
evening. I'll be brief.

My name is Tom Margo. And I was former CEO
of the Transportation Corridor Agency, in the interest of
fair play. But I'm recently retired, about six months ago.
And the reason I'm here today is that I'm a resident of
Ladera Ranch, in South Orange County, the -- adjacent to the
project area.

I have over twenty years of experience as an
executive in the transportation agencies in California. And
I could give you a hundred reasons why this road should be
built. But now that I am retired, the most important reason
for me is my grandchild, Avery.

I could talk about the extending -- the
extension basin, Austin sand filters and coarse pavement.
That's part of TCA's water quality mitigation plan, to
protect the environment. But while there's a laundry list of
scientifically and valid reasons that you, per se, could approve the permit. The most important reason for me to see the 241 extended is that I'd like to spend more time with my granddaughter and less time in traffic.

Every day, as I live near the project area, I see the grading construction that Rancho Mission Viejo has going on, right now. In fact, there are houses that are built now. You can see the -- the frame that is up and the bulldozers that are grading. This will be, as you've heard, 14,000 homes, five million square feet of the (mumbled) rest of the space. Without the extension, my fear is that the city streets in my community will be impacted significantly. We're already starting to see those impacts.

As you know, traffic congestion not only adds more pollutants to the air and negatively impacts our environment, but it slowly degrades our quality of life. Who among us hasn't had the story about a missed school play, being late for a business meeting or arriving at a store five minutes after it closed. All of which means, tomorrow's schedule has to be already rearranged to more trips. These are real impacts to real people who live in this area, as I do. Please vote to approve the permit.

I thank you and, hopefully, my granddaughter Avery will as well. Thank you.

VICE CHAIRMAN MR. STRAWN: Wes May?
Ben Medina.

Representative Mission Hospital.

We'll need your name and whether you took the oath.

THE PUBLIC (MR. NICHOLSON): Yes.

My name is Todd, Todd Nicholson. And I'm here representing Ken McFarlane, who is the President and CEO of St. Joseph Health.

Good morning, our -- (head gesture). Good afternoon, now.

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MR. NICHOLSON): I'm reading a letter that -- that Mr. McFarlane wrote.

My name is Ken McFarlane. And I'm President and Chief Executive Officer of Mission Hospital, at Mission Hospital Laguna Beach, in Orange -- South Orange County. I strongly urge you to support the Transportation Corridor Agency's Waste Dis- (sic) -- Discharge Permit at the Tesoro Extension Project, in Southern Orange County.

Mission hospital is a not for profit 500-plus bed hospital, operated by the St. Joseph Health System. You have the largest medical center in South Orange County and operate the area's only designated trauma center; and, in partnership with Cha- (sic) -- children's hospital, operate the only pediatric specialty hospital. Annually, Mission
hospital handles a hundred eighty thousand outpatients
visits, 1,100 trauma cases and 72,000 emergency room visits.

Additionally, we are the nearest trauma center
to Camp Pendleton, in North San Diego County. And,
consequently, Marines who are victims of trauma are
transported to Mission Hospital. With traffic in Southern
California the worst in the nation, the gridlock on the I-5
grows yearly, causing personal inconvenience, creating safety
issues and undermining the quality of life and wellness and
freedom we treasure.

However and more importantly, gridlock can
cause you life, because of the time lost in transporting a
trauma victim to Mission Hospital. The bottom line is this
proposed five-mile segment from Oso Parkway to San Juan
Capistrano, off the Ortega Highway region, the approximately
24- -- 2400 jobs. And equally as important, we'll have
minimal environmentally less effect on the less than one-half
acre you were considering for this permit. The next five-
mile segment of the SR 241 will provide an additional highway
link, giving patients and trauma victims greater access to
health care services. Particularly, for the growing
communities to the east of our hospital, this is critical in
providing the quality of care that patients need to find
emergency basis.

We strongly urge you to support this
application. It is critical to the well-being and health of all South Orange County residents. Signed, Kenneth McFarlane, President, Chief Executive Officer.

VICE CHAIRMAN (MR. STRAWN): Carl Morgan.

Debbie Newman.

David -- David Ny- -- (sic) -- Nydegger?

THE PUBLIC (MR. MCINTOSH): Good afternoon. My name's Martin McIntosh. Mr. Nydegger is one of many people who needed to get down the road to get down south. So -- he asked me to read his statement into the record.

My name's David Nydegger. And I'm submitting my comments as Chief Executive Officer of the Oceanside Chamber of Commerce. The Oceanside Chamber of Commerce is on record supporting the approval of the Foothill Eastern Transportation Corridor Agency's Waste Discharge Requirement for the Tesoro Extension Project in Southern California. The City of Oceanside shares the boundary with the southern area of Orange County, as many of our respective residents and business owners employees travel back and forth on a daily basis.

Additionally, many of our respective residents travel back and forth, on weekends, to visit family members, to attend events and for recreation and leisure. Currently, the I-5 is the only north-south non-arterial route available for residents and businesses in South Orange
County. The extension, along with other Orange County Transportation Projects, create an alternative route that will enable our residents to commute to Orange County without the bottleneck congestion that we typically encounter over the years. This five-mile extension will provide a number of much needed jobs and, as well as provide alternative routes for those traveling from North Orange County to North San Diego County.

Please give your utmost consideration to approve the application before you today. Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Dennis O'Connor?

THE PUBLIC (UNIDENTIFIED): He had to go.

VICE CHAIRMAN MR. STRAWN: Orange County Transportation Authority --

(Simultaneous speech; unintelligible.)

THE PUBLIC (UNIDENTIFIED): He already spoke for the government.

VICE CHAIRMAN MR. STRAWN: Ted Owen?

THE PUBLIC (MS. FITZGERALD): I'm obviously not Ted, (laughter). But my name is Smith (phonetic) Fitzgerald and I'm speaking on behalf of Ted Owen, who had to leave. I will read his letter into the record.
My name is Ted Owen and I'm the Chief Executive Officer of the Carlsbad Chamber of Commerce. I would like to go on record to express the Chamber's support for the approval of the Transportation Corridor Agency's Waste Discharge Requirement Tesoro -- Tesoro Extension Project in Southern Orange County. The Carlsbad -- (mumbled) -- has been on record supporting this well-planned transportation project.

The City of Carlsbad is a destination location, not only for our famous cook (mumbled) resort and hotels, but for our Carlsbad Village, Lego Land, Choir fields and it's -- all of this, just to name a few. Relieving traffic congestion will enable tourists to easily visit our city which will thereby contribute to the overall economic vitality of our city. The toll roads will also enable our residents to commute to Orange County without the bottleneck congestion that we usually encounter. This five-mile extension will provide a number of new jobs, as well as provide alternative routes for those traveling from Orange County to San Diego. Please give your consideration to approval this application for this today.

Thank you for your time. Ted Owen.

VICE CHAIRMAN MR. STRAWN: Jerry Pabbruwee.

Martin Pain.

THE PUBLIC (UNIDENTIFIED): He already spoke.
He already spoke.

VICE CHAIRMAN MR. STRAWN: Tom Rath.

Jeff Ruvalcava -- -lacava (sic)(whispering).

Sorry.

THE PUBLIC (MR. WRATH): My name is Tom Rath. I did take the oath, earlier. I'm a longtime resident of Orange County and a current resident of Lake Forest. I strongly support the Tesoro Extension.

I, along with many others, make the commute daily on the I-5. When traffic is light, which is seldom, it's a good commute. The majority of the time, it's very heavily traveled. And, if there's an issue, it -- it just becomes unbearable.

The increase -- it increases pollution, increases travel times, causing lost time that's gone forever, causing huge delays. When there is an accident or an emergency, the whole area turns into a parking lot, including all the local streets.

We need an alternative route, now. Everyone I know has stories about the I-5 delays, missing their various events and even being late for everything they go to. The number of times this happens is just increasing and we're predicting to increase.

The Tesoro Extension is standalone project.

It is our eternity route. It has been on the books for over
twenty years and it is long past due. TCA is committed to
the latest design and best management practices. TCA has
proven their commitment to the environment and their runoff
compliance from previous projects.

14,000 homes have been approved and are
currently under construction. Good access is needed. Now,
they can -- the gridlock provides an alternative, promotes
smoother traffic flow which will reduce air pollution.

Your experienced staff has an extensively
reviewed the permit application and prepared their findings.
Please acknowledge your own staff's expertise and
recommendations and approve this application for the County
of Orange and for the People of Orange.

That -- uh -- as you've seen, by having this
hearing here, in Orange County, you can see obviously the --
the large majority of people are in support of the Tesoro
Extension. And it's a matter of just where the -- the water
requirements around its compliance are meeting the -- uh --
mandates by both the Regional Water Quality Board's State and
Federal requirements. Thank you.

VICE CHAIRMAN MR. STRAWN: Now, Mr. Ruvalcava.

THE PUBLIC (UNIDENTIFIED): Left.

VICE CHAIRMAN MR. STRAWN: Phil Salerno?

CHAIRMAN MR. MORALES: You did him this morning.

VICE CHAIRMAN MR. STRAWN: It's another dupe?
CHAIRMAN MR. MORALES: Yeah.

VICE CHAIRMAN MR. STRAWN: Phil Schwartz?

THE PUBLIC (UNIDENTIFIED): He's spoken.

VICE CHAIRMAN MR. STRAWN: Sam Simms.

He'll be followed by Kristin Slocum.

And then Curt Stanley.

And -- and --

THE PUBLIC (MR. SIMMS): Hello.

VICE CHAIRMAN MR. STRAWN: And --

THE PUBLIC (MR. SIMMS): I'm sorry.

CHAIRMAN MR. MORALES: You can go 'head.

THE PUBLIC (MR. SIMMS): Well, my name is Sam Simms. I'm an engineer and a QSD. And -- uh -- but more importantly, I am a longtime resident of the City of Mission Viejo. And, since I've lived there, I've seen our traffic just go crazy. To say that no road's needed down there would just be ridiculous. There needs to be a road there.

But I kinda wanna step away from that issue, 'cause heard enough about that. Yeah, let's talk about why you're really here. You're here for one reason and one reason only: Does this project meet your requirements?

That's -- that's your judgment, here. That's the only judgment that you need to be looking at: Does this project meet your requirements?

You know, there's a lot of features on this
that are the latest technology. You've heard them all. I'm not gonna repeat them again.

But you also have to understand that they're gonna be managed and constructed by an agency that has a great history of environmental responsibility. These guys have got an awesome record in that, in fact. So, you need to really consider that, that -- that what they say they will do, they will do. It won't be just left out there. And, as a QSD, I know that roads can be built responsibly and that they can also be managed responsibly.

You know the State, just a few years ago, put a lot of time, effort and taxpayer dollars to develop the latest systems that you have and rules and regulations. And all I ask is that -- is that you just trust and have faith in those rules and regulations; that you follow them; that these regulations that were developed, they're gonna work. And that, by issuing this permit, your rules and regulations are gonna make this a great project.

So, with that, I would just like to close with the fact that I hope you close hearing here today. But, if you don't, I would request that you have it back here in Orange County. This is where I live. This is where the project lives. This is where you need to be.

So, with that, though, I do thank you for your patience. Very long day. I know I'm a "yes," and I had to
wait 'til almost the end myself. But -- uh -- thank you for your service and have a great rest of the day and I hope that it will be done. Bye-bye.

THE PUBLIC EN MASSE: (Clapping of hands).

THE PUBLIC (MS. SLOCUM): Members of the Board, good evening.

My name is Kristin Slocum. I'm the Communications Manager of Mobility 21. We're Southern Californian Transportation Advocacy Coalition, representing the transportation and business needs of Southern California, all the way from Ventura County and then north -- the San Diego and Imperial Counties in the south.

And I know it's been such a long day. But I obviously am -- am proud to be here to say that Mobility 21 strongly supports the 241 Tesoro Extension. 'Cause this project is critical to keep up with our region growing capacity needs, especially with the development of the Rancho Mission Viejo adding 30,000 people to South Orange County.

The project will alleviate traffic congestion on the already burdened I-5 Freeway. It's quite an important alternative route, in case of an emergency.

Construction almost nearly a five-mile extension will impress terminus near Oso Parkway to Ortega Highway will create more than 2,000 much needed jobs, as you've heard today. And I won't go into all of the details,
but -- and, as far as the -- (mumbled) -- statement, TCA has
taken great (mumbled) -- for the water quality measures go
above and beyond standard requirements.

And this project that you referred does not
have any wetlands under Federal jurisdiction and are less
than a half an acre of impact to waters under State
regulation. So, just keeping that really quick, on behalf of
Mobility 21, I urge you to approve this permit; so TCA can
get to work on -- making the 241 Tesoro Extension relieving
congestion, improving jobs and improving our air qualities;
and, most importantly, improving our quality of life. Thank
you.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Curt Stanley?

THE PUBLIC (MR. STANLEY): Thank you very much.

Just in case, I brought my Marco Rubio bottle
of water.

VICE CHAIRMAN MR. STRAWN: I can see.

THE PUBLIC EN MASSE: (Laughter).

THE PUBLIC (MR. STANLEY): Don't know how I'm
gonna come across. But -- uh -- good afternoon, Chairman
Morales and Vice Chair Strawn and Board Members.

And -- (Pause) -- Mr. Anderson, I -- I -- was
hoping you were going to stand up, when I was speaking.

'Cause my wife always thinks you get a standing ovation every
time you go up and speak. So, you're one person too soon. But thank you, anyway.

My name Curt Stanley and I'm up here as a small business owner and a small business owner that has to travel on the highway, every single day. I will challenge anybody in this audience, including the Board, if you -- to put over 30,000 miles, a year, onto your car. That's what I do.

I travel the toll roads, because I want to. I pay the nominal fee, because I want to. And you know why I want to? Because I sell more business when I can get from Point A to Point B in a realistic time.

When you make an appointment with -- with somebody, if you're a salesman, it's important you get there on time. And that's what the toll roads can do for me. So that's really important. Especially in this economic downturn, perhaps, some of you have experienced.

I definitely have experienced. I lost seven of my top ten customers in the last four years. So that has increased my road time, in my business.

I'm also here representing the South Orange County Regional Chambers of Commerce. I was the past chair of that. And I think I brung -- bringing them in, because we are a business oriented organization. And I think, with the economy the way its gone and the downturn, I think that
anything we can do to bring in the alternative way for people
to get to Point A to make that sale is so amazing.

    I -- I just don't wanna sit on the freeway,
like I have many times. I've even taken side streets, just
to avoid it. Because it cost me money. And I'm in
business. You may not know I'm old, but I am.

    And -- uhm -- I retired ten years ago and now
I'm back working full-time. And I didn't plan that, but it
happened. Thank God, I've got a lot of energy and most of
the time I can smile; and I'm smiling here.

    In fact, I came here today because I said,
"Where am I going?" And this board from San Diego, why am I
talking to the board of San Diego about a street that's about
five miles from my house? And then I realized that this is
the State Board. So, now, I respect that they have something
to do.

    And, by the way, I think you're getting paid
today. Because I have been really bored, sitting through
this. And, if you're not getting paid, you should be. All
right? Thank you very much.

    I think this support, this project will do
nothing but support the economy; and that is so important.
My mom told me, when I was little -- (mumbled) -- "Get out of
bed in the morning" -- she said another word. But, "Get out
of the bed in the morning and go to work; and you will get
what you deserve."

I just need an easier way to get what I deserve. And I think the extent (sic) of this toll rode -- oh, my gosh. I'm over time, already.

Okay. So, let's get real. You're here, because of the permit. And I believe what I read here is that the environmental impact study shows that the project has minimal negative effect. The water runoff system, it's state of the art and it mimics the nature.

Why would you wanna change mimicking nature? That's what it's all about. So, I ask you humbly but very seriously, as a retired old guy, please, approve the Waste Discharge Application, as presented. You'll be doing the right thing. Thank you very much.

And I didn't need my water (show of item).

That's really good. Thank you.

VICE CHAIRMAN MR. STRAWN: Bryan Starr.

And then David Stefandides.

And a Michael Walker?

THE PUBLIC (MR. STARR): I -- my time. So, I'll be brief.

My name's Brian Starr. I'm representing the Orange County Business Council. The business council is -- is -- uh -- made up of 200 and 50 of Southern California's largest companies representing 200 and 50 thousand men and
women in the region. Employees in the region, about two
million, globally.

The Orange County business council stands in
support of your approval of the TCA application -- uh --
through -- for WDR. Permit submitted for the Tesoro
Extension Project, in Orange County. The business community
in Orange County and throughout the region needs reliable
transportation corridors, morbid- (sic) -- mobility is the
lifeline of Southern California adopted our economy.

The project itself will create more than 2400
jobs and, one still -- uhm -- business and labor agree the
roadway will enhance economic growth throughout the region.
There's 5.6 million square feet of commercial space planned
for Mission Viejo. Today, the Interstate 5 Freeway is the
only major corridor to South Orange County. Extending the
State Route 241 to the area near Ortega Highway will help
relieve traffic from the onteri- (sic) -- arterial street, as
well as the I-5.

From the environmental prospective, the
projected is needed to improve regional air quality,
according to South Orange County -- oh, I'm sorry -- the
South Coast Air Quality Management District. Idling cars
create more air pollution, which is why free flowing traffic
is crucial both to traffic relief and a reduction to the
vehicle carbon emissions. TCA is convinced that building the
five-mile extension, using BMPs when it comes storm water runoff. To project impacts a less than a half acre of water that is regulated by the State Board that significant water treatment processes that will be implemented or designed to mimic pre- (sic) -- pre-project flows in water quality. On behalf of the Board of Directors and the Orange County Business Council, we encourage you to approve TCA's WDR Application.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Would you state your --

THE PUBLIC (MR. STEFANDIDES): Dave --

VICE CHAIRMAN MR. STRAWN: Would you state your name? So I --

THE PUBLIC (MR. STEFANDIDES): I will state it.

VICE CHAIRMAN MR. STRAWN: -- won't have to announce it, again.

THE PUBLIC (MR. STEFANDIDES): (Laughter). I -- I hear ya. Trust me, I have it. Stefandides, Dave.

And I am here on behalf of the Orange County Association of Realtors Board of Directors. They -- well, actually, they gave me a choice. They said, "Dave, you can get in your car and drive to Costa Mesa and talk to the good folks on The Water Quality Control Board or you can get in your car drive south on the 241 to the end. Get a shovel and start digging. Because we need this road completed."
The real estate market is picking up, I'm happy to report. And with that renewed interest in homes located in South Orange County. And -- uh-h-h -- inevitably that arises, that creates an interest in viewing properties for sale in South Orange County. And here's an experience that I wish was an exception, but is the rule. And this is from our members.

And, since this is a public hearing and you're interested in -- in hearing from the public, let -- let me just relate this experience. So, our agents in Dana Point, San Clemente, San Juan Capistrano are often contacted by interested buyers to look at properties and they take them around town, San -- San Clemente's a perfect example. And they show a few properties and they move onto the next and they move onto the next. And each time they're weaning underneath, back and forth of the I-5. And, finally, the perspective buyer says, "I can just jump on the freeway. It's just two exists down."

There's an awkward silence. We can't use the freeway on the weekend.

THE PUBLIC (UNIDENTIFIED): That's right.

THE PUBLIC (MR. STEFANDIDES): Well, okay. In the -- in -- uh-h-h -- the spirit of full disclosure, the agent then shows the perspective buyer the I-5, on Saturday. And the eyes are wide open. The mouth is dropped, as grid --
complete gridlock. And the buyer inevitably asks, "Was there an accident?" No.

"Was there a construction project?" No, (shake of the head). "Well what's wrong?" This is just how it is. This is how we live, in this part of the South Orange County. "Well, what are ya doing about it?"

Well, I understand that they're building a toll road. And we're really excited about that and we're hopeful that they're gonna get started on it, very quickly. "Well, are they?" Well, of course they are. It's the obvious right thing to do.

And -- uhm-m-m -- that's all I have. Thank you.

THE PUBLIC EN MASSE: (Clapping of hands).

VICE CHAIRMAN MR. STRAWN: Walker.

And, then, a Meg Waters.

THE PUBLIC (MS. WATERS): Hi, there. My name is Meg Waters. And I'm a resident of Dana Point. It's 5:05 and I bet you would love for me to read you a long tome that repeats everything that everybody else has said. Check out this stuff. I'm not gonna do that (giggle), lucky afternoon (laughter).

I'm gonna just -- uh -- agree with what everybody has said. But I did bring you a little present. Because you also heard a lot of what my former business
partner used to say, "Picking the fly caca out of the pepper about why this road won't meet your standards."

But we're looking at the -- a road that was designed to meet or exceed all of your wildest standards. So, this is a biodegradable fido (phonetic) bag that you can put all that extraneous information that made up facts in and keep them nice and neat and out of the water supply; and go ahead and approve this project.

Thank you, (show of bag).

THE PUBLIC EN MASSE: (Laughter).

CHAIRMAN MR. MORALES: All right. That's all of the cards that we have. So, I'll ask is there anybody that didn't speak that filled out a card?

Okay. Seeing nobody is stepping forward, we're gonna go ahead and wrap up. We do have a couple of housekeeping items to take care of, before we do wrap up.

Uhm -- since -- I don't think there are anymore items on the agenda.

Staff does have an opportunity to respond to any comments they heard today and they feel -- uh-h-h -- a response -- or that a response is appropriate, too.

NORTHERN WATERSHED UNIT (MS. DORSEY): Yeah, we'd like to --

CHAIRMAN MR. MORALES: Please.

NORTHERN WATERSHED UNIT (MS. DORSEY): -- a quick
statement.

My name is Kelly Dorsey. I'm the Senior Engineering Geologist here for the Board. I'll try and make this quick. I know we've been here for a very long time.

After the all the testimony we've heard today, staff leaves to revise the minute order. Once the CEQA questions have been addressed, will largely address concerns hydromodification, storm water, BMPs and other impacts related to the project.

The mitigation for the impacts of the waters in the State far exceeds the typ- (sic) -- the typical amount of mitigation required for a similar project and will adequately communicate for its project's impacts to waters in the State. And I would like -- I'd like to also address some counter (sic) -- concerns that came up related to the tentative order itself.

And staff would like to address concerns regarding the sediment transport and -- uh-h-h -- discharge -- discharge in compliance with their runoff management plan, by proposing to revise the tentative order to require the discharger to update the runoff management plan to ensure that it meets requirements in the new 2012 CalTrans Storm Water Project -- uh-h-h -- the -- and the Orange County HMP and WQMP.

I know that this -- the runoff measure plan
was drafted prior to their knowing that they needed to meet those standards. So -- uh -- we'll -- we would like to have them update that, include that in the order.

We would also like to have the discharger get a professional engineer to certificate that the plan does meet all those requirements.

Next, I would like to discuss the figure that was presented.

Can you hand me that figure there (indicating)?

This figure, I know it came up. Everyone had questions about it. From what we know, staff knowledge, is that it says (indicating) "Wagon Wheel Creek," here. Our -- from our knowledge, this project doesn't affect any of the tributaries that lead to Wagon Wheel Creek. We will research this further and -- and get back to you and let you know what actual location of the project is, in relation to Wagon Wheel Creek. But it is our understanding that it -- that it doesn't impact the tributaries to that.

And, lastly, I'd like to reflect on some of the comments regarding Cactus Road and the Arroyo Toad. I know this stuff also came up in your agenda package.

Uhm-m-m -- we -- we revised the tentative order and the -- and the version you have now, as supporting document 17, we revised it to include a public comment period on the
mitigation monitoring plan. We're gonna consider those comments and any others we received during that public comment period, in our review of that plan. And we'll relay those concerns so that they show just so they can revise and try to address those concerns.

And to wrap it up -- we're almost done. If the staff intends to make some minor changes, like I just said to the tentative order -- uhm-m-m -- regarding the Post-Construction BMPs and Sediment Transport Requirements, respond to any additional written comments that are added to the record. And, lastly, make ourselves available to the Board to make sense of what has definitely proven to be a very contentious item. So, anything we can do for you, please, just let us know.

Thank you very much.

BOARD MEMBER (MS. KALEMKIARIAN): I don't want an answer to this. I'm just asking for something and, maybe, TCA could do it.

I would like, at some point, when we revisit this -- I guess, at the next meeting -- to have an understanding of who's supervising the mitigation, who the (unintelligible) profits are and what their funding is gonna be like; and from where. So that we know what "in pertuity" means. I don't want an answer today. Just -- (inaudible).

A. Okay. Thank you.
Were there any other questions?

CHAIRMAN MR. MORALES: I don't think, at this time -- (interrupted)

THE WITNESS: Okay.

CHAIRMAN MR. MORALES: Thank you, Ms. Dorsey.

THE WITNESS: Great.

CHAIRMAN MR. MORALES: I think -- so, we are about to wrap up. But I do want to take a few minutes to con- -- confer with our counsel. Because we mentioned that we were going to request further briefing on a couple of items related to the CEQA analysis.

So, for those of you that are non-attorneys, feel free to fall asleep.

Those of you who will be working on this, we would like -- we can tell ya, at this point, to have your comments to our staff by the end of March, which I'm looking at my calendar is the 29th. That will be the last Friday. So, that's when we will request your written comments in response to some of the questions.

The questions will be written out and provided to -- to those of you that are with them and who would want to comment on. And we expect that to be done in -- in the next few days. But they will give you, just a brief, for heads up.

Yes, Mr. -- (inaudible).
MR. THORNTON: Mr. Chairman, can I just ask for clarification? Is this simply briefing on the legal issues? Or are you entertaining additional factual information? So, I think that's an important clarification.

CHAIRMAN MR. MORALES: Well, sometimes it -- it depends on what you mean by "factual in- (sic) -- information." A lot of times, you can't brief something legally, without additional facts.

I know there were questions by Ms. Hagan, earlier, about whether or not you -- you folks intended to actually do further mitigation. But -- and -- and that's a -- a "yes" or "no" answer. Uhm-m-m --

MR. THORNTON: No. We're -- we're happy to respond to that. I guess my -- I guess my question is, you know, is this an invitation for a reopening the commentary? I guess I understood that the Board was closing the commentary and with regard to submission and factual comments on the WDR -- uhm -- and just so we know where we stand, in terms of submission. Had we not been okay to do additional round of -

VICE CHAIRMAN MR. STRAWN: (Shake of the head).

MR. THORNTON: -- technical? Or is -- or is -- or the technical submission considered closed at this point?

CHAIRMAN MR. MORALES: Well, I don't know that -- if we'll consider it closed. But I will say that the only
testimony we intend to take, at our next hearing, will be
with respect to the questions that we ask you all to
address. We specifically came to Orange County to allow
folks the opportunity to address the technical and -- and
other issues. And it's -- quite frankly -- uhm-m -- you
know, I expect that we're gonna see a couple of attorneys and
maybe some other folks there; but not as large of a crowd.

BOARD MEMBER (MR. ABARBANEL): I assume that
questions we have that we may have mention, we can put in
writing and submit it to the executive officer and they will
be distributed on their own.

CHAIRMAN MR. MORALES: (Nod of the head). Yes. I
think that if -- uh -- if we had those questions, yes, that's
part of our normal process. Which reminds me, I did want
to -- particularly, for you all on the TCA side, let you know
that the -- uh-h-h -- Dr. Skinner's book, that -- that he
provided, we're not entering that into evidence. We didn't
rely on it as part of our discussion here. So, we'll be able
to return that to him. And it's not part of what we'll be
basing --

MR. THORNTON: That -- that -- that's sort of
the -- one the reasons I -- I had posed the questions,
Mr. Chairman. If there isn't going to be any additional
technical testimony provided, we request the opportunity to
have some opportunity to review and respond to that.
That's -- I think that would be the appropriate procedure.

STATE BOARD STAFF COUNSEL (MS. HAGAN): I'm not understanding. Respond to what?

MR. THORNTON: Well, and -- and then -- in terms of this additional briefing that, apparently, it needs to be submitted by March 20-- 29th, whether -- whether we're gonna have an opportunity to respond to any decisional or new factual information. Or to -- this is my understanding, that the -- the record is closed, with regard to those issues, at this point.

STATE BOARD STAFF COUNSEL (MS. HAGAN): I think it would be useful if we had a brief conference.

CHAIRMAN MR. MORALES: Yeah, yeah.

STATE BOARD STAFF COUNSEL (MS. HAGAN): And maybe we can clarify what it is -- (interrupted)

(Simultaneous speech; unintelligible.)

CHAIRMAN MR. MORALES: Yeah. And what it is we're going to be asking.

MR. THORNTON: Okay. Very good --

CHAIRMAN MR. MORALES: -- that -- think that may answer your question.

MR. THORNTON: Thank you.

CHAIRMAN MR. MORALES: All right.
So let's take three minutes, this time, folks. Because I really do wanna get us all out of here.

(Herefore, short recess commenced 5:14 p.m. Proceedings resumed 5:20 p.m.)

CHAIRMAN MR. MORALES: All right.

So, back on the record.

Mr. Thornton, to hopefully answer your question in a lawyerly manner, which we wanna make clear, means absolutely nothing -- (unintelligible) -- I'm going to try. We are going to provide you all with a written set of -- uh -- just a few questions, and we hope to do that by Friday.

Uhm-m-m -- to the extent that our staff makes any changes in their proposed order, as Ms. Dorsey has mentioned there might be, you all will be given an opportunity to comment on those of course.

To the extent that, in response to the written questions that we pose to you all, which you hopefully get by Friday and we would like answers to by the 29th, if factual information is required to answer some of those questions -- uh-h-h -- ya know, please provide it. It's not gonna be precluded from being added to the record. But, ya know, without actually helping to fashion the questions, I can't
say at this time whether any of -- any of that new factual information will be necessary. My answer, it's probably not much.

Sir?

MR. THORNTON: Okay. Thank you, Mr. Chairman.

And -- and -- and, beyond that, then -- other than that, responding to those questions, you're not anticipating additional submission of factual -- (inaudible).

CHAIRMAN MR. MORALES: No, we're not. And -- uh -- ya -- you know, I'm not going to the -- the -- I guess, the length of me disclosing the meeting at this point. But I will say, our next hearing on this, we will notice -- uh-h-h -- notice it, as soon as we figure out where it is going to be. And we anticipate only testimony on it. We'll say "newly raised issues," whether, as a result the -- the modifications to the proposed order or -- uh-h-h -- to the questions that we pose to help us get through the -- the CEQA motion (phonetic).

MR. THORNTON: Okay. Thank you, Mr. Chairman.

STATE BOARD STAFF COUNSEL (MS. HAGAN): I just have one quick housekeeping matter.

Today, when you administered the oath, it was after Mr. Bradford had testified. And I just wanted to -- for the record, if you could ask him to confirm that, just that he was telling the truth when he testified this morning.
CHAIRMAN MR. MORALES: Mr. Bradford, were you telling the truth?

MR. BRADFORD: I was telling the truth.

CHAIRMAN MR. MORALES: Thank you.

MR. BRADFORD: Thank you.

CHAIRMAN MR. MORALES: Okay.

I don't believe we have any further business. Nothing agendized. So, with that, I will close this meeting. Thank you.

(Heretofore, public meeting adjourned. Off the record 5:26 p.m.)

-000-
REPORTER'S CERTIFICATE

State of California  )
                 ) ss
County of Orange   )

I, SONIA RENEE SMITH, Certified Shorthand
Reporter, Certificate No. 11512, for the State of California,
hereby certify:

The foregoing proceedings were taken before me
at the time and place therein set forth;

The proceedings were recorded stenographically
by me and were thereafter transcribed;

The foregoing transcript, Pages 9 through 306,
inclusive, is a true and correct transcript of my shorthand
notes so taken in the open-mic public forum hearing, to the
best of my ability;

I further certify that I am neither counsel
for nor related to any party to said action, nor in any way
interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 29TH day of MARCH, 2013.

Sonia Renee Smith, RPR, CRR, CSR #11512
EXHIBIT 4
BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

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

1. **CONTACT INFORMATION FOR PETITIONER:**

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

   Robert D. Thornton  
   Nossaman LLP  
   18101 Von Karman  
   Suite 1800  
   Irvine, CA 92620-1047

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

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

   F/ETCA brings this petition to request review and reversal of the Regional Board’s final decision to deny the Revised Tentative Order relating to the Project. A copy of the Revised Tentative Order recommended for adoption by the Regional Board staff is attached hereto as Exhibit 1.
3. DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT:

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

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

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

a. Violated section 21167.3 of the Public Resources Code which requires the Regional Board to assume that the environmental documentation for the Project complies with CEQA;

b. Violated section 15050 of the Guidelines for the Implementation of the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15000 et seq.; hereinafter “CEQA Guidelines”) which provides that the CEQA determinations of the lead agency are final and conclusive on the Regional Board;

c. Failed to comply with applicable law requiring the Regional Board to make findings describing the facts relied upon by the Regional Board to support its decision, and explaining the factual and legal basis of the Regional Board’s decision;

d. Exceeded the Regional Board’s statutory authority because it denied the Revised Tentative Order for reasons wholly unrelated to the Regional Board’s water quality jurisdiction; and

e. Relied upon incompetent and irrelevant information.

5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:

F/ETCA is a Joint Powers Agency formed by the County of Orange and 12 cities in the
County to plan, finance, design, construct and operate a toll highway system in Orange County, California. The F/ETCA Board Members are all elected officials who collectively represent 1.8 million people. F/ETCA has proposed the Project, a 5.5 mile long extension of the existing SR 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74 in Orange County. The purpose of the Project is to reduce existing and forecasted deficiencies and congestion on Interstate 5 and the arterial network in southern Orange County.

F/ETCA is the CEQA lead agency for the proposed Project.

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

6. THE SPECIFIC ACTION THE PETITIONER REQUESTS:

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

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

Please see F/ETCA’s Memorandum of Points and Authorities below and incorporated by reference as if fully set forth herein.
8. STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER:

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

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

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

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

DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP

By: [Signature]

ROBERT D. THORNTON
MARY LYNN COFFEE
ASHLEY J. REMILLARD
DAVID J. MILLER
Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

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

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

2. FACTUAL BACKGROUND

A. The Tesoro Extension Project

The Tesoro Extension is an approximately 5.5 mile long extension of existing State Route ("SR") 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74 in Orange County ("County"), California. The location of the Project is shown below.
(Exhibit 2, p. 52.)
The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on Interstate 5 ("I-5") and the arterial network in the southern portion of the County. The Project will serve both local (existing and future) and intra- and inter-regional trips. The Project is a component of the Southern California Regional Transportation Plan and Regional Transportation Improvement Program, and the general plans of the County of Orange and every city in south Orange County. The Project is identified as a Transportation Control Measure in the South Coast Air Quality Management Plan – an air quality measure adopted by the South Coast Air Quality Management District to comply with state and federal air quality requirements.

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

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

The existing SR 241 is a tolled highway owned and maintained by Caltrans, with F/ETCA operating the toll collection facilities. SR 241 extends for approximately 25 miles within the eastern portion of the County. Beginning at its north-end at SR 91 within the City of Anaheim, SR 241 travels south/southeast through unincorporated areas of the County and the
cities of Irvine, Lake Forest, and Mission Viejo, and then terminates to the south at Oso Parkway.

SR 241 is the only regional north-south alternative to I-5 in southern Orange County.

B. Overview of California Environmental Quality Act Review

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

1 Public Resources Code section 21067 defines a lead agency as “the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect on the environment.” F/ETCA is a Joint Powers Agency formed by the County and 12 cities in the County to plan, finance, design, construct and operate a toll highway system in Orange County, California. (See Gov. Code, § 66484.3.) Thus, F/ETCA is the agency with the authority and responsibility to carry out the Project.
The Project is a modification of the SOCTIIP.2 The SOCTIIP Preferred Alternative was approximately 16 miles long, from Oso Parkway to I-5. With minor design adjustments, the Project follows the alignment of the Green Alignment between Oso Parkway and Cow Camp Road analyzed in the FSEIR. (Exhibit 2, p. 2-1.) The primary design alterations include a slight shift to the east to avoid impacts to an existing irrigation reservoir currently utilized for ranching activities in RMV. (Ibid.) In addition, an alignment shift to the west near the southerly terminus of the Project will avoid impacts to an earthen streambed, thereby reducing impacts to surface waters of the State. (Ibid.) These shifts in alignment are also designed to avoid all discharge of dredged or fill material to waters of the United States. (Id., p. 3-1.) In a letter dated November 5, 2012, the USACOE determined that Project activities will not occur within waters of the United States, that the Project is not subject to USACOE jurisdiction under Section 404 of the Clean Water Act (“CWA”), and that a Section 404 permit is not required for the Project. However, the Project has minor impacts to ephemeral waters of the State, as defined by section 13050 of the Water Code.

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

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

3 On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 approving the Addendum and a conceptual design for the Project. F/ETCA filed a Notice of Determination regarding the adoption of the Resolution with the State Clearinghouse on April 19, 2013.
the Project will not have any new significant impacts, or more severe significant impacts, that were not addressed in the 2006 SOCTIIP FSEIR.

C. The Tentative Order

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

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

Pursuant to Water Code section 13263, subdivision (a), the Regional Board must prescribe WDRs regarding the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241. As applied to the Project, the Water Quality Control Plan for the San Diego Basin, adopted on September 8, 1994 as amended, designates existing and potential beneficial uses for surface and ground waters within the San Diego region. (Exhibit 1, pp. B-6 – B-10.) The plan also establishes water quality objectives for surface waters and ground waters within the Mission Viejo Hydrologic Area (901.20). (Ibid.) The basin plan
states “certification [of WDRs] is dependent upon the assurances that the project will not reduce water quality below applicable standards” including the “the water quality objectives established and the beneficial uses which have been designated for the surface waters.” (Id., p. B-10.)

The Tentative Order’s requirements included:

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

The Tentative Order concluded that, as regulated by the WDRs, the discharge of fill as the result of the Project would not reduce water quality below these applicable standards. (See id., p. 8 [staff conclusion that “[t]hrough compliance with the waste discharge requirements of [the] Order, the Project will not result in State water quality standards being violated.”].)

Specifically, the Tentative Order requires, among other things, implementation of BMPs during construction and post-construction, compensatory mitigation measures, establishment of conservation easements, and compliance with reporting requirements. At the March 13, 2013 hearing, Regional Board staff testified regarding the Tentative Order, including explaining the
compensatory mitigation and BMPs proposed for the Project. Regional Board staff commended F/ETCA for its compensatory mitigation strategy, stating:

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

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

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

D. Revised Tentative Order

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

- Addition of monitoring and reporting requirements to ensure that the compensatory mitigation strategy for the Project is successful, to assess the
effectiveness of BMP strategies in protecting water quality, and to monitor
compliance with the receiving water limitations of the Revised Tentative Order;

- Additional requirements regarding the establishment, restoration, and
  enhancement of 21.27 acres of waters of the State and 13.55 acres of upland
  watershed buffer restoration;

- Requiring that the Runoff Management Plan for the Project be in conformance
  with the statewide storm water NPDES permit for Caltrans, Order No. 2012-0011-
  DWQ, NPDES No. CAS000003;

- Requiring F/ETCA to implement all post-construction BMPs described in the
  RMP to be installed and functional within 30 days of Project completion and prior
  to any authorized use of the Tesoro Extension; and

- Requiring F/ETCA to submit the results of the receiving water monitoring in an
  Annual Monitoring Report, due prior to December 1st of each year, with such
  receiving water monitoring reporting to continue for at least five years following
  Project construction completion.

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

Regional Board staff testified that the revisions to the Regional Board addressed the
Coalition's comments regarding potential effects on the supply of sediment bed material to
Chiquita Creek, Gobernadora Creek and San Juan Creek, as well as comments regarding the
timing of the Regional Board's approval of certain monitoring and mitigation plans. (Exhibit 6,
pp. 17-20.) Regional Board staff further testified that, with these revisions, the mitigation in the
Tentative Order "meets the mitigation requirements of CEQA and adequately addresses impacts
to waters of the State." (Id., p. 20.) Regional Board staff concluded: "[The] Order contains
waste discharge requirements to ensure beneficial uses are maintained or enhanced through
mitigation and monitoring requirements for impacts to waters of the State. The waste discharge
requirements are designed to ensure and verify that the highest level of water quality is
maintained consistent with the maximum benefit to the people of the State.” (Exhibit 1., p. 9.)

Regional Board staff also testified:

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

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

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

Petition for Review
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E. The Regional Board’s Decision

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

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

Following Ms. Kalemkiarian’s comments, Mr. Abarbanel stated: “I think the project that’s in front of us is actually pretty clear. It’s the [SOCTIIP] project that was presented here in 2008 . . . . Some people might say I made up what the project is, but I went to the website of the Transportation Corridor Authority and it shows the project going all the way through Interstate 5, somewhere kind of in San Diego County. I don’t know if that’s where they’re going to do it. But that’s the goal of their project and they’re asking us to support that, and I cannot.” (Id., pp. 201-202.) Similarly, Regional Board Chair Morales stated, “As I see it, the project as envisioned may
end up [south of San Clemente]; may not. I don't know. I do think it's more than five and a half miles though.” (Id., p. 203.)

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

3. ARGUMENT

A. Standard of Review

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

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

(Id., subd. (c), emphasis added.) Before taking any such final action, the State Board “may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both.” (Cal. Code Regs., tit. 23, § 2052, subd. (c).)
Thus, in reviewing F/ETCA’s petition challenging the denial of the Tentative Order, the State Board is not required to defer to the findings of the Regional Board. Of course, here, the Regional Board made no findings to which the State Board could defer.

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

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

Section 21167.3 provides:

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

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

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

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

5 The Regional Board is a responsible agency under CEQA because it has discretionary approval authority over WDRs. (Pub. Resources Code, § 21069; Cal. Code Regs., tit. 14, § 15381.)
agency, found that a supplemental or subsequent EIR was not required or authorized under
CEQA (Exhibit 2), and the F/ETCA Board of Directors approved the Addendum in April 2013.
(See Exhibit 1, p. 10.) Regional Board staff thereafter concluded: “The San Diego Water Board
has considered the environmental effects of the Project, as shown in the FSEIR and the changes
identified in the Addendum. The San Diego Water Board finds that since F/ETCA’s approval of
the Addendum on April 18, 2013, none of the conditions under CEQA Guidelines section 15162
trigger the need for the San Diego Water Board to prepare a subsequent or supplemental EIR in
its role as responsible agency under CEQA. Therefore, under CEQA Guidelines section 15050,
the decision of F/ETCA, as Lead Agency, is final and conclusive on all persons, including
responsible agencies.” (Ibid.) Accordingly, the Regional Board acted improperly when it failed
to assume that the Project’s FSEIR and Addendum—including the project description—comply
with CEQA. (Pub. Resources Code, § 21167.3.)

(i) Pending Litigation

As described in detail in Exhibit 3, at the time of the Regional Board’s decision, litigation
was pending concerning the FSEIR and the Addendum. (California State Parks Foundation, et
al. v. Foothill/Eastern Transportation Corridor Agency, Petition for Writ of Mandate, Nos. 06-
GIN051194, 06-GIN0513721 (S.D. Super. Ct. March 23, 2006); People ex rel. Attorney General
Bill Lockyer and State Park and Recreation Commission v. Foothill/Eastern Transportation
2011, the Superior Court of San Diego County approved a stipulated order and settlement
agreement (attached hereto as Exhibit 8) regarding the litigation. Pursuant to the settlement, the
parties agreed to a dismissal without prejudice as a means of effectuating a stay of the
proceedings, and the Court expressly reserved jurisdiction to set aside the dismissal and reinstate
the proceedings upon the written request of a party. Specifically, the settlement agreement
provides:

The stay shall terminate and no longer be in effect upon the written
request filed in Court by any Petitioner is either of the consolidated
proceedings to set aside the dismissal and reinstate the proceedings,
following notice to all Parties hereto through their counsel of
record. Upon such request, the dismissal shall be set aside, and the
proceedings shall be reinstated without the necessity to refile the pleadings or other papers filed in the proceedings prior to the dismissal, all of which shall be deemed filed as of their original filing dates.

(Exhibit 8, ¶2.) On May 22, 2013, the petitioners in the above cases filed motions to reinstate the litigation concerning the FSEIR. In doing so, the parties sought to reinitiate the 2006 challenge to the FSEIR, as well as challenge the F/ETCA’s Board of Directors approval of the Addendum in April 2013. The California Attorney General filed similar papers on May 23, 2013. (The People of the State of California, ex rel. Attorney General Kamala D. Karris v. Foothill/Eastern Transportation Corridor Agency, et al., No. 37-2013-00050001 (S.D. Super. Ct. May 23, 2013).)


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

(ii) Legal Standards

The plain text of Public Resources Code section 21167.3 required the Regional Board to assume that F/ETCA’s CEQA documentation regarding the Project complied with CEQA. The legislative history also makes it clear that Public Resources Code section 21167.3 was intended to impose stringent limitations on the ability of responsible agencies to question the adequacy of the lead agency’s CEQA compliance where CEQA litigation is filed. In its report on the proposed legislation, the Resources Agency opined on the following question: “Should the only challenge of the lead agency’s determination [of the adequacy of an EIR] be in court?” (Bill
Analysis, Natural Resources Agency, AB 884 (Apr. 29, 1977) (1977-78 Reg. Session).) In supporting such a requirement, the agency noted "prohibiting responsible agencies from raising the issue of adequacy at a later point in the process would be helpful to applicants and help streamline the process" and "the responsible agencies would be freed [from] the costs of litigation brought by other parties against them for using an inadequate EIR." (Id., p. 5.) Thus, by electing to include such language, the Legislature sought not only to limit the susceptibility of an EIR to legal challenge, but to ensure that such challenges were limited to the courts. (Ibid.; see also Enrolled Bill Report, Dept. of Finance, AB 884 as amended on Aug. 31, 1977 (Sept. 23, 1977) [discussing the bill's goal of limiting the susceptibility of EIRs to legal attack.])

As the Court of Appeal held in City of Redding v. Shasta County Local Agency Formation Commission, (1989) 209 Cal.App.3d 1169, the Legislature enacted section 21167.3 to streamline the CEQA process by designating one forum for challenges to an EIR. The court held:

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

(City of Redding, supra, 209 Cal.App.3d at p. 1181, first emphasis in original, second emphasis added.) The Court of Appeal recognized the intent of the Legislature to preclude a collateral attack on the validity of CEQA documentation in two forums. Given that lawsuits have been filed challenging the FSEIR and Addendum under CEQA and no final determination has been reached in such lawsuits, the Regional Board is foreclosed from questioning the adequacy of the FSEIR and Addendum in the WDR proceedings for the Project. That is, just as section 21167.3 barred the City of Redding from adjudicating the validity of the lead agency's CEQA documentation, it also bars the Regional Board from challenging the validity of the FSEIR and Addendum and from questioning the adequacy of the Project description in the Addendum. In addition, CEQA Guidelines section 15050 imposed an obligation on the Regional Board to treat the F/ETCA's determinations in F/ETCA's Resolution approving the Addendum as "final and conclusive."
(iii) The Regional Board's Determination

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

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

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

6 Notably, counsel for the Regional Board reminded the Board Members of section 21167.3, stating: “Essentially under CEQA the lead agency drives the process. And as a responsible agency, we are bound by the lead agency’s document even if litigation is filed challenging the lead agency’s approval.” (Exhibit 6, p. 36.)
C. The Regional Board Failed to Make Written Findings to Support its Denial of the Tentative Order

An adjudicatory proceeding is defined as "an evidentiary hearing for determination of facts pursuant to which the State Board or a Regional Board formulates and issues a decision." (Cal. Code Regs., tit. 23, § 648, subd. (a); Gov. Code, § 11405.20.) With limited exceptions, adjudicatory proceedings for the Regional Board are governed by article 2 of title 23 of the California Code of Regulations, chapter 4.5 of the Administrative Procedure Act ("APA") (commencing with section 11400 of the Government Code), Government Code section 11513, and Evidence Code sections 801-805. (Cal. Code Regs., tit. 23, § 648, subd. (b).)

The Regional Board can choose to conduct either an informal (Gov. Code, § 11445.10-.60) or formal (Cal. Code Regs., tit. 23, § 648 et seq.) adjudicative proceeding. For an informal hearing, the notice of hearing must state that the Regional Board has elected to proceed in such a manner. (Gov. Code, § 11445.30.)

(i) The Regional Board Failed to Make Findings In Violation of Law

The notice of hearing related to the Regional Board's consideration of the Tentative Order was issued on June 18, 2013 (attached hereto as Exhibit 9). The notice explains that matters before the Regional Board may be "quasi-legislative or quasi-judicial." (Exhibit 9, p. 10.) Quasi-legislative matters are limited to rulemaking and informational proceedings. (Id., p. 12.) Quasi-judicial proceedings, including formal and informal hearings, are considered adjudicative, and as described above, must comply with the rules governing adjudicatory proceedings. The notice further states that "adjudicative proceedings include hearings to receive evidence concerning the issuance of waste discharge requirements." (Id., p. 10.) As the Regional Board's consideration of the Tentative Order was such a proceeding, it was subject to the rules governing adjudicatory proceedings.

Notably, the provisions that govern the Regional Board's adjudicatory proceedings include the following:

"The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:
The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50."

(Gov. Code, § 11425.10, subd. (a)(6), emphasis added; see also Gov. Code, § 11425.50 ["[t]he decision shall be in writing and shall include a statement of the factual and legal basis for the decision"].) The Regional Board entirely failed to comply with this requirement. Not only was the Regional Board’s decision not in writing, but it was not based on the record and did not include statements regarding the factual and legal basis for the decision. Indeed, the Regional Board wholly failed to articulate any rational basis for its decision. Instead, Board Members Kalemkiarian and Abarbanel and Regional Board Chair Morales simply determined, despite the F/ETCA’s findings and the evidence in the record to the contrary, that the project under consideration was not the 5.5 mile Tesoro Extension, but the 16-mile SOCTIIP highway. (See Exhibit 6, pp. 198-205.) This determination entirely lacks a legal or factual basis. It is contrary to the findings of Regional Board staff, who recommended adoption of the Tentative Order, finding the conditions and mitigation measures in the WDR would protect water quality and water resources. (Id., p. 27.)

The Regional Board’s failure to make findings to support its decision to deny the Tentative Order was contrary to law and an abuse of discretion. (Code Civ. Proc., § 1094.5.)

Four decades ago, the California Supreme Court made it clear that quasi-judicial decisions of administrative agencies are required to be supported by written findings that identify the facts relied upon by the agency and that explain the connection between such facts and the agency’s legal conclusions. (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.) In Topanga, a planning commission granted a zoning variance to an investment company in Topanga Canyon in Los Angeles County. Local property owners unsuccessfully appealed the decision to the county board of supervisors, and thereafter sought relief by means of administrative mandamus in court. Among other things, the issue before the California Supreme Court was whether the planning commission was required to render findings to support its
decision. *(Id. at p. 510.)* In holding that administrative agencies, including the planning commission, were required to render such findings, the Court held that "among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." *(Id. at p. 516.)* The Court continued, stating "[i]n addition, findings enable the reviewing court to trace and examine the agency's mode of analysis." *(Ibid.)*

To support its decision, the Court explained that its analysis began "with consideration of Code of Civil Procedure section 1094.5, the state's administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies." *(Id. at p. 514.)* It noted that section 1094.5 defined "abuse of discretion" as an order or decision "that is not supported by the findings, or the findings are not supported by evidence.

*(Id. at p. 515, emphasis in original.)* The Court concluded:

[I]mplicit in section 1094.5 is a requirement that the agency which renders the challenged decisions must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In doing so, [the Court] believe[d] that the Legislature must have contemplated that the agency would reveal this route.

*(Ibid.)* The court reasoned that the language in section 1094.5 requiring a court to compare the evidence and ultimate decision to the "findings" left no room for the conclusion that speculation as to the administrative agency's basis for decision was acceptable. *(Ibid.; see also Sierra Club v. City of Hayward (1981) 171 Cal.3d 840, 858-62 [holding explicit findings are needed to determine whether an administrative agency "strayed from the statutorily created pathway from evidence to ultimate conclusion."])*

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

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

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

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

Indeed, Ms. Kalemkiarian based her decision on allegations in a recently filed Attorney General complaint, and Mr. Abarbanel based his on information found on the F/ETCA website. (See Exhibit 6, pp. 198-205.) Allegations in a civil complaint are not evidence. *(Cassady v. Morgan, Lewis & Bockius LLP (2006) 145 Cal.App.4th 220, 241, citing San Diego Police Officers Assn. v. City of San Diego (1994) 29 Cal.App.4th 1736, 1744 & fn. 8.)* The use of the particularly egregious given its decision departed from the Regional Board staff’s recommendations. (See Exhibit 7, p. 1; see also *Bam, Inc. v. Board of Police Commissioners* (1992) 7 Cal.App.4th 1345, 1346 [noting that "where the decision of the hearing examiner is rejected," findings by the decision-maker are critical].)

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

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

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

The Legislature has prescribed the jurisdiction of the Regional Board. That is, the authority of the Regional Board is limited to those activities set forth in applicable statutes, including the Porter-Cologne Water Quality Control Act (“Porter-Cologne”), Water Code, § 13000 et seq. Specifically, Water Code section 13263 provides that, after the necessary hearing, the Regional Board “shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, ... with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed.” In prescribing these requirements, the Regional Board “shall implement any
relevant water quality control plans that have been adopted, and shall take into consideration the
beneficial uses to be protected, the water quality objectives reasonably required for that purpose,
or other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.”
(Ibid.) Water Code section 13241 provides that the Regional Board “shall establish such water
quality objectives in water quality control plans as in its judgment will ensure reasonable
protection of beneficial uses and the prevention of nuisance . . .”
These provisions set the limits on the Regional Board’s scope of review. Nowhere does
the Water Code provide any other basis for a Regional Board decision on waste discharge
requirements. Indeed, applicable regulations confirm that the scope of the Regional Board’s
review is limited to water quality. Specifically, “when acting as a responsible agency, [the
Regional Board] may prohibit, postpone, or condition the discharge of waste . . . or other
entitlement for use for any project subject to CEQA to protect against environmental damage to
water resources, to minimize adverse environmental impacts on water resources, or to ensure
long-term protection of water resources, or if the information required [for a waste discharge
report] has not been timely submitted to the board.” (Cal. Code Regs., tit. 23, § 3742, subd. (a).)
“The board’s authority under . . . subdivision [(a)] is limited to the protection of water resources
within its purview.” (Ibid, emphasis added; see also Pub. Resources Code, § 21002.1 [stating a
“responsible agency shall be responsible for considering only the effects of those activities
involved in a project which it is required by law to carry out or approve”].)
In short, the role of the Regional Board is to ensure that applicable water quality
standards are met. Notably, Regional Board staff concluded that the Project would satisfy such
standards and recommended adoption of the Revised Tentative Order. Specifically, staff found
that “[t]hrough compliance with the waste discharge requirements of [the] Order, the Project will
not result in State water quality standards being violated.” (Exhibit 1, p. 8.) Staff further found:
“[The] Order contains waste discharge requirements to ensure beneficial uses are maintained or
enhanced through mitigation and monitoring requirements for impacts to waters of the State.
The waste discharge requirements are designed to ensure and verify that the highest level of
water quality is maintained consistent with the maximum benefit to the people of the State.” (Id.,
p. 9.) Nothing presented at the June 19 hearing nor discussed by the Regional Board contradicts these findings. Indeed, no other state highway has been required to satisfy such rigorous water quality standards. (Id., p. 7.)

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

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

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

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

8 During the March 13, 2013 hearing, Board Member Abarbanel disclosed that he is a member of the Sierra Club. (Exhibit 4, p. 14.) The Save San Onofre Coalition (“Coalition”) includes the Sierra Club, and was designated as an interested party for purposes of the June 19 hearing. (See Exhibit 9 [describing rules applicable to interested parties].) This means that the Coalition—and therefore the Sierra Club—was afforded the same rights and privileges as F/ETCA at the hearing, including having the same amount of time to present oral testimony. (See Exhibit 6.) Put another way, this means that Board Member Abarbanel was a member of one of the parties in the proceeding over which he presided. Further, the Sierra Club engaged in a public relations blitzkrieg against the Project and urged its members to “take action” against the Project on June 17, 2013—two days prior to the June 19 hearing. (See http://angeles2.sierraclub.org/take_action/blog/2013/06/take_action_stop_toll_road_again.) Mr. Abarbanel failed to disclose any ex parte communications with the Sierra Club in violation of Regional Board rules governing ex parte communications.
The Regional Board does not have the authority to question the F/ETCA definition of the Project. As described in the provisions above, the Regional Board’s authority is limited to rendering decisions on whether the F/ETCA complied with water quality standards applicable to the Revised Tentative Order. It is the role of lead agency here to determine the scope of the project. (See Pub. Resources Code, §§ 13260, 13263 [explaining that a person who proposes to discharge waste must file a report with the Regional Board; the Regional Board then makes a decision based on that report].) Here, as the lead agency, F/ETCA was authorized to determine the scope of the Project, and did so pursuant to applicable law. (See Exhibit 2.) Thus, not only is it improper for the Regional Board to question F/ETCA’s determination regarding the Project scope, but it does not have the authority to do so.

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

4. CONCLUSION

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

For the foregoing reasons the State Board should adopt the Revised Tentative Order, or in the alternative, reverse and remand the Tentative Order to the Regional Board with instructions to adopt the Revised Tentative Order.
DATED: July 18, 2013

Respectfully Submitted,

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By:

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FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
LIST OF EXHIBITS

Exhibit 1: California Water Quality Control Board, San Diego Region, Item No. 9, Revised Tentative Order No. R9-2013-0007 Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (June 19, 2013)

Exhibit 2: Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIP) Final Subsequent Environmental Impact Report (SCH #2001061046), Tesoro Extension Project, prepared by the Foothill/Eastern Transportation Corridor Agency (February 2013)

Exhibit 3: Correspondence from Robert D. Thornton, Nossaman LLP on behalf of Foothill/Eastern Transportation Corridor Agency to Darren Bradford, California Regional Water Quality Control Board Re: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County; Response to Questions for Written Response on Tentative Order No. R9-2013-0007 (March 29, 2013)

Exhibit 4: Reporter’s Partial Transcript of Proceedings, California Regional Water Quality Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory Committee, Item No. 8 Water Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County (March 13, 2013)


Exhibit 6: Reporter’s Partial Transcript of Proceedings, California Regional Water Quality Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory Committee, Item No. 9 Water Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County (June 19, 2013)


Exhibit 8: *California State Parks Foundation v. Foothill/Eastern Transportation Corridor Agency*, San Diego Superior Court Case No. GIN051194 and GIN051371 (Consolidated) Stipulated Order Approving Interim Settlement with Tolling Agreement and Dismissal Without Prejudice, and Retaining the Court’s Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement (filed January 12, 2011)

EXHIBIT 5
MR. MORALES: I will like to call the meeting back to order. It's after 1:00 p.m. so we can take up item number nine on the agenda and this is the time and place for the continuance of public hearing on tentative order number R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency, Tesoro Extension, commonly know as the 241 project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. STRAWN: Thank you.

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

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

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

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

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

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

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

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

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

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

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

I'll simply ask you guys to say "I do" when I
finish.

Do you swear the testimony you are about to
give is the truth? And if so, please answer "I do."

THE WITNESSES: I do.

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

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

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

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

Excuse me one second.

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

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

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

So here's the existing sections of 241. Here's
the proposed Tesoro Extension Project. And here is the
proposed Cow Camp Road.

The purpose of the Tesoro Extension Project is to provide improvements to the south Orange County transportation infrastructure.

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

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

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

The board continued the public hearing to today's meeting to allow staff and counsel adequate time to prepare responses to the remaining issues, draft revised conditions and/or additional findings as appropriate for inclusion in the tentative order, and to evaluate the comments submitted regarding compliance with the California Environmental Quality Act, also
Since the March hearing, staff evaluated the validity of TCA's CEQA documentation; revised the tentative order in response to oral comments received at the March hearing, written comments and legal counsel's evaluation of CEQA; accepted public comments regarding the latest provision of the tentative order; revised the response to comments report to include responses to CEQA questions; prepared an addendum to the response to comments report to address new public comments; and prepared an errata sheet to address additional changes to the tentative order.

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

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

I will discuss each key issue individually.

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

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

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

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

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

MR. BRADFORD: Sure.

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

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

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

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

MR. ABARANEL: Thank you.

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

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

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

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

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

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

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

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

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

Excuse me one second.

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

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

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

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

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

The commenters state that, in order to comply with the Orange County HMP, the site design may need to be significantly altered. Possible changes to the
The project may include modification of fill discharge locations, storm water best management practices and grading footprint.

They are concerned that the water board cannot evaluate the project until TCA analyzes the changes needed to meet the requirements in the HMP.

The revised tentative order requires that the updated runoff management plan comply with the Orange County HMP and model water quality management plan. These requirements must be met regardless of when the runoff management plan is updated and submitted to the water board.

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

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

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

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

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

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

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

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

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

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

MR. ABARANEL: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

In the mid-1980s, the County of Orange, in order to manage the transportations needs of population growth and development, adopted a roads first strategy.

This policy is manifested in the establishment of roadway improvement programs in areas having significant growth and development. The development in an area is tied to roadway construction by a building permit phasing, thereby guaranteeing that roads will be built first.

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

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

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

The revised tentative order requires TCA to