

**California Regional Water Quality Control Board
San Diego Region**

**Addendum to Response to
Comments Report**

**Revised Tentative Order No. R9-2013-0007
Waste Discharge Requirements
for
Foothill/Eastern Transportation Corridor Agency
Tesoro Extension Project (SR 241) Project
Orange County**

June 19, 2013

STATE OF CALIFORNIA

EDMUND G. BROWN, JR. Governor
MATT RODRIQUEZ, Agency Secretary, California Environmental Protection Agency



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Acronyms & Abbreviations

ACOE	Army Corps of Engineers	NGO	Non-governmental Organization
BMPs	Best Management Practices	NPDES	National Pollutant Discharge Elimination System
Caltrans	California Department of Transportation	NTR	National Toxics Rule
CCR	California Code of Regulation	PROJECT	Tesoro Extension Project
CEQA	California Environmental Quality Act	RMP	Runoff Management Plan
CFR	Code of Federal Regulations	ROWD	Report of Waste Discharge
CTR	California Toxics Rule	SR	State Route
CRAM	California Rapid Assessment Method	SSOC	Save San Onofre Coalition
CWA	Clean Water Act	SWPPP	Storm Water Pollution Prevention Plan
CWC	California Water Code	TCA	Transportation Corridor Agencies
EIR	Environmental Protection Report	USACOE	United States Army Corps of Engineers
F/ECTA	Foothill/Eastern Transportation Corridor Agency	USEPA	United States Environmental Protection Agency
GIS	Geographic Information System	WC	Water Code
HMMP	Habitat Mitigation and Monitoring Plan	WDRs	Waste Discharge Requirements
HMP	Hydromodification Plan	WQMP	Water Quality Management Plan
MS4	Municipal Separate Stormwater Sewer Systems		

EXECUTIVE SUMMARY

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has prepared this Addendum to Response to Comments Report regarding Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County* (Tesoro Extension Project).

This report includes responses to comments on the revisions to the Tentative Order that were received between May 30, 2013 and June 7, 2013. Please note, all references to Tentative Order section numbers in the response sections of this report refer to section numbers in the Revised Tentative Order, unless otherwise noted in the response.

**ADDENDUM TO RESPONSE TO COMMENTS REPORT
 TENTATIVE ORDER NO. R9-2013-0007
 June 19, 2013**

Comment No.	CEQA	
127	<p>COMMENT: As we have discussed at length in our prior letters, CEQA requires that a responsible agency prepare an SEIR for a project where substantial changes are proposed in the project which will require major revisions of the prior EIR, substantial changes occur with respect to the circumstances under which the project is being undertaken, or new information on environmental impacts becomes available. (Pub. Resources Code § 21166; CEQA Guidelines § 15162.)</p> <p>Here, the project is the Foothill-South project approved by TCA in 2006—a six-lane highway that would have extended State Route 241 through 16 miles of virtually undeveloped lands in one of the most environmentally sensitive areas in California. The approvals of the Foothill-South and the underlying EIR (“2006 EIR”) were challenged on CEQA grounds in a lawsuit brought by members of the Coalition, and in a similar suit brought by the State Park and Recreation Commission and the Attorney General. Two years later, the California Coastal Commission held that the Foothill-South was inconsistent with the Coastal Zone Management Act of 1972 (“CZMA”), 16 U.S.C. § 1451 et seq., a decision which was upheld by the U.S. Secretary of Commerce in December 2008.</p> <p>In the face of this decision, TCA decided to simply proceed with the first segment of the project without indicating how it would resolve the CZMA conflicts for the remainder of the alignment. In February 2013, TCA prepared an Addendum to the 2006 EIR for the first 5.5 miles of the Foothill-South, which it dubbed the “Tesoro Extension.” This literal “road to nowhere” terminates at a dirt road and purports to serve a development, the future Rancho Mission Viejo, that already includes a north-south road that is more than adequate to serve the projected traffic. The Addendum does not address the location or impacts of the remainder of the Toll Road, nor does it contain a detailed or updated environmental analysis of the Tesoro Extension. Rather, it simply concludes that the impacts of the Tesoro project will not be significantly greater than the impacts of the entire 16-mile Toll Road analyzed in the 2006 EIR.</p> <p>The Addendum’s artificially truncated analysis ignores the serious and controversial environmental constraints to constructing the southern portion of the route. For example, in a</p>	<p>Commenter: William J. White, Shute, Mihaly & Weinberger LLP, on behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WiLDcoast-COSTASALVAJE, and Orange County Coastkeeper</p>

	<p>clear attempt to evade Army Corps permitting, the Tesoro Extension segment stops just short of San Juan Creek and the San Juan Creek complex's valuable jurisdictional wetland resources. TCA's use of a segmented project description also sidesteps the significant impacts on water quality, wetlands, and coastal zone and park resources resulting from the Foothill-South alignment or the other far-eastern alignments.</p> <p>Once TCA goes forward with the remainder of the alignment, however, as it has repeatedly indicated it will impacts to these resources are inevitable. The 2008 determination by the Secretary of Commerce that the Foothill- South is inconsistent with the CZMA, and thus that the alignment approved by TCA in 2006 is no longer feasible, represents a substantial change in circumstances requiring preparation of an SEIR. In addition, the 2006 EIR is now entirely outdated. To give just one example, its water quality analysis is primarily based on a 2003 Runoff Management Plan, as well as obsolete versions of other documents, such as the California Storm Water BMPs and the Storm Water Quality Handbooks. These documents are not only out-of date, they were flawed from the beginning. As the Water Board informed TCA in denying its WDR application in early 2008, the 2003 RMP had numerous deficiencies and "was not adequate to demonstrate that the project would not cause degradation of receiving waters."</p> <p>Despite the fact that the 2006 EIR is clearly outdated, TCA failed to prepare an SEIR. It also failed to recirculate the 2006 EIR for public review as CEQA requires when a lead agency approves a separate, later project based on a prior EIR. (CEQA Guidelines, § 15153(b)(2).) Instead, on April 18, 2013, TCA—at a special meeting convened only 48 hours before the meeting was held—approved the Tesoro Extension based on the abbreviated and inadequate Addendum and determined that no SEIR was required. TCA's decision has been challenged in two new lawsuits, one filed by members of the Coalition, and another by the California Attorney General.³ In addition, the reinstatement of the litigation challenging the original 2006 EIR has been initiated.</p> <p>The Revised Tentative Order appears to assume that, now that TCA has decided to proceed with the project without preparation of an SEIR, the Water Board, as a responsible agency, is bound by that decision. But this is not the case, where, as here, changed circumstances and conditions require an SEIR under CEQA. A responsible agency has independent authority under CEQA to determine whether the conditions requiring preparation of an SEIR have been met. (CEQA Guidelines, § 15050(c)(2) (lead agency determination not conclusive where conditions</p>	
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June 19, 2013

	<p>for SEIR are met); see also id., § 15096(e)(3).)</p> <p>Here, as discussed above and in our prior letters, the project is the entire Foothill-South, and substantial changes in circumstances have occurred since TCA's approval of the EIR for the Foothill-South project in 2006. The Board should require preparation of an SEIR to ensure that it has a full and complete picture of the environmental implications of its approval.</p> <p>RESPONSE: Regarding the Project Description, addendum approval, and role of the San Diego Water Board as lead agency please see prior responses to comments #116, #117 and #125. As a responsible agency under CEQA, the San Diego Water Board must presume the EIR prepared by the lead agency is adequate. (Pub. Resources Code § 21167.3; CEQA Guidelines § 15050.) The San Diego Water Board finds none of the conditions that would require it to prepare a subsequent or supplemental EIR under CEQA Guidelines section 15162 have been met since the addendum approval on April 18, 2013.</p> <p>Commenter states that the 2003 Runoff Management Plan submitted by TCA and its water quality analysis are outdated as reflected in a San Diego Water Board determination in 2008. The Project analyzed by the San Diego Water Board is the project identified in the 2006 FSEIR, modified by the April 2013 addendum. The project before the San Diego Water Board is a 5.5 mile toll road as described by TCA in its Addendum. The 2008 determination is not applicable to the current Project and TCA's application for Waste Discharge Requirements for this Project. The Board further notes that the Runoff Management Plan has been updated and the Order requires it to meet defined performance standards. See section V. of the Revised Tentative Order and Section 8 of Attachment B to the Order.</p> <p>Commenter's remark that a new EIR must be circulated for a new project is noted. The San Diego Water Board as responsible agency is relying on the project description as described in the 2013 addendum. (See Pub. Resources Code § 21167.3; CEQA Guidelines §15050.)</p> <p>Commenter notes that two new lawsuits have been filed against TCA challenging, among other things, TCA's approval of the addendum and project description. Comment is noted and is applicable to actions TCA has taken as lead agency under CEQA and do not pertain to the San Diego Water Board's role as responsible agency. Even if litigation is filed challenging an</p>	
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	<p>environmental document, under Public Resources Code § 21167.3 subdivision (b) responsible agencies are required to presume the documents prepared by the lead agency comply with CEQA and any approval by the responsible agency, “shall constitute permission to proceed with the project at the applicant’s risk pending final determination of such action or proceeding.”</p>	
<p>Comment No.</p>	<p>CEQA</p>	
<p>128</p>	<p>COMMENT: Even if the Water Board were bound by TCA’s improper determination to proceed with the project without preparing an SEIR, the Board has independent authority to deny the application under the Porter-Cologne Act based on the impacts of the Foothill-South project as a whole. Moreover, the Water Board is independently required under CEQA to make findings regarding the project’s significant impacts before it can approve the application. The only impacts described in the CEQA documents submitted by TCA are the impacts of the Foothill-South as a whole, and there is no evidence that TCA has fully addressed the inadequacies in the water quality mitigation for this project previously identified by the Water Board. On these grounds, the Water Board—as it did in 2008—should deny TCA’s application.</p> <p>The Water Board has a statutory responsibility “to protect the quality of waters in the state from degradation.” (Water Code, § 13000.) In reviewing waste discharge requirements, the Board is entitled to all “data and information necessary to enable the board to determine whether the project proposed may have a significant effect on the environment.” (Cal. Code Regs., tit. 23, (“23 CCR”), § 3740.) The Board may also request further information from TCA in order to “clarify, amplify, correct, or otherwise supplement the contents of a complete application in order for the certifying agency to determine whether a certification should be issued.” (23 CCR § 3836.) The Board has the authority to “prohibit, postpone, or condition the discharge of waste” where this information has not been submitted or where it fails to ensure “long-term protection of water resources.” (23 CCR § 3742.)</p> <p>The Board’s regulations further require that the applicant submit “a full, technically accurate description, including the purpose and final goal, of the <i>entire activity</i>.” (23 CCR § 3856(b) (emphasis added); <i>accord</i> CEQA Guidelines, § 15378(c) (“project” means the whole of the “activity which is being approved” and not “each separate government approval”).) It is clear that the “entire activity” here is and has always been construction of the Foothill-South. As discussed</p>	<p>Commenter: William J. White, Shute, Mihaly & Weinberger LLP, on behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WiLDCOAST-COSTASALVAJE, and Orange County Coastkeeper</p>

	<p>in our prior letters, there is no utility in constructing the Tesoro Extension independent from the Foothill-South, and in any event, TCA's repeated statements show that the project's only purpose is to further completion of the entire Foothill-South. Moreover, TCA's improper determination regarding the scope of its review under CEQA—even if it were binding on responsible agencies for CEQA purposes until it is overturned in court—does not bind the Water Board in the application of its independent authority under the Porter-Cologne Act to ensure protection of water resources. (Water Code, §§ 13263, 13241.)</p> <p>Here, the record has always shown that the impacts of the Foothill-South project will be devastating, and some of the most significant impacts are on water quality and wildlife. Among other things, the Project would:</p> <ul style="list-style-type: none">• Adversely impact important habitat for eleven threatened or endangered species, including the endangered arroyo toad, the southernmost known population of the endangered steelhead trout, and the endangered tidewater goby.• Threaten the water quality of affected watersheds and the coastal waters to which they drain, including the world-class surfing beach known as Trestles.• Cause the permanent loss of wetlands, including wetlands associated with San Mateo Creek—one of the last remaining high-integrity watersheds along Southern California's coast—and degrade the creek and its estuary through erosion. Destroy over 50 acres of undisputed environmentally sensitive habitat areas.• Cause erosion and fine sediment delivery to the lagoon at the San Mateo Creek mouth that has the potential to change its ecology and adversely impact habitat for the tidewater goby.• Require 41 million yards of cut and fill.• Result in major impacts to runoff patterns in 20 individual subwatersheds, most of which are fragile and prone to instability and rapid degradation, that currently have little development or and related impervious area and include steep terrain and drainage channels which are very sensitive to increased runoff.• Discharge toxic roadway pollutants and sediment into miles of waterways that are presently pollution free.⁴ <p>Even TCA has recognized that the project would have numerous significant and unavoidable impacts on water resources and sensitive species, including impacts related to sensitive plant communities; habitat fragmentation and wildlife movement; cumulative impacts to wildlife,</p>	
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	<p>fisheries, and vegetation; and impacts to the arroyo toad and California gnatcatcher. The Coastal Commission, in denying TCA's consistency certification, also expressed grave concerns about the project's water quality analysis, based in part on the Water Board's concerns. With regard to pollution impacts, for example, the Staff Report finds:</p> <p>Although BMPs are the basis for a national strategy to reduce the impacts of stormwater and nonpoint source pollution, they are not 100% effective. According to the Caltrans BMP Retrofit Pilot Program Final Report (CTSW-RT-01-050), also cited by TCA, the proposed sand media filters can be expected to trap about 90% of suspended sediment, 87% of total lead, and 50% of copper. The proposed detention basins fare even worse trapping only 72% of suspended sediment, 72% of total lead, and 58% of total copper. In other words, the proposed toll road will discharge between 42- 50% of the copper, 13- 28% of the lead, and 10- 28% of the suspended sediment generated from automobiles into the San Mateo Creek, San Juan Creek, and San Onofre Creek watersheds. Clearly, the heavy metal impacts would not be completely mitigated. Considering that no toll road currently exists through San Mateo Creek watershed, nor in the watersheds on either side of it, this project will increase discharges of heavy metals and other automobile-generated pollutants into the upper parts of the watersheds...</p> <p>Commission staff also found that the baseline and proposed monitoring were insufficient to ensure protection of water quality:</p> <p>The Coastal Commission finds that given the risk associated with this project to biological productivity and water quality associated with this project a comprehensive monitoring program for those resources is required. The monitoring plan should enable TCA and others to evaluate the current hydrologic, biological productivity and water quality baselines and monitor changes to those resources caused by the project. In addition, a contingency plan is required that proposes corrective actions that will be taken if the proposed project is shown to have adverse impacts on the hydrologic functions, biological productivity or water quality of the San Mateo, San Juan or San Onofre watersheds based on the comprehensive monitoring plan.</p> <p>The Water Board independently denied the waste discharge application for the Foothill-South in 2008 based on its determination that the project had the potential to degrade local receiving waters. TCA has never resolved the serious deficiencies the Water Board identified in its 2008 water quality analysis.</p>	
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	<p>Until TCA can provide adequate and updated information about the environmental impacts of the <i>entire activity</i>—the Foothill-South—the Water Board should deny TCA's application for the same reasons it denied TCA's prior application in 2008.</p> <p>RESPONSE: Commenter claims that water quality impacts within the San Diego Water Board's purview under Porter Cologne (Wat. Code § 13000 et seq.) have not been adequately mitigated and the Board must make findings for impacts under CEQA Guidelines section 15091 for impacts to water quality.</p> <p>With respect to certain impacts that Commenter cites, Commenter refers to impacts outside the project area for the Tesoro Extension Project citing a California Coastal Commission decision in 2008 as it applied to the "Foothill-South Toll Road". As discussed in Comment #127, the Project, as defined by TCA is an application for Waste Discharge Requirements for the 5.5 mile Tesoro Extension Project. Further, commenter alleges a number of environmental impacts that will result from the "Foothill-South Toll Road" or Tesoro Extension Project that are outside the purview of the San Diego Water Board which has authority to mitigate for impacts within its areas of responsibility. (CEQA Guidelines §§ 15042, 15096.)</p> <p>As commenter notes, the San Diego Water Board has authority to mitigate for impacts to water resources and water quality. In the Revised Tentative Order, the Board finds that impacts to water quality and water resources for the Tesoro Extension Project will be mitigated to a less than significant level and has appropriately made findings under CEQA Guidelines section 15091. (See Revised Tentative Order section II.N.)</p>	
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Comment No.	CEQA	
129	<p>COMMENT: Even if the Board were bound by TCA's decision not to prepare an SEIR prior to its approval of the Tesoro Extension, the Board has an independent duty to consider all the environmental impacts of the proposed project, ensure appropriate mitigation for impacts within its jurisdiction, and identify overriding considerations for any impacts that are not mitigated before it can approve the project. Because the Board is not bound by TCA's findings on these matters, and because there is no basis for making these findings on the present record, the Board should deny TCA's application.</p> <p>As a responsible agency, the Water Board has responsibility for mitigating or avoiding "the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." (CEQA Guidelines, § 15096(g)(1); <i>accord id.</i>, § 15096(g)(2) (a responsible agency "shall not approve a project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.").)</p> <p>The Board must also adopt findings pursuant to Guidelines section 15091 for <i>each significant environmental impact</i> identified in the lead agency's EIR. <i>Id.</i>, § 15096(h). Section 15091 provides:</p> <p><i>No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:</i></p> <p>(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR. (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (3) Specific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or project alternatives identified in the final EIR.</p>	<p>Commenter: William J. White, Shute, Mihaly & Weinberger LLP, on behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WiLDcoast-COSTASALVAJE, and Orange County Coastkeeper</p>

	<p>(CEQA Guidelines, § 15091(a) (emphasis added).) In addition, the Board must adopt a statement of overriding considerations for any significant and unavoidable impacts and a mitigation monitoring plan setting forth mitigation that is “fully enforceable through permit conditions, agreements, or other measures.” (<i>Id.</i>, §§ 15093, 15091(d).) In making these findings, the Board does not defer to the findings of the lead agency, but rather “must...issue its <i>own</i> findings.” (<i>Riverwatch v. Olivenhain Mun. Water Dist.</i> (2009) 170 Cal.App.4th 1186, 1201.)</p> <p>Even overlooking the deficiencies of the 2006 EIR and recent Addendum that are now being challenged in court, the record makes clear that the project will have numerous significant and unmitigable impacts. The 2006 EIR found that the Foothill- South project would have impacts that are too numerous to summarize here, but some of the most significant relate to impacts on sensitive plant communities, habitat fragmentation, fisheries, endangered species, and erosion and sedimentation of local creeks, and wetlands.</p> <p>TCA’s recent Addendum provides no basis for the Water Board to limit its CEQA findings to the impacts of the Tesoro Extension. The Addendum does not even purport to analyze the environmental impacts for the Tesoro Extension standing alone. Rather, it merely concludes after the most cursory analysis that the “Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR.” Thus, the Addendum itself relies entirely on the impacts of the entire Foothill-South project as its benchmark. In the absence of any analysis by TCA of the significance of the Tesoro Extension’s impacts standing alone, the Water Board has no choice but to base its CEQA findings on the full range of impacts described in the 2006 EIR.</p> <p>As discussed above, the Foothill-South would have extensive significant and unavoidable impacts on water resources, habitat and protected species. TCA has also found that the Foothill-South would have potentially significant impacts on a wide range of resources that are within the Water Board’s jurisdiction, including adverse impacts to:</p> <ul style="list-style-type: none">• peak flow rate and runoff volumes for local drainage areas;• floodplain encroachments;• encroachment impacts on local creeks;• impacts to natural and beneficial floodplain values;	
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	<ul style="list-style-type: none">• groundwater recharge;• increases in sediment loads;• channel scouring and sediment deposition;• erosion and sedimentation of local creeks;• surface and ground water quality;• direct and cumulative impacts to state and federally protected wetlands;• conflicts with local ordinances and local, regional and State habitat conservation plans;• short- and long-term impacts to numerous sensitive and protected plan and animal species; and• impacts on the coastal zone. <p>The Water Board must then adopt findings for each of these significant impacts indicating either that the impact has been mitigated, or that mitigation is infeasible or outside the Board's jurisdiction. The Board is responsible for mitigating or avoiding all significant impacts resulting from its approvals of the project that are within the scope of its authority. (CEQA Guidelines, §§ 15096(g), 15096(h).) This requires that the Board develop specific permit conditions, based on current and complete information, to mitigate each significant impact on water and water-related resources identified in the 2006 EIR.</p> <p>For the reasons already identified by the Water Board in denying TCA's application in 2008, these findings cannot be made. Indeed, the Addendum relies on the very same water quality mitigation measures that the Board found inadequate in 2008. Nor can the Water Board rely on TCA's findings, as TCA adopted no mitigation findings under CEQA Guidelines section 15091 for the Tesoro Extension and its 2006 Findings are both outdated and fundamentally inadequate.</p> <p>Finally, the Board is required to make findings of overriding considerations justifying approval in light of the significant impacts remaining after mitigation. Not surprisingly, the only override findings TCA has ever adopted are for the Foothill-South <i>as a whole</i>. TCA's findings (which like the other required CEQA findings do not bind the Board) are deficient for numerous reasons, but in any event cannot stand in light of the 2008 decision by the Coastal Commission, upheld by the Secretary of Commerce, that the Foothill-South contravened numerous enforceable policies of the State's Coastal Management Program.</p>	
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	<p>In addition, the benefits and environmental impacts of the Tesoro Extension alone are significantly different from those of the full Foothill-South. For example, in approving the Foothill-South in 2006, the “benefits” that TCA found would outweigh the Project’s substantial environmental impacts all assumed the construction of the entire Toll Road. These benefits included traffic relief resulting from connecting State Route 241 to I-5, the installation of water treatment systems at Trestles beach, and the creation of “an additional evacuation route from I-5, immediately south of San Clemente, to Ortega Highway and to State Route 241.”¹⁵</p> <p>None of these claimed benefits will be realized by the proposed Tesoro Extension. Despite its substantial environmental impacts, the Tesoro Extension will achieve only the most nominal traffic improvements. In fact, TCA previously rejected an alternative similar to the Tesoro Extension, the Far East Corridor-Ortega Highway Variation (FEC-OHV), as infeasible on the grounds that it performed poorly for the traffic measures because it did not “provide a connection to I-5” and the “high cost per hour of travel time saved” did not justify the expenditure of resources.¹⁶</p> <p>Because there is no basis for the Board to make the findings required by CEQA on the current record, the Board should deny TCA’s application.</p> <p><u>RESPONSE:</u> Commenter’s remarks largely pertain to whether TCA has proceeded in a manner legally required by CEQA. As the commenter notes, litigation has been filed challenging the adequacy of TCA’s approvals and compliance with CEQA as a lead agency. See responses to comments #127, #128 and referenced responses to comments contained therein, for an explanation of the San Diego Water Board’s role and responsibilities as a responsible agency under CEQA.</p> <p>The Board agrees with the commenter’s remark that the Board must mitigate for impacts within its authority pursuant to CEQA Guidelines section 15096. Commenter’s remark on the adequacy of the San Diego Water Board’s findings is noted. The Board’s findings regarding mitigation of impacts within its purview are addressed in section II.N. of the Revised Tentative Order.</p>	
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Comment No.	CEQA	
130	<p>COMMENT: Even if the Tesoro Extension could be considered apart from the impacts of the Foothill-South, the documents before the Board are not adequate to ensure that the proposed 5.5 miles of new freeway will not significantly degrade regional water quality. Even in the very limited review period provided by the Board’s May 30 Notice of Continuance of Hearing, we have been able to identify a number of critical flaws in the studies underlying TCA’s permit application.</p> <p>As explained in the June 7, 2013 comment letter from ESA/PWA, until the RMP is updated, the impacts of the Tesoro Extension on receiving waters, and whether those impacts can be mitigated, is unknown. As currently proposed, the project would fill in several headwater channels, potentially leading to a reduction in sediment to receiving streams. In order to comply with the HMP, the site design may need to be significantly altered, including changes to fill discharge locations, changes to the size and location of stormwater best management practices, and changes to grading footprints. The Water Board cannot evaluate these potential changes until TCA undertakes the required analyses. Moreover, the hydromodification facilities and other design changes that may be required to mitigate those impacts may themselves have impacts on habitat or other resources that cannot be known until those facilities or changes are identified.</p> <p>The Order recognizes the inadequacy of the existing RMP. It provides that TCA shall “update the RMP” to be in conformance with the statewide storm water NPDES permit for the California Department of Transportation (Caltrans), Order No. 2012-0011-DWQ, NPDES No. CAS000003, to “provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces,” and to comply with the draft Model Water Quality Management Plan for South Orange County and the draft South Orange County Hydromodification Plan (HMP). (Order at 14.)</p> <p>The Order also recognizes that other critical plans and mitigation are currently inadequate. For example, it provides that TCA “shall develop a monitoring program to assess effects of the project on the physical, chemical, and biological integrity of receiving waters,” as well as “final maintenance plans for the vegetated swales.” (Order at 15, 21.)</p>	<p>Commenter: William J. White, Shute, Mihaly & Weinberger LLP, on behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WiLDcoast-COSTASALVAJE, and Orange County Coastkeeper</p>

	<p>Another central component of TCA’s application—the Habitat Mitigation and Monitoring Plan—is also deferred to future consideration. The Order currently provides for an official 30-day public comment period for the Final HMMP:</p> <p>Following receipt of a complete [HMMP], containing the information required under section VII.B. of this Order, the HMMP will be posted on the San Diego Water Board website and released for public review and comment for a minimum of 30 days. Based on the timely comments received, the San Diego Water Board Executive Officer will determine whether to hold a public hearing for San Diego Water Board consideration of the HMMP.</p> <p>(Order at 18.) Although a document entitled “Final Habitat Mitigation and Monitoring Plan” is now available on the Water Board’s website, the Board has not indicated whether it contains the information required under section VII.B of the Order, nor has it noticed a 30-day public review period for the document. The 2012 Biological Assessment for the Tesoro Extension, referenced in the Addendum, has also never been circulated for public review.</p> <p>Now is the time to ensure that this project is properly designed and all water quality impacts are fully mitigated. It simply makes no sense for Board to consider approving this project before the final site design and project footprint are finalized. Once the project is approved and moves forward, it will be difficult or impossible to implement any necessary changes.</p> <p>Approving TCA’s application before critical plans and mitigation have been finalized violates both the Board’s own regulations and CEQA. (See 23 CCR § 3742 (Board must “minimize adverse environmental impacts on water resources”); CEQA Guidelines, § 15126.4(a)(1)(B) (“Formulation of mitigation measures should not be deferred until some future time.”); <i>San Joaquin Raptor Rescue Center v. County of Merced</i> (2007) 149 Cal.App.4th 645, 669–71 (critical mitigation cannot be deferred until after project approval).) Because final and complete copies of these plans and programs are necessary to ensure adequate water quality protection and mitigation under the Porter- Cologne Act, as well as under CEQA, any approval of the project before the Water Board has reviewed such plans and found them adequate is premature.</p> <p>RESPONSE: Commenter largely discusses impacts of the “Foothill-South Transportation Project”. The Project now before the San Diego Water Board as described in TCA’s April 2013</p>	
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	<p>addendum and approval is the Tesoro Extension Project.</p> <p>Commenter refers to the inadequacy of the Runoff Management Plan (RMP) and Habitat Mitigation Monitoring Plan (HMMP). The Revised Tentative Order does not state that the RMP is inadequate; it states that the updated RMP must provide for the capture and treatment of the 85th percentile storm event from 100% of impervious surfaces, and comply with the Orange County Hydromodification Plan (HMP) and Model Water Quality Management Plan (WQMP).</p> <p>The Order states the HMMP must be updated to meet a set of listed criteria. The requirements of the HMMP as outlined in section VII of the Order, and attachment B to the Order, are detailed and specific in describing the measures that must be met in the HMMP and approved before construction can begin. The Revised Tentative Order describes standards that are specific and enforceable. The mitigation measures are not deferred as the comment suggests, rather the standards are described in detail and will be incorporated into plans that will meet the Order's stated criteria.</p> <p>The CEQA Guidelines state that mitigation measures include: (a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (CEQA Guidelines § 15370.) The San Diego Water Board finds the mitigation required to be implemented in the Order meet the mitigation requirements of CEQA.</p> <p>(See generally, California Native Plant Society v. City of Rancho Cordova, (2009) 172 Cal. App. 4th 603, 622, "when a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. Moreover, under SOCA, the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study." [Court discussing Sacramento Old City Assn. v. City Council (1991) 229 Cal. App. 3d 1011 (SOCA)].)</p> <p>The Board notes that commenter cites several sections of the California Code of Regulations</p>	
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	that apply to certification actions. Those sections are not applicable to the issuance of waste discharge requirements.	
Comment No.	CEQA	
131	<p>COMMENT: Public participation is at the heart of California’s environmental protection laws. The regional water boards, for example, are directed to ensure “fair, timely, and equal access to all participants in regional board proceedings” and to “encourage public participation and comment in the preparation and review of environmental documents.” (Water Code, § 13292; 23 CCR § 3763.) Likewise, the Supreme Court has explained that “the ‘privileged position’ that members of the public hold in the CEQA process . . . is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making. . . .” (<i>Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.</i> (1986) 42 Cal.3d 929, 936 (citation and internal quotations omitted).) Indeed, the entire CEQA review process is premised on the value of ongoing dialogue with the public:</p> <p>“CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.” In short, a project must be open for public discussion and subject to agency modification during the CEQA process. This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action.</p> <p>(<i>Id.</i> (citations omitted); see also <i>Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.</i> (2004) 116 Cal.App.4th 396, 400 (“Environmental review derives its vitality from public participation.”).)</p> <p>In contravention of these principles, TCA provided no meaningful public review of the Addendum or its underlying studies and reports. Pursuant to its own regulations, the responsibility to ensure adequate public participation now falls on the Water Board.</p> <p>TCA has made every effort to circumvent public review of its approval of the Tesoro Extension. For example, TCA failed to hold a scoping meeting for the project, despite the fact that it is</p>	<p>Commenter: William J. White, Shute, Mihaly & Weinberger LLP, on behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WiLDCOAST-COSTASALVAJE, and Orange County Coastkeeper</p>

	<p>clearly of statewide, regional, or area wide significance. (Pub. Resources Code § 21083.9(a)(2).) As a result, the public and affected resource agencies had no opportunity for input on TCA's initial decision to piecemeal the environmental review for the Foothill-South project.</p> <p>TCA has also misled the public and environmental stakeholders regarding the opportunity for public participation. In the months leading up to the approval of the Project, TCA repeatedly assured the public that it would circulate the Addendum for public review and comment, prepare written responses to public comments, and hold a public workshop on the environmental review documents for the Tesoro Extension. Instead, TCA approved the Addendum with no public comment period and no public environmental process. Moreover, it approved both the Addendum and the Tesoro Extension at a last-minute special meeting that it called without any meaningful notice to public or to the environmental stakeholders actively involved in this issue for years.</p> <p>TCA also failed to solicit comments from the Water Board or other state and federal resource agencies. These agencies would normally be closely involved in preparation of the CEQA documents through scoping meetings, formal consultation, meetings, and comments. (Pub. Resources Code § 20183.9(b)(2); CEQA Guidelines, §§ 15096(b), 15096(c), 15096(d).) Formal consultation is designed to ensure that a responsible agency has CEQA documents adequate for its own later approvals by providing it the opportunity to "explain its reasons for recommending whether the lead agency should prepare an EIR," "identify the significant environmental effects which it believes could result from the project," and recommend project modifications to eliminate these effects. (CEQA Guidelines, § 15096(b).) TCA, however, never engaged in formal consultation for the Tesoro Extension and thus short-circuited this interactive process.</p> <p>TCA never circulated the Addendum, or any of the underlying studies, for public review and has taken no action to make these documents accessible to the public. For example, the Coalition was able to obtain the 2012 Traffic Analysis: Final Report ("Traffic Analysis") referenced in the Addendum only pursuant to a Public Records Act request. Even then TCA delayed providing a copy of the report for over a week beyond the statutorily-required deadline, and did not release it until March 12, 2013, only one day before the San Diego Water Board hearing on the matter on March 13, 2013.</p>	
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	<p>In addition, critical documents referenced in the Order have not been made available for review. For example, the RMP is not available on the website of either TCA or the Water Board and has never been circulated for public review. Given that the Addendum's discussion of water quality mitigation relies almost exclusively on the RMP, public review of this document is critical to serve the purposes of CEQA. Likewise, as noted above, the Board had indicated that a "final" HMMP would be circulated for a 30- day review period—this has not occurred and should occur before the Board acts on the project, not after.</p> <p>Even with regard to the upcoming Water Board hearing scheduled for June 19, the public was not informed until May 30th that the Board would accept limited additional comments. The stated June 7, 2013 deadline provided the public barely a week to prepare their submissions.</p> <p>The Water Board is authorized to hold public hearings or workshops in order to "encourage public participation and comment in the preparation and review of environmental documents" for a proposed project. (23 CCR § 3763.) Given that TCA's actions to date have been aimed at evading rather than facilitating public input on its environmental documents, it now falls on the Water Board to open up this process and, for the first time, provide a formal process for public review of the Addendum and all supporting documents, including the Traffic Analysis, Runoff Management Plan, HMMP, and 2012 Biological Assessment. If the Board does not deny the application at this time, it should refrain from taking further action until all of the critical documents have been circulated for public review and comment.</p> <p>RESPONSE: Commenter's remarks largely pertain to actions TCA has taken with respect to the Project approval and adoption of its addendum. The Board does not have authority over TCA's public participation processes or the manner in which it approves projects.</p> <p>As was noted in Responses to Comments #119, #123 and #126, the Board has provided extensive public participation for this Project. The Board first noticed the Availability of the Proposed Order for Waste Discharge Requirements on January 17, 2013. The Board provided TCA's addendum on its website in February 19, 2013, prior to the March 13, 2013 Board meeting. The Board accepted written comments on the Proposed Order until March 1, 2013. The Board accepted additional testimony from designated parties and the public at the March 13, 2013 Board meeting and continued the hearing. Following the hearing, the Board provided additional opportunity for the designated parties to brief issues related to CEQA. Finally, the</p>	
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	<p>Board provided an additional written comment period after release of the Revised Tentative Order on May 30, 2013, and will allow for additional testimony at the Board meeting on June 19, 2013.</p> <p>Commenter cites several plans and reports that have not been circulated for public review and comment. The reports are available on the San Diego Water Board's website and comments have been accepted on the Proposed Order since it was made available for public comment in January 2013. The HMMP that commenter cites will be circulated for public review and comment. (See Revised Tentative Order section VII.C.) The Runoff Management Plan will be required to meet stated performance criteria as outlined in the Order.</p>	
<p>Comment No.</p>	<p>Waste Discharge Requirements</p>	
<p>132</p>	<p>COMMENT: Findings, N, California Environmental Quality Act. The paragraph at the top of page 10, second sentence, references the Tesoro Extension as a segment of the Transportation Improvement Project. This should be replaced with a reference to the Tesoro Extension as a modification of the Transportation Improvement Project, as stated in correspondence submitted by and on behalf of F/ETCA to the San Diego Water Board. See for example, the Nossaman LLP March 29, 2013 letter Responding to Questions for Written Response on Tentative Order No. R9-2013-0007, pages 1, 5-10.</p> <p>RESPONSE: Comment noted. The San Diego Water Board did not accept this change request.</p>	<p>Commenter: Carollyn B. Lobell, Attorney at Law, NOSSAMAN LLP, on behalf of F/ETCA</p>

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Comment No.	Waste Discharge Requirements	
133	<p>COMMENT: Mitigation Finding F, page 7, first line on the page, includes the correct mitigation acreage of 20.31. Finding N on page 11, second paragraph, contains a prior number of 21.27. The Final HMMP, which is posted on the San Diego Water Board's website, contains the current information on mitigation acreage. In addition, Table 5, Impact and Compensatory Mitigation Summary, on page B-13, should also be updated to reflect the current acreages of mitigation for waters of the state (wetland) at Site A.</p> <p>RESPONSE: The San Diego Water Board will correct the errors in Finding N and in Table 5 of Attachment B. The revisions will be described in an errata for the Revised Tentative Order that will be presented during San Diego Water Board staff's presentation at the June 19, 2013 Board meeting.</p>	<p>Commenter: Carollyn B. Lobell, Attorney at Law, NOSSAMAN LLP, on behalf of F/ETCA</p>
134	<p>COMMENT: Section VIII.A. Receiving Water Monitoring. F/ETCA respectfully requests some minor changes in the wording of Section VIII.A. as shown in the proposed redline/strikeout changes below, starting on page 21 of the Revised Tentative Order. In order for F/ETCA to assure it can properly implement the receiving water monitoring regardless of the availability of a viable coalition or group, the monitoring responsibilities must recognize, consistent with Water Code section 13267, that the discharger can conduct monitoring individually rather than as a member of a group. Further, the monitoring responsibilities should recognize, consistent with Water Code section 13267, that if the monitoring is done with a coalition, the discharger's responsibilities pursuant to the group monitoring program and as a member of the coalition shall bear a reasonable relationship to the monitoring necessary to establish compliance of permitted discharges with this WDR. Finally, the monitoring provisions must take into account that the identification of sampling locations will take into account, and will be subject to TCA's ability to obtain permission to enter private property owned by third parties.</p> <p>RESPONSE: The San Diego Water Board did not accept these change requests. The Revised Tentative Order provides in section VIII.A that the monitoring may be performed either by the Discharger (F/ETCA) or through participation in a water body monitoring coalition or both. The Revised Tentative Order provides in section VIII.A.1.b that the San Diego Water Board will</p>	<p>Commenter: Carollyn B. Lobell, Attorney at Law, NOSSAMAN LLP, on behalf of F/ETCA</p>

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	<p>coordinate with the water body monitoring coalition if one is formed to ensure that all coalition participants are proactive and responsive to potential water quality related issues as they arise during monitoring and assessment. The Revised Tentative Order provides in section X.E that the Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations. Thus the ability of F/ETCA to sample locations on private property owned by third parties will necessarily be subject to TCA's ability to obtain permission to enter the private property. .</p>	
<p>Comment No.</p>	<p>Waste Discharge Requirements</p>	
<p>135</p>	<p>COMMENT The revised tentative order includes a new section titled VIII. Receiving Water Monitoring which requires the Discharger (TCA) to develop and implement a monitoring program to "assess effects of the project on the physical, chemical, and biological integrity of receiving waters" (Page 21, Section VIII, Tentative Order). It is unclear from the tentative order which receiving waters are required to be monitored. Please specify which receiving waters are to be monitored.</p> <p>RESPONSE: The waters of the State affected by the Project are listed in Section 5.0 of Attachment B to Order No. R9-2013-0007. Additionally, Section VIII of the Revised Tentative Order requires the Discharger to prepare a Conceptual Model that will serve as the basis for assessing the appropriateness of the receiving water Monitoring Plan design. The Conceptual Model must consider "points of discharge into the segment of the water body or region of interest." The water bodies to be monitored will be identified in the Conceptual Model and also included in the Monitoring Plan that will be submitted to the San Diego Water Board.</p>	<p>Commenter: Laura Coley Eisenberg, Rancho Mission Viejo, Vice President, Open Space & Resource Management</p>

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Comment No.	Waste Discharge Requirements	
135	<p>COMMENT: If one reviews Table 2 of the tentative order one might interpret the condition as applying to Gobernadora Creek and Chiquita Creek both of which are located on property owned by RMV. It is unclear to RMV how the SDRWQCB can require the TCA to enter onto private property for the purposes of conducting monitoring absent permission from RMV. Please provide RMV with the authorities by which SDRWQCB proposes to enforce this condition.</p> <p>RESPONSE: The Revised Tentative Order does not require the Discharger (F/ETCA) to enter onto private property owned by Rancho Mission Viejo (RMV) for the purpose conducting monitoring absent permission from RMV. (See Response to Comment No. 135.) The San Diego Water Board does have authority under Water Code section 13267 to require the Discharger (F/ETCA) to submit monitoring reports for locations that are not on F/ETCA's property. If RMV fails to provide F/ETCA access, the San Diego Water Board would have investigative authority under Water Code section 13267 to require RMV to provide access or conduct the monitoring itself. As a condition of Order No. R9-2013-0007, F/ETCA is responsible for all monitoring requirements set forth in the Order, including obtaining access to the receiving waters to be monitored.</p>	<p>Commenter: Laura Coley Eisenberg, Rancho Mission Viejo, Vice President, Open Space & Resource Management</p>
Comment No.	Receiving Water Monitoring	
136	<p>COMMENT: In our verbal comments at the March 13, 2003 meeting on the initial draft of this order, we made the point that it is standard procedure to obtain baseline water quality information for a project site before the initiation of a project. This is necessary so that the project designers can utilize the information for designing appropriate project BMP's, and before and after project comparisons can be made to determine if the project is degrading water quality. We also stated that we have informed the Transportation Corridor Agency (TCA) on numerous occasions that we are concerned about the lack of baseline water quality data for the project area and that this information needed to be developed before the project could proceed.</p> <p>In the revised tentative permit, the board takes a step in the right direction by requiring the TCA to undertake a comprehensive water monitoring program for the project area that includes water chemistry and bioassessments. However, we object to allowing the initial stage of this monitoring</p>	<p>Commenter: Raymond Hiemstra, Associate Director, Orange County Coastkeeper</p>

	<p>program to happen concurrent with project construction. To accurately determine pre-project water quality conditions, at least two years of data needs to be collected in order to accumulate enough samples to represent existing seasonal water and biological conditions. Allowing the monitoring program to begin concurrent with construction will result in the collection of data that is not representative of the pre-project conditions. The tentative order specifically states in section VIII A that the discharger shall develop a monitoring program to assess effects of the project on the physical, chemical, and biological integrity of receiving waters. Without representative pre-project data, it will be impossible to assess effects of the project as the order requires.</p> <p>Additionally, the order as written requires the TCA to submit a monitoring plan to the board for approval by January 1, 2014. This deadline is halfway through the rainy season, and by the time staff reviews and approves the monitoring program the 2013-2014 rainy season will be over, missing a key opportunity to collect unadulterated data. The permit should at least be revised to require the TCA to submit the monitoring plan to the board for approval by September 1, 2013. This will give the board time to review and comment on the plan before the rainy season begins on October 1, 2013. With the resources of the TCA, and the relative simplicity of developing a water monitoring plan, this is not an unreasonable deadline.</p> <p>Considering that the TCA has had years of notice for the need to develop this data, along with the resources to do the monitoring, the only conclusion we can come to is that they have not done so in order to avoid documenting the substantial impacts the project will have on water quality in the project area and further downstream. It is our opinion that the order should be rewritten to require that a minimum of two years of baseline water chemistry and bioassessment data is developed by the TCA, or a monitoring coalition, before any construction on the project can begin. Once this data is developed, it can be determined if the proposed project BMP's are appropriate for the project and minimize the environmental impacts to the streams and habitat in the project area and downstream. Considering that the project has the potential to impact the recovery of endangered species, such as steelhead trout, along with water quality and habitat downstream to and including the 303d listed San Juan Creek, it is imperative that we take the time to determine existing conditions before undertaking a major alteration to the watershed.</p> <p>RESPONSE: The San Diego Water Board has considered the O.C. Coast Keeper comments and will change the due date of the Receiving Water Monitoring Plan to September 13, 2013 to</p>	
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	<p>ensure the monitoring plan is received prior to the rainy season. The revision will be described in an errata for the Revised Tentative Order that will be presented during San Diego Water Board staff's presentation at the June 19, 2013 Board meeting.</p>	
<p>Comment No.</p>	<p>CEQA</p>	
<p>137</p>	<p>COMMENT: The United Coalition to Protect Panhe ("UCPP") is a grassroots alliance of Acjachemen/Juaneno people dedicated to the protection of our 9,000 year old village and sacred place, Panhe. We request that the Regional Board deny the tentative order regarding waste discharge requirements for the Tesoro Extension-the first segment of the Foothill South Toll Road ("Toll Road")-until the Foothill/Eastern Transportation Corridor Agency ("TCA") has identified the route for the entire Toll Road project, analyzed its environmental impacts in an environmental impact report, as required by CEQA, and fulfilled its obligations to consult with, and obtain consent from, area Tribes under the CaNRA Tribal Consultation Policy issued in 2011, and as stipulated by the United Nations Declaration on the Rights of Indigenous Peoples', officially supported by the United States since December 2010, and formally endorsed by the Advisory Council on Historic Preservation in March of 2013.</p> <p>The agency's permit application overlooks impacts to cultural and archaeological resources as well as environmental impacts to important wetlands that could potentially affect the coastal zone, and additional impacts to water resources such as ground water pollution, and erosion. In 2008, both the California Coastal Commission and the Bush administration rejected the toll road because of potentially devastating impacts to the coastline and to the Acjachemen people, whose sacred site Panhe would have been devastated by the project. Despite those decisions, TCA remains undeterred and now plans to build the road in segments. This segmentation approach is an obvious attempt to circumvent the decisions rejecting the road, and is illegal under both state and federal law.</p> <p>The area where the proposed road is planned is located adjacent to and/or includes Indian Cultural sites of great significance both to Indian and scientific communities in the region. We are concerned that by continuing to seek permit approval to build the 241 in segments the TCA is avoiding the fact that the proposed road in its entirety will significantly impact areas of cultural, biological, hydrological, environmental and sociological significance.</p>	<p>Commenters: Rebecca Robles, Co-director, Angela Mooney D'Arcy, Co-director, United Coalition to Protect Panhe</p>

	<p>We agree with and incorporate by reference the comments submitted by the San Onofre Coalition on February 6, February 22, and March 29, 2013.</p> <p>Briefly, UCPP objects to the following:</p> <ul style="list-style-type: none">□ Potential impacts to known and undetermined Acjachemen cultural and archaeological resources, including sites listed on the California Sacred Lands Inventory;□ Insufficient notice of project proposal provided to Tribes with ancestral territories within the project boundaries, traditional cultural practitioners, and representatives from local tribal communities;□ Failure to adequately consult with Tribes, tribal community members and traditional cultural practitioners about potential impacts to sites of cultural and spiritual significance, particularly in light of new state laws and recent federal support for policies recognizing Indigenous peoples' rights; and□ Failure to analyze environmental impacts of project in its entirety and consider the environmental impacts of the project as a whole.□ The Toll Road Alignment Analyzed and Approved by TCA in 2006 Was Found to Be Illegal, and the TCA Has Not Yet Identified a New Alternative. <p>According to the California Cultural Resource Preservation Alliance, the proposed Tesoro Extension will result in the potential destruction of five archaeological sites, including some dating to the early Holocene. Archaeological sites dating to this time period are rare in Orange County and have become even more so given the destruction of hundreds of archaeological sites due to modern development, including toll roads. The lack of preservation of Orange County's prehistoric heritage can be attributed to the idea that the only value of an archaeological site is scientific data and if a sample of the data is recovered, the destruction of the site is "mitigated". This does not take Native American religious and cultural values into consideration. In recognition that data recovery excavations do not mitigate for the destruction of a significant archaeological site, federal regulation (36 CFR 800 Protection of Historic Properties) was revised to indicate that data recovery is not sufficient mitigation for the destruction of an archaeological site and can no longer be used for a "no adverse effect" determination. In summary, the adverse effects of the proposed toll road extension do not reflect the public interest.</p>	
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	<p>Additionally, the 2006 SEIR and Addendum are inadequate because they fail to consider recent changes in state and federal law with respect to Tribal consultation.</p> <p>Executive Order B-10-11 was signed by Governor Brown in California almost two years later on September 19, 2011 to establish the position of Governor’s Tribal Advisor and to establish that it is the policy of the Brown Administration that every state agency and department subject to executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.</p> <p>Gov. Brown EXECUTIVE ORDER B-10-11</p> <ul style="list-style-type: none">• ORDERED that the position of Governor’s Tribal Advisor shall exist within the Office of the Governor;• ORDERED that the Governor’s Tribal Advisor shall oversee and implement effective government-to-government consultation between my Administration and Tribes on policies that affect California tribal communities. <p>The RWQCB must abide by the policies and procedures set forth by the California Natural Resources Agency (CaNRA) which has established its Tribal Consultation Policy (“Policy”) in compliance with Executive Order B-10-11, that every state agency and department subject to executive control shall encourage communication and consultation with California Indian Tribes. CaNRA recognizes in its policy that:</p> <p>“California Native American Tribes and tribal communities have sovereign authority over their members and territory and a unique relationship with California’s resources. All California Tribes and tribal communities, whether federally recognized or not, have distinct cultural, spiritual, environmental, economic and public health interests and unique traditional cultural knowledge about California resources.” And;</p> <p>“It is only by engaging in open, inclusive and regular communication efforts that the interests of California Tribes and tribal communities will be recognized and understood in the context of complex decision-making.”</p>	
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	<p>Adequate engagement on this project by the Lead Agency with local Tribes and organizations has not occurred. UCPP co-director Rebecca Robles attempted to schedule a consultation meeting with the TCA via phone and email on multiple occasions. UCPP's phone calls and emails have not been returned. Clearly, a good faith effort to consult has not been established by the TCA.</p> <p>In December 2010, the United States announced support for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In announcing this support, President Obama stated: "The aspirations it affirms—including the respect for the institutions and rich cultures of Native peoples—are one we must always seek to fulfill...[W]hat matters far more than any resolution or declaration – are actions to match those words." The UNDRIP addresses indigenous peoples' rights to maintain culture and traditions (Article 11); and religious traditions, customs, and ceremonies (Article 12); to participate in decision making in matters which would affect their rights (Article 18); and to maintain spiritual connections to traditionally owned lands (Article 25).</p> <p>According to the Summary of environmental impacts regarding cultural resources outlined on Pg 3-25: Table 5 of the Addendum, the SCOTIPP Final SEIR found that impacts would be less than significant with mitigation and that the proposed project does not involve new or substantially more severe impacts—however if the Tesoro Extension is a new, stand-alone project as the TCA claims, then these impacts must be analyzed in light of new developments in state and federal law regarding agency obligations to consult with Tribes.</p> <p>Any environmental review for the Tesoro Extension must include review of the entire Toll Road project. Review of the Tesoro Extension in isolation would represent improper segmentation of environmental review under CEQA. As discussed in the letter to Federal Highway Administration submitted in December 2012 by the San Onofre Coalition;</p> <p>the Tesoro Extension has no independent utility apart from the Toll Road as a whole. By itself, the extension is literally a "road to nowhere," terminating at what is presently a dirt road...In short, the Tesoro Extension, considered alone, is an unnecessary and irrational project that would never be built except as part of the larger Toll Road project. Like NEPA, CEQA prohibits the segmentation of a project to avoid environmental review. Indeed, if anything, CEQA imposes</p>	
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	<p>even more stringent protections against piecemealing. CEQA requires agencies to analyze impacts of any future development that is "a reasonably foreseeable consequence" of a Project and "will likely change the scope or nature of the initial project or its environmental effects."(Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Ca1.3d 376,396.)</p> <p>There is no question that the Toll Road as a whole is a reasonably foreseeable consequence of the Tesoro Extension, the impacts of which must be considered before TCA's application for WDRs can be approved. If Tesoro is constructed, the impacts of the remainder of the Toll Road will become virtually inevitable. Those impacts are far greater than those of the Tesoro segment.</p> <p>Impacts of the Foothill South project on the sacred site Panhe and on the Acjachemen people are another glaring example of why the Tesoro Extension is by design insufficiently long to provide an adequate environmental analysis. The proposed toll road would impact Acjachemen access and their ability to practice our religion. The toll road will impair our freedom of religion, freedom of association, and beach access rights under federal and state statutory and constitutional protections including the First Amendment. The Foothill-South would run adjacent to and through Panhe and its construction would pass within feet of the burial site and interfere with spiritual, cultural, and ceremonial uses. See Native American Heritage Commission, Complaint for Injunctive Relief, No. 06-GIN051370 (S.D. Super. Ct. filed March 22, 2006). In addition, if the road is built, increased scavenging and damage by relic collectors are anticipated.</p> <p>RESPONSE: Commenter's remarks pertain to the adequacy of the environmental documentation prepared by TCA. As noted in previous responses #116, #117, #125, #127, #128 the San Diego Water Board is acting as a responsible agency under CEQA in its approval of the Tesoro Extension Project. Impacts to archeological resources are impacts that pertain to the adequacy of the environmental documents prepared by TCA and to resources outside the Board's purview. As lead agency, TCA is responsible for considering any impacts to archeological or cultural resources.</p> <p>Commenter urges the San Diego Water Board not to approve the "Foothill-South Toll Road" Project. The San Diego Water Board does not have authority to approve the "Foothill-South Toll Road" project, nor does it have the authority, as a responsible agency, to require mitigation for</p>	
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	<p>all environmental impacts of the Project and those impacts that do not pertain to water quality or water resources. The Board is responsible for reviewing the environmental documents prepared by TCA, making appropriate findings under CEQA Guidelines section 15091, and implementing mitigation for impacts to resources within its purview. (CEQA Guidelines §§ 15042, 15050, 15096.)</p>	
<p>Comment No.</p>	<p>Waste Discharge Requirements</p>	
<p>138</p>	<p>COMMENT: At your request, we have reviewed the Revised Tentative Order (No. R9-2013-0007) for Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (TCA) Tesoro Extension Project in Orange County. The Revised Tentative Order includes several updates to the previous Tentative Order for the project (dated March 13, 2013). Among these updates, the Revised Tentative Order requires the TCA (the applicant) to update the Runoff Management Plan for the project to conform to the Caltrans general discharge permit, the draft Model Water Quality Management Plan (Model WQMP) for South Orange County, dated December 16, 2011, and the draft South Orange County Hydromodification Plan (HMP), dated December 11, 2011.</p> <p>In our previous letter, dated February 15, 2013, we described how the 2012 Runoff Management Plan does not comply with the draft South Orange County HMP. The HMP requires a three-step process to demonstrate compliance, none of which appeared to have been analyzed by the applicant in the 2012 Runoff Management Plan. In Section 5.1 of the draft South Orange County HMP, the three steps are listed (Orange County, 2011):</p> <ol style="list-style-type: none"> 1. Determine whether the site is a significant source of bed material to the receiving stream. 2. Avoid significant bed material supply areas in the site design. 3. Replace significant bed material supply areas that are eliminated through urbanization. <p>The Revised Tentative Order requires a new Runoff Management Plan to conform with the HMP and, by extension, conform to the three steps above. However, as discussed in our February 15 letter, parts of the proposed project site may be a significant source of bed material, and may require substantial changes to the project design in order to meet the requirements of the HMP. The project as currently proposed would fill in several headwater channels, potentially leading to a reduction in sediment to receiving streams. In order to avoid these areas, the site design may</p>	<p>Commenter: Andrew Collison, PhD. Senior Fluvial Geomorphologist, ESA PWA and Michael D. Fitts, Staff Attorney, Endangered Habitats League</p>

