

SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2013

- ITEM: 8
- SUBJECT: Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*)
- PURPOSE: To consider adopting Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County* (Tesoro Extension Project)
- RECOMMENDATION: Staff recommends that the San Diego Water Board begin the public hearing to receive testimony and comments on March 13, 2013 and postpone action on the Tentative Order to a later meeting to allow staff and counsel adequate time to evaluate CEQA comments and compliance, prepare responses to remaining issues, and draft revised or additional findings as appropriate for inclusion in the Tentative Order.
- DISCUSSION: Comments on the Tentative Order from F/ETCA, Shute, Mihaly & Weinberger on behalf of the Save San Onofre Coalition, Endangered Habitats League, Hamilton Biological on behalf of the Endangered Habitats League, and Rancho Mission Viejo have been previously provided to the San Diego Water Board Members as **Supporting Documents Nos. 4. through 14.** Several hundred form letters and over seventy non-form letters from private citizens, organizations, and elected officials in support of the Tesoro Extension Project and one letter against the Project were also previously provided to the San Diego Water Board Members on disc as **Supporting Document No. 15.** All of these comment letters were timely submitted by the close of the comment period on February 25, 2013.
- After the close of the comment period, approximately 5,350 additional comment letters have been received regarding the Tentative Order as of March 7, 2013. In

consultation with the Chair, the San Diego Water Board decided to accept late written comments received by 5:00pm on March 1, 2013 for inclusion in the administrative record for the Tentative Order. Over 1,550 comment letters were received from February 25, 2013 to March 1, 2013. Of the approximately 1,550 letters received, 1,515 were form letters against the Project, 30 were form letters in favor of the Project, 6 were general letters against the Project, and 4 were general letters in favor of the Project. Electronic copies of the additional 1,550 comment letters are provided in **Supporting Document No. 16**.

San Diego Water Board counsel is in the process of evaluating and responding to comments in **Supporting Document Nos. 4, 5, 6, 9, and 10** on whether F/ETCA failed to submit a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely on in considering the adoption of the Tentative Order.

The timely submitted comment letters regarding non-CEQA issues on the Tentative Order include several substantive comments on issues of importance to the Save San Onofre Coalition and others, as well as a number of other comments requesting clarification and various modifications to the Tentative Order (**Supporting Documents No. 7, 8, 12, and 14**). A Response to Comments document and Revised Tentative Order (**Supporting Document Nos. 17 and 18**) have been prepared to address the comments and concerns in the technical comment letters that were timely submitted. The substantive issues in these comment letters include:

1. Discharger compliance with the South Orange County Draft Hydromodification Management Plan.
2. Concerns regarding the impacts of the Project on coarse grain sediment (bedload) transport which naturally armors the receiving water stream bed and reduces the erosive forces associated with high flows.
3. Comments regarding the adequacy of the Habitat Mitigation and Monitoring Program with regards to Project impacts affecting the Cactus Wren and the Arroyo Toad.
4. Several requests for changes to the Tentative Order

made by the Discharger and Rancho Mission Viejo regarding post-construction best management practices(BMPs), compensatory mitigation timing and reporting, conservation easements, financial assurances, reporting requirements, and inspection and entry.

The Response to Comments document addressing these issues and Revised Tentative Order (**Supporting Document Nos. 17 and 18**) were released for public review on March 7, 2013 and posted on the San Diego Water Board website.

LEGAL CONCERNS:

Some of the legal issues raised by the F/ETCA and the Save San Onofre Coalition are still under evaluation.

SUPPORTING
DOCUMENTS:

1. Location Maps (Hardcopy)
2. Tentative Order No. R9-2013-0007 with attachments (Hardcopy)
3. Notice of Availability (Hardcopy)
4. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Request for Public Comment Period Extension, dated 2/6/2013 (Hardcopy)
5. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Additional Comments on Proposed Waste Discharge Requirements, dated 2/22/2013 (Electronic Copy)¹
6. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Response to Transportation Corridor Agencies Letter dated February 20, 2013, dated 2/25/2013 (Hard Copy)
7. Endangered Habitats League, ESA PWA Comment Letter Dated February 15, 2013 (Electronic Copy)
8. Hamilton Biological Comments on HMMP, dated 2/25/2013 (Electronic Copy)
9. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger's February 6, 2013 Request for Extension, dated 2/20/2013 (Electronic Copy)
10. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger Letter Dated February 22, 2013, dated 2/25/2013 (Electronic Copy)
11. Transportation Corridor Agencies, F/ETCA

¹ Electronic copies in PDF format can be found on the CD provided with this agenda item.

Response to EHL (ESA PWA) Letter Dated
February 15, 2013, dated 2/25/2013 (Electronic
Copy)

12. Transportation Corridor Agencies, F/ETCA
Comments - Tentative Order No. R9-2013-0007
(including explanation of edits), dated 2/25/2013
(Electronic Copy)
13. F/ETCA State Route 241 Tesoro Extension
Project Water Quality and Environmental
Measures document, dated 2/25/2013 (Hardcopy)
14. Rancho Mission Viejo Comments dated 2/25/2013
(Electronic Copy)
15. Comment Letters Regarding Tentative Order
(Electronic Copy)
16. Additional Comment Letters Regarding Tentative
Order (Electronic Copy)
17. Revised Tentative Order No. R9-2013-0007 with
attachments (Hardcopy)
18. San Diego Water Board Response to Comments
(Hardcopy)