



February 18, 2015

**Via E-Mail and U.S. Mail**

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 California Regional Water Quality Control  
 Board, San Diego Region  
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Re: Findings Supporting Denial of WDRs for Tesoro Extension  
(Comment - Tentative Resolution No. R9-2015-0022, Place ID:  
785677)

Dear Mr. Bradford:

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

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

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

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

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

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

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<sup>1</sup> Administrative Record, Vol. 1, Index 27 at 198-99, 201-203.

<sup>2</sup> WQ-2014-0154 at 15.

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Cologne Act, and identifies substantial evidence in the record that Tesoro is simply the first step towards completion of the larger and more-damaging Foothill South project, and that TCA's failure to provide information on the impacts of that project restricted the Board's ability to exercise its full authority to condition the project to avoid or minimize impacts.

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

- **TCA's Ongoing Reliance on Foothill South.** When TCA submitted its WDR application for the Tesoro Extension, it relied on its 2006 Foothill South EIR, CEQA findings, and approval to support the WDR application.<sup>3</sup> TCA has never rescinded its 2006 approval of Foothill-South, which remains the only approved alignment of the TCA's SR 241 Completion Project.
- **Intention to Continue Extension Southward.** As noted by the State Board, TCA's CEQA Addendum for the Tesoro Extension indicates TCA's intention to build the remainder of the Foothill South, and states that constructing Tesoro "does not preclude a connection to any of the 19 toll road alternatives evaluated in the" 2006 Foothill South EIR.<sup>4</sup>
- **Foothill South in Regional Plans.** TCA has repeatedly claimed that Tesoro was a necessary element of the Southern California Regional Transportation Plan ("RTP") and Sustainable Communities Strategy ("SCS").<sup>5</sup> But the project identified and analyzed as part of the road network in the RTP and in the SCS is the entire Foothill South, not the Tesoro Extension alone.<sup>6</sup>

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

<sup>4</sup> Administrative Record, Vol. 4, Index 6 at 7, 54.

<sup>5</sup> Administrative Record, Vol. 1, Index 5 at 19-29.

<sup>6</sup> Administrative Record, Vol. 1, Index 4 at 5-6; *see also* Vol. 2, Index 2 at 48.

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- **Artificial Truncation of Road.** The design of the Tesoro Extension was artificially truncated to avoid regulatory review of impacts to federal waters and wetlands, stopping just short of federal jurisdictional wetlands at San Juan Creek.<sup>7</sup> This design is driven not by function, but to avoid Army Corps of Engineers environmental review and permitting authority.<sup>8</sup> The Army Corps staff itself recognized that the road could be a “road to nowhere,”<sup>9</sup> and noted:

TCA is proposing to segment the project, starting with constructing the first approximately 4 miles and terminating at SR-74 in Orange County. That would present a major NEPA problem considering the previous environmental document had them evaluating all approximately 16 miles and they still intend ultimately (through construction of future segments) to build all the way to I-5.<sup>10</sup>

- **Previous Rejection of Segment as Infeasible.** In 2006, TCA found that a partial extension of SR 241 similar to Tesoro would be infeasible because such extension “performed poorly for the traffic measures” because it terminated “at Ortega Highway and does not provide a connection to I-5.”<sup>11</sup>
- **Tesoro Serves No Purpose Alone.** Without further extension, Tesoro serves only the Rancho Mission Viejo development (“RMV”).<sup>12</sup> But RMV is in the process of seeking approvals from this Board to build a substantially less expensive, non-tolled arterial road (“F Street”) in the same location as Tesoro. TCA’s own traffic studies show F-Street

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<sup>7</sup> Administrative Record, Vol. 4, Index 6 at 53-54.

<sup>8</sup> Administrative Record, Vol. 2, Index 2 at 195-96.

<sup>9</sup> Administrative Record, Vol. 2, Index 2 at 216.

<sup>10</sup> Administrative Record, Vol. 2, Index 2 at 113; *see also id.* at 116 (TCA’s strategy was “beginning to look like a classic case of segmenting under NEPA”); *id.* at 118 (“The new proposal would segment the environmental evaluation, permitting and construction of the 16-mile toll road project into several phases”).

<sup>11</sup> Administrative Record, Vol. 4, Index 5 at 87-88.

<sup>12</sup> Administrative Record, Vol. 4, Index 6 at 8.

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outperforms Tesoro.<sup>13</sup> Tesoro thus serves no purpose except as a prelude to the extension of the toll road south of San Juan Creek.

Because it is clear that Tesoro exists only to facilitate completion of the entire Foothill South project, the Board properly denied TCA's application for WDRs. Approval of WDRs for a partial project would significantly impair the Board's options for addressing the future water quality impacts of the full project and prejudice the Board's ability to meet its obligations for protecting waters of the State. The Tesoro Extension requires a \$200 million commitment to building the 241 Completion Project,<sup>14</sup> which, once made, would effectively foreclose non-toll road alternatives that could avoid or substantially lessen impacts to waters, such as I-5 widening, arterial improvements, and transit.

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

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

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

<sup>14</sup> Administrative Record, Vol. 2, Index 2 at 92.

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Very truly yours,

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