

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

6 MR. THORNTON: That's correct.

7 MS. KALEMKIARIAN: Okay. So --

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

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

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

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

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

5 AUDIENCE MEMBER: You're under oath.

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

14 MS. KALEMKIARIAN: I understand.

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

19 AUDIENCE MEMBER: That's not the question.

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

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

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

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

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

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

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

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

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

25 MR. THORNTON: There will be very few investors

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

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

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

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

24 MR. THORNTON: Correct.

25 MS. KALEMKIARIAN: Assuming you get the

1 funding.

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

5 AUDIENCE MEMBER: He didn't have respect.

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

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

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

1 of California surface waters.

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

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

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

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

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

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

23 MR. THORNTON: Where are we on time?

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

1 MR. THORNTON: Thank you.

2 MR. STRAWN: 16.45.

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

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

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

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

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

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

24 MR. STRAWN: Next we have Lesa Heebner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17                   MR. ABARBNEL: Yes.

18                   MR. STRAWN: Go ahead with that?

19                   MR. ABARBNEL: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. protect this resource.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 With regards to mitigation, TCA is proposing a

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

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

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

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

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

1 traffic relief and mobility.

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

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

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

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

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

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

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

1 construction.

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

9 Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 MR. ABARANEL: Thank you.

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

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

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

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

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

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

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

16 MR. FELIEN: Yes.

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

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

21 MR. ABARANEL: Yes, it is.

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. STRAWN: Your time is up.

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

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

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

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

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

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

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

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

1 a number of bases.

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

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

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

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

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

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

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

3 MR. TURNER: Right.

4 MR. ANDERSON: Am I wrong on that?

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

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

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

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

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

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

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

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

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

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

25 On behalf of Senator Wyland and those of who

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

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

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

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

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

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

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

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

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

25 The supervisor is extremely proud of the

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

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

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

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

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

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

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

7 MR. MORALES: It's right here.

8 MS. SANCHEZ: Okay. Thank you.

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

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

25 This continues to be a self-certifying

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

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

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

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

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

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

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

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

1 241 project. Thank you.

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

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

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

13 (Recess.)

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

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

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

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

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

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

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

1 road extension. Sorry about that.

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

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

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

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

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

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

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

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

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

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

10 "Sincerely, Anthony Beall."

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

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

21 MR. MORALES: Much appreciated.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Two of the many recent examples include the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 MR. MORALES: -- in the registry?

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

12 MR. ACUNA: Panhe.

13 MR. MORALES: Panhe. Sorry.

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

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

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

25 MR. MORALES: Thank you.

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

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

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

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

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

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

24 MS. HEMSEY: We do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 MALE SPEAKER: No, I gave him time.

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

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

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

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

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

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

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

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

4 THE REPORTER: Hold on. Start over.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 your court reporter if that's okay.

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

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

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

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

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

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

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

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

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

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

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

13 MR. ANDERSON: Was the surf good?

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

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

21 FEMALE SPEAKER: Mark had to leave.

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

25 Ladies and gentlemen, gentlemen of the public,

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

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

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

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

1 items of threat, waves around the world.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MR. STRAWN: Mark Renschler.

7 FEMALE SPEAKER: He left.

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

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

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

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

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

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

25                   MR. STRAWN: Do we have Travis?

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

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

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

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

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

12 MR. STRAWN: Ginger.

13 THE AUDIENCE: Tom and Ginger both left.

14 MR. STRAWN: Okay. Jack Eidt.

15 MR. EIDT: Yes.

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

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

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

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

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

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

1 areas, not Yorba Linda.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. STRAWN: Okay. Patricia Marks.

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

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

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

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

3 And you have heard that there are five sites,  
4 archaeological sites within the area of potential effect  
5 of this five-mile segment of the project and that these  
6 sites are important to the Native American community.  
7 Some of the sites -- all of the sites are recorded at  
8 the information center at Cal State Fullerton.  
9 Locations of the sites are confidential and so you won't  
10 see a lot of maps showing where the sites are located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 FEMALE SPEAKER: He went.

9 MR. STRAWN: Chad Nelson.

10 FEMALE SPEAKER: He had to leave.

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

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

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

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

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

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

20 MR. HOWARD: I thought I would try. Thank you.  
21 Appreciate it.

22 MR. STRAWN: One more time. Fred Mertz. Gisla  
23 Cosner. Steve Williams. He'll be followed by Marty  
24 Beson. And then Bond, just Bond.

25 MR. WILLIAMS: Thank you. Thank everybody for

1 the recitations. I know it's a long, long session here.  
2 I'm Steve Williams. I'm a conservation biologist and  
3 also an executive committee member of Surfrider West  
4 L.A. Malibu. Came down with a bunch of folks.

5 As I came down in 2008, when I got this cool  
6 shirt and I'm wearing here again and I'll wear it again  
7 and again until this thing is put to rest. So anyway, I  
8 believe the currently proposed upper watershed segment  
9 of the project is piecemealing of the entire 16-mile  
10 project, which is to be considered as such and is a  
11 violation of CEQA.

12 I also think that the baseline water quality  
13 studies one to two years minimum needs to be precluded  
14 from any portion of the project rather than be conducted  
15 concurrently with the project. These studies should  
16 target predicted impacts such as brake dust, petroleum  
17 products, et cetera, associated with highway runoff as  
18 well as sedimentation rates from increased  
19 impermeability -- impermeable surfaces of highways.

20 In my 15 years of monitoring water quality and  
21 sensitive species in coastal Southern California  
22 streams, my experience is this: Where you have roads  
23 along the creek corridor, you have trash, water quality  
24 degradation can introduce invasive species. For  
25 example, where I work in the Santa Monica Mountains,

1 Louisiana crayfish have been introduced along Malibu and  
2 Topanga Creek Highways in the creek there and are  
3 devastating the populations of native amphibians as  
4 their eggs are a delicacy for crayfish. That's one  
5 example of many.

6 Also, while doing biannual creek cleanups with  
7 volunteers along these creek corridors and along these  
8 roads, we removed thousands of pounds of auto-ejected  
9 trash and roadside dumping sites. I often wonder what  
10 the creek would be like --

11 MR. STRAWN: Your time.

12 MR. WILLIAMS: I'm sorry. Well, just like to  
13 wrap up to say -- okay. Please deny the TCA permit.  
14 Thank you very much.

15 MR. BENSON: My name is Marty Benson. Thanks  
16 for your patience in letting me speak. I want to start  
17 with the elephant in the room or at least it appears to  
18 me and speak to the independent utility issue.

19 Roads create traffic. Anyone with a cursory  
20 understanding of the history of automotive  
21 transportation can see that when you build a road, it  
22 gets congested. So this road segment only has utility  
23 for the TCA, not the overall mobility of the community.  
24 It's going to create congestion.

25 And second of all, I actually attend all of the

1 TCA meetings and most of their financial committee  
2 meetings, and their failed experiment. They were  
3 supposed to monetize roads by incurring debt and then  
4 pay off the debt with the tolls from the road by 2040.  
5 No scenario that they can currently articulate allows  
6 them to do that.

7 They have the impunity and monopolistic  
8 advantage of a public entity and that avarice greed and  
9 salesmanship of a private corporation. To allow them to  
10 spend another dollar of revenue on PR, attorneys and  
11 lobbying is a fraud on the people of California. I  
12 really hope that you will deny this permit. Thank you.

13 MR. STRAWN: No, that's all they wrote down.  
14 Ryan Wiggins. Then a Mark Babski and an Israel Adina.

15 MR. WIGGINS: Good evening. I'm Ryan Wiggins.  
16 I'm the climate change director for an organization  
17 called Transforming California. I'd just like to say  
18 that this project is really a 20th Century band-aid for  
19 a problem that really requires a 21st Century solution.

20 A lot has changed since 2008. We now have a  
21 state climate change law, AB 32 which is in effect, and  
22 we also have complimentary piece of legislation which is  
23 called SB 375. SB 375 is our state's recognition that  
24 we must reduce urban sprawl and we also must provide  
25 alternatives to traditional automobile traffic in order

1 to combat climate change.

2 This project here is really a 20th Century  
3 planning relic. We need to go do -- move forward is to  
4 actually invest in public transportation, biking and  
5 walking corridors, such as trains. These are the type  
6 of solutions we really need to look forward to. We have  
7 a saying in the transportation planning community which  
8 says that fighting congestion by adding a highway  
9 capacity is like fighting obesity by losing your thumb.

10 What that really means is if you build or  
11 expand a freeway, yes, yes you will release some  
12 congestion. But give it a couple of years, give it four  
13 or five years. Empirical studies actually show that you  
14 will get induced traffic from induced development and  
15 you'll be back to square one.

16 And in terms of water quality, what will this  
17 get us? This will get us more parking lots, this will  
18 get us more roads, this will get us a lot more sprawl,  
19 which is going to get us more urban runoff. And that  
20 will directly impact this region, and then they will  
21 come back to you and they will say, we need this next  
22 section to move forward. And they will -- they will  
23 show the study about the traffic that was induced from  
24 this, and they will make the same case again.

25 And we can go ahead and decide whether to go

1 ahead and build a new segment or we can say at this  
2 point, no. We need to look at real alternatives, we'll  
3 create real solutions to this problem. Thank you.

4 MR. STRAWN: Mark Abski or Israel Adina. Scott  
5 Harrison. Dan Sulberg.

6 MR. HARRISON: Thank you for staying late  
7 tonight. I'm a volunteer as well and through that  
8 process, I've become involuntary --

9 MR. STRAWN: Your name, sir?

10 MR. HARRISON: Scott Harrison.

11 MR. STRAWN: You took the oath?

12 MR. HARRISON: I will give my opinion whether  
13 it's good or not. I signed the sheet, but I didn't  
14 have -- do we have to tell the truth here? Well, I  
15 appreciate your staying late and hopefully, make this  
16 briefer than it already has been usurped on from that  
17 part right there.

18 But three points that I would like to cover.  
19 They have been covered today already. One of the major  
20 arguments for the road is the jobs. The jobs will be  
21 temporary. The roads will be permanent and the damage  
22 to the environment will be permanent, so when the jobs  
23 are long gone, the road will still be here and causing  
24 the problems that we're here to try to figure out if the  
25 road will actually cause these problems.

1                   Number two, what brings us sort of unsavory  
2                   pall over the proceedings today are the fact -- and you  
3                   have seen it here in San Diego -- is toll roads. That  
4                   the toll roads eventually, they're bankrupt. Esther  
5                   talked about this a little bit. All the monies being  
6                   made up front; therefore, I can see the enthusiasm by a  
7                   group like TCA, well, let's build a toll road; big money  
8                   grab.

9                   They -- the local toll roads have actually gone  
10                  down because the use has gone down. The toll roads in  
11                  the other parts of the state went bankrupt and had to be  
12                  taken over by municipalities to recover those costs to  
13                  the taxpayer, so we all pay for those types of things.

14                 Marty talked about an elephant. I'm more the  
15                 800-pound gorilla that's here to talk about the clean  
16                 water. You have all heard the saying, all stuff flows  
17                 downhill and mitigation, filtration, CEQA, NEPA, swales,  
18                 whales, all that stuff, when you come to a significant  
19                 reign event, the stuff is going to continue to flow  
20                 downhill anyway. And just about everything that we  
21                 value here today, we're talking about is downhill from  
22                 this road.

23                 Please deny the permit and thanks for staying  
24                 late again tonight.

25                 MR. STRAWN: There are about five more here.

1 This one, I just can't make -- actually, I'll go down  
2 the person that signed the oath is Eleanor Robbins.  
3 There might be a Norris Robbins or something. No? And  
4 just calling everybody once. If I called your name and  
5 -- Valerie Johnson, followed by a something Richmond.

6 MS. JOHNSON: Hi. I'm Valerie Johnson. I'll  
7 keep it short because I know everybody wants to get  
8 home. Thanks for your patience.

9 I listened to many of the comments in the other  
10 room from the elected officials. I couldn't help but  
11 feel that the claim that is only about a short segment  
12 that Tesoro extension is at best disingenuous, and I  
13 couldn't help but be struck by how many who were  
14 representing City Council were also part of the TCA  
15 board. It doesn't seem to me that these folks could  
16 possibly be unbiased about this.

17 It sounded really good on paper. The thing  
18 about safety and more access and weighs out in case of  
19 an emergency. Who wouldn't be in favor of that? The  
20 problem is that every place toll roads have been built,  
21 development has followed. And as many as the forms the  
22 speakers have said is more detail, the sprawl, the  
23 development follows and then so does the traffic. It's  
24 at best a Band-aid.

25 I also want to say that it makes me feel a bit

1 strange to be here speaking on the opposite side from so  
2 many representatives of unions that I see here, since  
3 I'm a proud union member myself. But I think that this  
4 jobs versus conservation dichotomy that has been set up  
5 is a very false one. We need to have the jobs, but they  
6 should be jobs that are sustainable and contribute to a  
7 better environment. Taxpayer money should not be spent  
8 on something that is going to degrade our environment.  
9 Instead it should be spent on increasing solar energy  
10 and perhaps some of the people, you know, the taxpayer  
11 money could be much better spent helping to much more  
12 quickly truck out the toxic awful that was left behind  
13 by San Onofre nuclear generating station. Thank you.

14 MR. STRAWN: Charles Richmond and then John  
15 Holder and a Larry Smith, and then we have T.M. Johnson.  
16 And was there any other green cards that didn't --  
17 actually, why don't you come up next.

18 DR. LOCKREED: My name's Dr. Bill Lockreed.  
19 I'm currently retired, but I spent 45 years in the  
20 aerospace industry as an engineer and 25 of those as a  
21 program manager, relatively large programs. And I'm  
22 just amazed. I got prepared notes, but as I heard for  
23 this last hour some of the bizarre comments. Number  
24 one, taxpayer dollars being used for this.

25 There's no taxpayer dollars being used. Number

1 two, just going through a state park. It's not going  
2 through a state park. Number three, it's going to be 16  
3 and a half miles long. It's not. It's 5.5 miles long.  
4 What you got in front of you, the CEQA which your staff  
5 reviewed, which you -- you're supposed to vote on only  
6 the CEQA.

7 What we've got here, you got a gold standard on  
8 how a highway will be built. It's got this porous  
9 pavement which is very high tech. It's got a very  
10 sophisticated filtration system. They have done -- the  
11 rest of California will look at this as the best highway  
12 in the State of California. So forget all this other  
13 stuff you're hearing, because most of it is just  
14 hyperbole.

15 The important thing is 5.5 miles, the CEQA  
16 study was approved after extensive study by your own  
17 staff. Go ahead and approve this thing and let's move  
18 on and get on with this thing and approve what your  
19 staff is recommending. Thank you.

20 MR. STRAWN: T.M. Johnson.

21 MR. JOHNSON: Sir, once again, I want to thank  
22 you for your time and your committed efforts to see one  
23 way or the other the truth of the matter and for your  
24 diligence in giving a good report on it.

25 I've sat in the back from the beginning since

1 this morning and I've listened to both sides and I'm for  
2 it. I've seen growth. And I'm from San Diego and I  
3 know what it did when 805 went over the 8. When nobody  
4 had to drive 163 to go north. And so with that is going  
5 to come production. There's going to come jobs.  
6 There's going to be more schools. We have a state that  
7 everybody wants to live in. We have kids who want to  
8 own their own homes one day. We have to put them  
9 somewhere.

10 So we have to do something to make that  
11 available for them. I want to know how many people in  
12 this room do not drive a car. If we're going to get  
13 down to the brass tacks of it all, it's about traveling.  
14 The best direct approach to a situation is forge  
15 straight through. This is a hurdle we can get over it  
16 or we can let it stop us. But we've got to do one thing  
17 or the other. Stop production or make room for others.

18 I've seen road rage. I know what it's looks  
19 like. I've been in L.A. where the traffic was stopped  
20 for longer than a half hour to go five miles. So if  
21 this helps a community grow and it gives them the time  
22 they need to get to where they're going without leaving  
23 a half hour earlier, we need to help them.

24 If it's about the environment, we waste more  
25 gas sitting still than we do traveling. That's going to

1 help everyone in the long run. I's tell you what. I  
2 wouldn't want to go five miles to the grocery store over  
3 a dirt road to get there and get back on bicycle. Just  
4 telling you, man.

5 MR. MORALES: Okay. Those are all the public  
6 comment cards that we got.

7 MR. SMITH: You called me and you didn't let --  
8 give me the opportunity to speak. I was walking up,  
9 so...

10 MR. STRAWN: Your name?

11 MR. SMITH: My name's Larry Smith. I presently  
12 reside at Provonda, which most folks know as Long Beach  
13 in Signal Hill area, and I'm obviously here to ask you  
14 to deny the permit. I've been indigenious for over ten  
15 years, and I probably spend about 99 percent of my time  
16 reporting on the genocide or forms of genocide  
17 perpetuated against indigenious peoples and their  
18 respective first nations.

19 And one document that this board may or may not  
20 be familiar with that does apply, is the United Nations  
21 declaration under the rights of indigenious people and  
22 was passed by the nation's general assembly on September  
23 13th, 2007. And I want to refer to two articles.  
24 Article 8, Section 1 specifically states that  
25 "Indigenious people, individuals have the right not to be

1 subject subjected to forced assimilation or the  
2 destruction of their culture."

3 Article 11, Section 1 specifically states,  
4 "Indigenous people have the right to practice in and  
5 realize their culture, traditions and customs. This  
6 includes the right to maintain, protect and develop the  
7 past, present and future manifestations of their  
8 cultures such as archaeological and historical sites,  
9 artifacts, designs, ceremonies, technologies and visual  
10 and performing arts and literature."

11 Now, there are 20 more articles that equally  
12 apply in this situation, and I wanted to ask that all of  
13 you in this room, staff, the board here, members of the  
14 TCA community members, not be complicit in committing an  
15 act of genocide by allowing this part of the toll road  
16 to destroy a portion of what's remaining of the nation.  
17 If you destroy the nation, you destroy the culture,  
18 that's called genocide. So I'm asking you to deny the  
19 permit. Thank you.

20 MR. MORALES: Okay. That's it for the public  
21 comments. I think we have been going for a while and  
22 our court reporter probably needs to rest her fingers.  
23 Yeah, I know that NGO's might.

24 Okay. I'm going to give you guys two or three  
25 minutes max. I'm going to add it to your time if you

1 wish to add that because we do believe that you used  
2 your 30 minutes.

3 MR. WHITE: I have no objection to that. Thank  
4 you. And I appreciate your patience. I will try to  
5 make it brief. I want to bring it back. We heard a lot  
6 of testimony today -- bring it back to the issues that  
7 you're faced with today, the issues that pertain to your  
8 jurisdiction and what your options are today.

9 But first I want to respond to a couple of  
10 misconceptions that have been floated out there, a  
11 couple of important ones anyway. The first is with  
12 respect to the SAM. We heard that because the TCA has  
13 looked at the SAM and tried to comply with the SAM, that  
14 we shouldn't be complaining about the HMP and having to  
15 do additional HMP conflicts with the timing of that.

16 The SAM is a planning level document. It's not  
17 a project level document. It's not intended to be a  
18 project level document. I think you heard from one of  
19 authors of the SAM, PWA last time that this was not  
20 intended to govern project level decisions. It's  
21 exactly what the county HMP requirements are designed to  
22 do. That's why your staff is recommending that those be  
23 complied with. What we're saying is until that analysis  
24 is done, you should not be hearing this application.

25 So this one, we think is a no-brainer. You

1       should just -- you should deny this application, require  
2       they do the analysis before taking any further action.  
3       To get back to the larger issue, the issue of what is  
4       the project and whether the project has independent  
5       utility.

6               I think the biggest misconception that we have  
7       so far tonight is that this 5.5 segment of toll road is  
8       needed to serve the Rancho Mission Viejo development.  
9       The Rancho Mission Viejo development was approved by  
10      Orange County. It has its own transportation plan. The  
11      county itself determined that the toll road was not  
12      necessary, was not a necessary part of the  
13      transportation plan for that project. The  
14      transportation will be adequately served for those  
15      14,000 units if and when they're ever built by that  
16      transportation plan as part of the project.

17             It includes an arterial called F Street which  
18      as TCA itself has noted, is -- would serve generally the  
19      same purpose as the toll road. It's a multi-mobile full  
20      access road that people can drive on, they can walk on,  
21      they can ride their bike on, they can access it from  
22      side streets unlike the toll road.

23             It is a complete fallacy that the toll road is  
24      needed at all to serve Rancho Mission Viejo. That is a  
25      critical point that you have to understand. So back to

1 what are your options or what are your obligations at  
2 this point. I think I've already mentioned that you're  
3 required by CEQA to make findings before you approve the  
4 project with respect to the significant impact. This is  
5 something that you're not -- there is no definite of the  
6 TCA on these findings. They have to be independent  
7 findings.

8 I should -- CEQA provides -- TCA is wanting to  
9 use the 2006 EIR for this project. There is a process  
10 under the CEQA regulations for using an EIR from another  
11 project for a separate different project. Those  
12 regulations say if you want to do that, you take the  
13 EIR, you circulate it the way you circulate all the  
14 EIRs, you recirculate it for 30 days. You have to  
15 respond to comments just like you would under a normal  
16 CEQA process.

17 If TCA wanted this to be a separate project,  
18 they could've taken advantage -- if they wanted to use  
19 the 2006 EIR, they could have taken advantage of that  
20 process and done that. They chose not to. Instead they  
21 chose to call this a segment or a -- a phase or whatever  
22 you want, of the original project. They relied on the  
23 2006 EIR, and that's all you have before you to make  
24 your findings. That EIR has over a dozen water quality  
25 related significant impacts.

1                   You found in 2008 that the mitigation provided  
2                   for those impacts was not enough to mitigate those  
3                   significant impacts. You should do the same thing  
4                   today. It's not a difficult decision. They want to  
5                   make this a separate project, let them go through that  
6                   process. They haven't done it yet. They've only given  
7                   you one option and that is to make mitigation findings  
8                   for the project as a whole. We urge that you do what  
9                   you did in 2008 and reject the project. Thank you very  
10                  much.

11                  MR. MORALES: Break, folks. And as soon as we  
12                  come back, we're going to start with TCA and then we  
13                  will go to staff.

14                  (Recess)

15                  MR. MORALES: Please take your seats. Okay.  
16                  Folks, the lights will come on. It's not from -- it's  
17                  not from the -- it's just an energy-saving timer. It  
18                  should indicate how long we have been going. So I think  
19                  that Mr. Thornton, you're your okay starting in  
20                  semi-darkness.

21                  MR. THORNTON: No problem, Mr. Chairman and  
22                  members of the board. We appreciate your patience very  
23                  much. I want to bring this hearing back to where it  
24                  began, Mr. Chairman. Your introductory comments indeed  
25                  with having witnesses take the oath was, I think it's

1 important to focus.

2           Why is it that witnesses before a water board  
3 hearing on the WDR are required to take the oath because  
4 you're sitting as quasi-adjudicatory body. You're not  
5 sitting as a transportation policy entity, you're not  
6 sitting for the transportation commission, you're not  
7 sitting for the water quality entity, you're not sitting  
8 as a greenhouse gas entity, you're not sitting as a  
9 legislative body. You're the regional water quality  
10 control board and your obligation is to apply the rules  
11 and regulations of the State of California applicable to  
12 waste discharge. That's your role and responsibility.

13           That's why as the chairman appropriately noted  
14 this morning, there are restrictions on ex-parte  
15 communications because you're sitting as a  
16 quasi-adjudicatory body. So your obligation is to  
17 decide this matter on the basis of not emotion, not  
18 policies about growth in California, not whether some of  
19 us would prefer to have a population of less than 38  
20 million people, but rather to fairly apply the laws of  
21 the State of California as they apply to water quality  
22 and the regulations of the State of California as they  
23 apply to water quality and has been articulated in your  
24 basic plan and the water committee quality facts of this  
25 matter.

1           And the facts of this matter are as your staff  
2           has articulated that you have a project before you that  
3           involves the impact to four-tenths of an acre in stated  
4           waters that has 15 to one mitigation ratio, an unheard  
5           of mitigation ratio, but your staff has drafted a  
6           tentative weight discharge order that requires this  
7           agency, this public agency by the way, public agency  
8           that represents two million people live in Orange  
9           County.

10           To me, the highest water quality standards of  
11           any highway in the State of California. That's what  
12           your staff is requiring. So your obligation is to apply  
13           the law to the facts -- to the facts presented, and  
14           there have been no facts presented here today to  
15           contradict the findings of your staff. And I refer to  
16           paragraph Roman 2, dash, K on Page 8 of the tentative  
17           order where your staff findings are through compliance  
18           -- quote, through compliance with the waste discharge  
19           requirements of this order, the project will not result  
20           in State water quality standards being violated.

21           And in Roman two, dash L, on Page 9 of your  
22           tentative order, your staff says, quote, the order  
23           contains waste discharge requirements to ensure  
24           beneficial uses are maintained or enhanced through  
25           mitigation and monitoring requirements for impacts to

1 waters of the State.

2 With regard to the CEQA issue, your council has  
3 advised you that you are obligated as a matter of law to  
4 presume that the CEQA documentation prepared by the TCA  
5 complies with CEQA. Now lawsuits have been filed.  
6 There is another entity, the judicial branch of our  
7 water system whose authority and jurisdiction is to  
8 review the TCA CEQA determinations. And they will do  
9 that in due course.

10 And a judge -- Superior Court judge and perhaps  
11 a court of appeals will decide that issue, but that's an  
12 issue to be decided in that venue, not in this venue.  
13 Your council has advised you that there are no -- there  
14 is no basis to require additional environmental  
15 documentation.

16 Now, we have heard testimony on a variety of  
17 matters. Again, we have been here a long time today.  
18 This project comes nowhere close to Trestles, has  
19 nothing to do with Trestles. It's not going to impact  
20 Trestles. It's nowhere to Panhe. It's ten miles away  
21 from Panhe. There are no sacred sites. There are no  
22 burial sites. There are no facts to suggest that this  
23 project will have those impacts but again, refocusing on  
24 the water quality issues, there's been no facts  
25 presented to you today that contradict your staff's

1 recommendations to approve this WDR.

2 Finally, I just want to respond briefly to  
3 suggestions that determination by the opponents that the  
4 denial without prejudice in 2008 somehow constituted  
5 some kind of binding determination. Again, let's focus  
6 on the law. The State water board's regulations Section  
7 3831H provides denial without prejudice, means inability  
8 to grant certification for procedural rather than  
9 substantive reasons.

10 This form of denial carries with it no  
11 judgment, so the suggestion again that the denial  
12 without prejudice of the certification in 2008 has any  
13 applicability to this proceeding is simply wrong as a  
14 matter of law. I submit to you, Mr. Chairman and  
15 members of the board, that you have before you a project  
16 that meets all of the applicable water quality standards  
17 protects the beneficial uses.

18 That's the role of the water board and we urge  
19 your approval of this WDR. Thank you for your time and  
20 patience. Thank you very much.

21 MR. MORALES: Are there any further comments by  
22 staff at this point?

23 MR. BRADFORD: Thank you. In closing, I would  
24 like to clarify a few pieces of information brought up  
25 today. Approving projects based on a refined conceptual

1 design plan at the time the WDR are issued is common  
2 practice by the water board. Therefore, approving the  
3 WDR for this project during this stage is appropriate.

4 Project impacts to water have been avoided and  
5 minimized to the maximum extent practical. The order  
6 contains requirements that are specific and enforceable.  
7 Staff finds that the mitigation requirement of the order  
8 adequately replaced aquatic resources that would be  
9 impacted by discharges of fill associated with the  
10 project.

11 The compensatory mitigation sites must be  
12 maintained and protected in perpetuity in a manner that  
13 maintains or improves the functions and values of the  
14 sites for the variety of beneficial uses of water that  
15 it supports. The order requires that TCA provide annual  
16 reports for compensatory mitigation sites until the  
17 sites be all long-term success criteria identified in  
18 the approved mitigation and monitoring plan that it met  
19 to satisfaction the San Diego Water Board.

20 Moreover, TCA must provide financial assurances  
21 for the mitigation sites acceptable to the San Diego  
22 Water Board. The financial assurances instrument  
23 shall -- shall allow the San Diego Water Board to  
24 immediately draw on the financial assurance if the  
25 San Diego Water Board determines in its sole discretion

1 that TCA has failed to meet the mitigation obligations.

2 There were some comments made about cultural  
3 and archaeological impact. Please keep in mind impacts  
4 to archaeological resources are impacts that pertain to  
5 the adequacy of the environmental documents prepared by  
6 TCA and to resources outside the board's purview.

7 There were also comments regarding the runoff  
8 management plan. Revised tentative order requires that  
9 the updated runoff management plan comply with the  
10 Orange County HMP and water quality management plan.  
11 These requirements must be met regardless of when the  
12 runoff management plan is updated and submitted to the  
13 water board.

14 A suite of BMPs -- a suite of appropriate BMPs  
15 will be installed to reduce the discharge of fluids in  
16 the project runoff. Incorporation of the BMPs into the  
17 on-site drainage system will result in acceptable runoff  
18 water quality before entering the receiving water.

19 Staff has considered the testimony given today  
20 and maintains its recommendation to adopt the revised  
21 tentative order. Thank you.

22 MR. MORALES: I think that concludes all of the  
23 testimony that we are going to be receiving on this  
24 matter, so at this point we go into our deliberations;  
25 correct.

1 MS. HAGAN: So Chair Morales, so formally  
2 closing the public hearing?

3 MR. MORALES: Yes. At this point, we are  
4 formally closing the public hearing. Thank you all.

5 So we have heard staff's recommendation and  
6 think -- oh, boy, the board -- where are we, folks?

7 MS. KALEMKIARIAN: I'll start. I'll start  
8 because I know we all want to get home. And I first  
9 want to thank both sides of the issue because this was  
10 very helpful to me today, and I feel that while we got  
11 sidetracked sometimes on transportation policy and good  
12 serving spots, we did get a very good exposition of the  
13 issues.

14 I guess what's most persuasive to me, being --  
15 not having been here in '08 when this was last reviewed,  
16 was reading through the attorney general's complaint or  
17 writ, actually, because I do not believe that the  
18 project is Tesoro, and I think that the project has been  
19 presented is the entire highway. And the reason I think  
20 that is that there have been no alternatives at all  
21 brought forth by the TCA to tell us well, this is the  
22 first segment that's needed because we've got these  
23 homes here. It's not going to have an environmental  
24 impact. The water quality standards will be met, but  
25 the rest of it, what's happening there?

1                   There's been no explanation. And from what I  
2                   can gather from all the evidence that was presented to  
3                   us, that was a very big issue in 2008, and it's still an  
4                   issue. And there's not alternatives being presented. I  
5                   think the staff has done a wonderful job. I don't -- I  
6                   don't question the staff's conclusion that this segment  
7                   meets water quality standards. That's not why I'm going  
8                   to vote against the staff's recommendation. It's  
9                   because I think that is not the project. In honesty, it  
10                  is not the project.

11                 If this had come forward as the entire highway,  
12                 or an alternative to the entire highway and the  
13                 environmental impact and the water quality -- not the --  
14                 the water quality issues, the discharge permit had been  
15                 everything that we evaluated, I'm not going to do  
16                 transportation policy. I'm not elected official in  
17                 Orange County. You are correct, sir, our job is as an  
18                 adjudicating body and as regulators, and I do not think  
19                 we were provided with the project, and I think the staff  
20                 evaluated what it was presented with and did a great  
21                 job, but we have a different function.

22                 So I can't approve the staff's recommendation.  
23                 Now, I'm persuadable otherwise, but I just don't believe  
24                 that we have been given the project. So as the attorney  
25                 general says in her first cause of action, it's not been

1 explained, the environmental impacts or the evaluated  
2 for the entire project and the water quality standards  
3 by definition as well.

4 MR. MORALES: Anybody else or should we vote?

5 MS. KALEMKIARIAN: Am I standing alone perhaps?

6 MR. STRAWN: I wish I could totally agree with  
7 you. Because I don't like this project. I don't like  
8 the toll road through the hill. I don't like what it  
9 does to endangered species. I don't like the fact that  
10 it's disturbing some tribal sites. But as the water  
11 quality control board of San Diego region, those cannot  
12 be the deciding factors. If we were to decide using  
13 those factors, our ruling would be appealed and I think  
14 we would lose it.

15 So just maybe it's blinders on, but looking at  
16 the project that we were presented, and I -- likewise, I  
17 don't think we can expand it to some potential larger  
18 project, even though we might believe that could happen.  
19 Looking at the evidence that's in front of us and  
20 looking at the revised tentative order and what it is  
21 we're approving, I reluctantly think I need to vote in  
22 favor.

23 MR. ANDERSON: Well, I'm not afraid of slippery  
24 slopes. This is a 5.5 mile section serving a fairly  
25 large planned community, and I will support the --

1 second your -- is that a motion?

2 MR. MORALES: Net yet.

3 MR. ANDERSON: I would support you on support  
4 the -- I think it's a whole other discussion for when we  
5 do move through the sacred sites and when we do go down  
6 towards the I-5 connection, and I'm -- I agree that will  
7 be a project and it's part of the project. In this  
8 case, I feel we're -- 5.5 well mitigated, and so I will  
9 support the staff's position on this.

10 MR. ABARANEL: I think the project that's in  
11 front of us is actually pretty clear. It's the project  
12 that was presented here in 2008 and rejected by the  
13 people of California in the United States of America. I  
14 have heard from Orange County elected officials more or  
15 less heard from the counsel, Mr. Thornton, that the  
16 project is the entire extension from where 241 ends now  
17 to somewhere intersecting Interstate 5 and the  
18 environmental impact report that is before us -- that's  
19 not actually before us -- it was before us. Clearly  
20 evaluates the whole project -- that project was rejected  
21 and I don't see any reason to accept part of it.

22 I feel as though somebody came before this  
23 board and the Coastal Commission and the Department of  
24 Commerce basically the people of California and the  
25 United States some years ago and said we want to build a

1 bridge and that was rejected. And somebody is coming  
2 back now and saying let's build a quarter of the bridge.  
3 It's not going to impact traffic. Right. Not going to  
4 cost as much. It's not going impact this or that now,  
5 but the whole project is clearly identified as impacting  
6 water quality and many other things.

7 I think our obligation here is not to be  
8 blinded by a representation of part of the project, but  
9 to recognize that the entire project impacts water  
10 quality in a way that this board should not support.  
11 Some people might say I made up what the project is, but  
12 I went to the website of the Transportation Corridor  
13 Authority and it shows the project going all the way  
14 through Interstate 5, somewhere kind of in San Diego  
15 County. I don't know if that's where they're going to  
16 do it.

17 But that's the goal of their project and  
18 they're asking us to support that, and I cannot.

19 MR. MORALES: Wow. I'm really torn on this one  
20 because while I got to say it's a -- a story. Having  
21 traveled on the 241 often, but the -- the time I recall  
22 actually traveling on the 241 was during one of the big  
23 fires that we had when my wife and I were at a  
24 conference in the desert and our two young children were  
25 with a good family friend at our home here in San Diego

1 and fires raged all over the county. And the only way  
2 that we were able to get home to our kids with all the  
3 roads shut down was by taking a portion of 241.

4 So I understand personally the utility of a  
5 number of roads for safety reasons. And I personally  
6 benefitted, you know, by it. I'm grateful for that.  
7 But that really can't be a part of my decision and the  
8 decision will be based on the information I have before  
9 us. I think my decision actually might be different if  
10 it were the entire segment, frankly. But as a five and  
11 a half mile, I guess, portion of the overall project, I  
12 really am sort of the same mind as two of my fellow  
13 board members.

14 And -- and I -- I think -- and I've said many  
15 times that we have the best staff in the state and they  
16 do excellent work and, you know, I take them at their  
17 word, and I know that their work and analysis is  
18 thorough and is as good as we're able to get, but we  
19 have to make some sometimes difficult decisions and I  
20 don't know anyone who's ever surfed at Trestles. I've  
21 never been there. I don't go to Trestles and, you know,  
22 okay, folks. It's going to impact Trestles.

23 I don't know. As I see it, the project as  
24 envisioned may end up there; may not. I don't know. I  
25 do think it's more than five and a half miles, though.

1 I was torn with a lot of the questions about CEQA and  
2 TCA, you know. They went -- they provided us with an  
3 NOD, which -- which I think is very, very helpful.

4 But I think there are some ambiguity in what we  
5 are required to do and not do in terms of our analysis,  
6 and I know there are arguments that go both ways. And  
7 we are a semi-adjudicative body and while the threat of  
8 litigation is always a possibility for us, quite  
9 frankly, it's going to happen no matter what we decide.  
10 So you know, it is with frankly a lot of reluctance that  
11 I can't support the staff.

12 MS. KALEMKIARIAN: I want to take a stab, if I  
13 might. But are you finished, Chair?

14 MR. MORALES: I am.

15 MS. KALEMKIARIAN: Because really, it's only  
16 when I put this in my mind in context because I was  
17 wavering back and forth because when I looked at the way  
18 the AG analyzes it, it hit on -- the nail on the head  
19 for what was bothering me. And that is the description  
20 as the project in quotes as consisting only as the  
21 Tesoro extension. I'm reading from the complaint -- the  
22 grid -- as the first 5.5 mile segment is contrary to  
23 decades of representation by the TCA as well as its most  
24 recent characterization of the Tesoro extension as the  
25 first step towards completion of the entire Foothill

1 South extension.

2 This is not an adequate project description and  
3 that's what bothers me. To say that this has an  
4 independent beneficial review, I have to refer to  
5 counsel for the NGO, said look, there's already been a  
6 transportation plan approved. And it's not my business  
7 whether there's been an independent beneficial use.  
8 That's a transportation question.

9 My business is have I been given a project  
10 description that's accurate to make a water quality  
11 decision in it, and I don't think that was the staff's  
12 task, frankly. They had their application. They  
13 reviewed the application. From a public policy  
14 perspective, I do not believe that the project  
15 description is genuine. And if that project description  
16 is the entire highway, show me the entire highway and  
17 then we make a decision if water quality standards are  
18 going to be compromised. We were not presented with  
19 that, which Mr. Abaranel said.

20 And it's not that I like it. I'm not a big fan  
21 of big highways. I'm not sure that I wouldn't prefer to  
22 see there be less growth, but, you know, the gentleman  
23 from the union who spoke last was very eloquent. We  
24 can't just stop growth in the state, and that's what I'm  
25 not about. But I do think you have to be genuine and

1 accurate and I do not believe the project description is  
2 accurate the way it's being presented and that's my  
3 problem. So...

4 MR. MORALES: I know. Okay. So what do we do  
5 here, folks? I get a motion either way. Anybody?

6 MR. ABARANEL: I move we do not approve  
7 tentative order R92013 triple 07.

8 MS. KALEMKIARIAN: Second.

9 MR. MORALES: We have a motion that we not  
10 approve the tentative order before us. All of those --

11 MS. HAGAN: Mr. Chair, may I make a suggestion  
12 just for you to consider. If that motion were -- the  
13 board is inclined to go -- one -- one option is for the  
14 board to allow staff to draft a resolution stating the  
15 board's reasons for not approving the project, that  
16 would be brought back at the next meeting, but it's not  
17 required but it would give an opportunity to more  
18 clearly refine the reasons for that action.

19 MR. ABARBNEL: May I respond. That's always  
20 possible, but I think the reasons with one exception  
21 that I have, I tried to articulate. I hope they're on  
22 the record. If it's the opinion of counsel and the  
23 senior staff, that would be very important to do, I  
24 would be happy to go along with it. But if it's not so  
25 important, I just as soon proceed now.

1 I do have another item that's important to me  
2 and maybe that would be -- which I haven't articulated  
3 yet. It's not important as the one that I did  
4 articulate, so I would like to know just how big a deal  
5 this is.

6 MS. KALEMKIARIAN: I -- we were both just  
7 discussing it, and I do think you, the board members,  
8 have fairly clearly stated their views in their  
9 deliberations, so I don't think a resolution is critical  
10 at this point.

11 MR. MORALES: I'm all for not punting. I --  
12 like I said, that's why we make the big bucks.

13 So there is a motion and a second that the  
14 tentative order not be approved, and I guess I'll call  
15 for a vote. So all those in favor of the motion as  
16 stated nonapproval of the tentative order, signify by  
17 saying aye.

18 IN UNISON: Aye.

19 MR. MORALES: Those opposed?

20 MR. ANDERSON and MR. STRAWN: No.

21 MR. MORALES: Three, two, motion carries. I  
22 think that's it for tonight.

23 (Whereupon the hearing was concluded at  
24 7:15 p.m.)

25 \* \* \*

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I, Johnell M. Gallivan, Certified Shorthand Reporter for  
the State of California, do hereby certify:

That the hearing was taken by me in machine shorthand  
and later transcribed into typewriting, under my  
direction, and that the foregoing contains a true record  
of the hearing proceedings.

Dated: This \_\_\_ day of \_\_\_\_\_, 2013,  
at San Diego, California

\_\_\_\_\_  
Johnell M. Gallivan  
CSR No. 10505

# **EXHIBIT 7**

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 19, 2013

ITEM: 9

SUBJECT: Public Hearing (Continued): Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*).

PURPOSE: To consider adoption of revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County.

RECOMMENDATION: Adoption of the revised Tentative Order No. R9-2013-0007 is recommended.

DISCUSSION: This Executive Officer Summary Report (EOSR) supplements the EOSR and Supplemental EOSR provided for Item 8 of the March 13, 2013 San Diego Water Board meeting (**Supporting Document No. 1**). At that meeting, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order for the Tesoro Extension (SR 241) (Tesoro Extension or Project), which was attended by over 200 people. The San Diego Water Board heard extensive testimony on the Tentative Order from a large diverse group of stakeholders including San Diego Water Board staff, F/ETCA, Save San Onofre Coalition (SSOC), elected officials, and other interested persons. The testimony included concerns that F/ETCA's Final Subsequent Environmental Impact Report (FSEIR) is not a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely upon in considering adoption of the Tentative Order.

At the conclusion of the hearing proceedings on March 13, 2013, the San Diego Water Board continued the public hearing to today's meeting to allow staff and counsel adequate time to 1) evaluate the comments submitted on CEQA compliance, 2) prepare responses to the remaining issues, and 3) draft revised conditions and/or additional

findings as appropriate for inclusion in the Tentative Order.

As directed by Board Chair Morales at the March 13, 2013 Board meeting, San Diego Water Board member questions (**Supporting Document No. 2**) were sent to F/ETCA and SSOC and responses were required by March 29, 2013. Timely written responses were received from F/ETCA and SSOC on March 29, 2013 (**Supporting Document Nos. 3 and 4**). Additional questions posed by Board members during the March 13 Board meeting will be addressed during the Board staff and F/ECTA presentations at today's meeting.

On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 entitled, "*A Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Approving Addendum to Final Subsequent Environmental Impact Report and Approving Conceptual Design of the Tesoro Extension Project*" (**Supporting Document No. 5**). In adopting the Resolution, the Board of Directors approved a conceptual design plan for the Tesoro Extension Project and adopted an Addendum to the Final Subsequent Environmental Impact Report (FSEIR) which can be used to fulfill the environmental review requirements of CEQA for the Tesoro Extension (**Supporting Document No. 6**). F/ETCA filed a Notice of Determination regarding the approval and adoption of the Resolution with the State Clearinghouse on April 19, 2013 for state agency review as required under CEQA Guidelines Sections 15205 and 15206 (**Supporting Document No. 7**). San Diego Water Board counsel has reviewed the information submitted in responses to the Board's CEQA questions and considered the findings and conclusions of the F/ETCA Board of Directors in their adoption of Resolution 2013F-005. Based on these and other considerations, San Diego Water Board counsel has concluded that the CEQA documentation provided by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering adoption of the revised Tentative Order.

The testimony of participants at the March 13, 2013 Board meeting also included concerns with the Tesoro Extension Project meeting the coarse (bed material) sediment supply preservation requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). The testimony focused on how the construction of the Tesoro Extension would affect the supply of bed material sediment

to Chiquita Creek, Gobernadora Creek, and San Juan Creek. F/ETCA testified that the findings and conclusions of the *Baseline Geomorphic and Hydrologic Conditions Report* for Rancho Mission Viejo (PCR, PWA, and BHI, 2002), demonstrated that constructing the Tesoro Extension through the headwater channels in Chiquita Creek and Gobernadora Creek would not adversely impact the supply of bed material sediment to those streams. The SSOC maintains that neither the overall purpose nor the detailed findings of the *Baseline Geomorphic and Hydrologic Conditions Report* support F/ETCA's assertion.

Tentative Order No R9-2013-0007 has been revised to address concerns regarding Project impacts to the coarse bed material sediment supply to downstream receiving waters. The Tentative Order now requires F/ETCA to submit and implement an updated Runoff Management Plan by October 31, 2013, prepared and certified by a properly qualified engineer, that clearly indicates the means for compliance with all of the requirements in the HMP, including those regarding coarse bed material sediment supply. The HMP contains provisions for avoiding coarse sediment yield areas and implementation of measures that allow coarse sediment to be discharged to receiving waters to prevent sediment deficit. A detailed discussion of this issue can be found in response to Comment No. 1 in the San Diego Water Board Revised Response to Comments document (**Supporting Document No. 8**). This document replaces and updates the previous version that was prepared for the March 13, 2013 Board meeting. The Revised Response to Comments document addresses all timely submitted comment letters that were received by March 1, 2013.

#### **Final Revisions to the Tentative Order**

San Diego Water Board staff is proposing final revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions are shown in redline/strikeout text in the Revised Tentative Order (**Supporting Document No. 9**) and include:

1. A requirement to update, certify, and implement the Runoff Management plan (RMP) (See section V.B of the Revised Tentative Order);
2. A requirement to develop and implement a monitoring

program to protect water quality and assess compliance with the receiving water limitations of the Tentative Order (see Finding G and section VIII.A of the Revised Tentative Order);

3. Changes to the CEQA findings to acknowledge that the CEQA documentation produced by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering the adoption of the Tentative Order (see Finding N of the Revised Tentative Order); and
4. Corrections of typographical errors and incorporation of suggested text by stakeholders.

By letter dated May 30, 2013 the Revised Tentative Order was released for public review and comment. Consistent with the direction provided by Board Chair Morales at the March 13, 2013 Board meeting, further written comments are limited to: 1) revisions to the Tentative Order since March 13, 2013; and 2) comments pertaining to the Revised Tentative Order and CEQA. Comments on the Revised Tentative Order must arrive no later than 5:00 p.m. on June 7, 2013. San Diego Water Board staff responses to comments received on the Revised Tentative Order and any errata for the Revised Tentative Order will be addressed during staff's presentation at today's meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. EOSR and Supplemental EOSR for Item 8 of the March 13, 2013 San Diego Water Board meeting.
2. San Diego Water Board Member Questions for Written Response Due March 29, 2013 by 5:00 p.m.
3. Shute, Mihaly & Weinberger LLP, Save San Onofre Coalition's Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
4. Nossaman LLP, Foothill/Eastern Transportation Corridor Agencies, Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
5. A Resolution of the F/ETCA Board of Directors Approving the Addendum to the Final Subsequent Environmental Impact Report and the Conceptual Design of the Tesoro Extension Project. (Resolution

- No. 2013F-005), dated April 18, 2013.
6. Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report, dated February 2013.
  7. F/ETCA Notice of Determination, dated April 23, 2013.
  8. San Diego Water Board Revised Response to Comments document.
  9. Revised Tentative Order No. R9-2013-0007 with attachments.

# **EXHIBIT 8**

1 NOSSAMAN, LLP  
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5

**F I L E D**  
Clerk of the Superior Court

JAN 12 2011

BY: A. LUM

6 Attorneys for Defendants,  
Foothill/Eastern Transportation Corridor Agency;  
The Board of Directors of the Foothill/Eastern Transportation Corridor  
7 Agency

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

11 CALIFORNIA STATE PARKS FOUNDATION, )  
12 et al., )

Case No: GIN051194 and GIN051371  
(Consolidated)

13 Petitioners, )

ASSIGNED FOR ALL PURPOSES TO:  
THOMAS P. NUGENT, DEPT. 30

14 vs. )

15 FOOTHILL/EASTERN TRANSPORTATION )  
CORRIDOR AGENCY, a Joint Powers Agency; )  
16 BOARD OF DIRECTORS OF THE )  
FOOTHILL/EASTERN TRANSPORTATION )  
17 CORRIDOR AGENCY; and DOES 1 through 40, )  
inclusive, )

~~PROPOSED~~ 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

18 Respondents. )

Date: January 14, 2011  
Time: 10:00 a.m. [status conference]  
Dept: 30 [Hon. Thomas P. Nugent]

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22 THE PEOPLE OF THE STATE OF )  
23 CALIFORNIA, et al., )

Date Action Filed: March 23, 2006  
Trial Date: Not Set

24 Petitioners, )

25 vs. )

26 FOOTHILL/EASTERN TRANSPORTATION )  
CORRIDOR AGENCY, a joint powers authority, )  
27 et al., )

28 Respondents. )



1 expressly reserving the Court's jurisdiction to set aside the dismissal and reinstate the proceeding nunc  
2 pro tunc when the stay is no longer in effect;

3 H. WHEREAS Code of Civil Procedure section 664.6 independently authorizes, and the  
4 parties hereby request, this Court to approve the Parties' Interim Settlement, and to retain jurisdiction to  
5 enforce its terms and conditions in order to ensure full performance;

6 I. WHEREAS the Interim Settlement provides for, and is contingent upon, among other  
7 things, (a) the Court's approval of the Interim Settlement as set forth herein and its retention of  
8 jurisdiction to enforce the Interim Settlement pursuant to Code of Civil Procedure section 664.6, (b) the  
9 Court's dismissal of these proceedings without prejudice and reservation of jurisdiction to set aside the  
10 dismissal pursuant to Local Rule 2.1.13, and (c) the entry of the stipulated order below;

11 J. WHEREAS, each person signing below represents and warrants that by executing this  
12 stipulation, the person is authorized to bind the Party on whose behalf the person is signing; the Party  
13 has relied on legal advice from the Party's attorney in entering into this stipulation; the terms and  
14 conditions have been completely read and explained to the Party; and the Party fully understands the  
15 terms and conditions;

16 K. WHEREAS the Interim Settlement, as memorialized in this stipulation, is in lieu of, and  
17 extinguishes and supersedes, any other communication by or between the Parties relating thereto; each  
18 of the Parties acknowledge that no other Party, or agent or attorney for any other Party, has made any  
19 promise, representation, or warranty whatsoever, express or implied, not contained herein, to induce the  
20 other Party to execute this stipulation, and each Party acknowledges that it has not executed this  
21 stipulation in reliance upon any promise, representation or warranty not expressly contained herein; this  
22 stipulation comprises the entire understanding of the Parties with respect thereto; and this stipulation  
23 may only be modified or amended by a mutual agreement of the Parties in writing and signed by the  
24 Parties;

25 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between all Parties in these  
26 consolidated proceedings, through their respective counsel of record, that the Court should approve the  
27 Interim Settlement as memorialized in this stipulation, and enter an order incorporating the following  
28 terms and conditions of the Interim Settlement:

1           1.       Pursuant to Code of Civil Procedure section 664.6, the Court approves the Interim  
2 Settlement of all Parties as memorialized in this stipulated order, including the following settlement  
3 terms expressly incorporated into this stipulated order.

4           2.       To effectuate a stay of these consolidated proceedings (case numbers GIN 051194 and  
5 GIN 051371), the proceedings are hereby dismissed without prejudice pursuant to Local Rule 2.1.13,  
6 and the Court expressly reserves its jurisdiction to set aside the dismissal and reinstate these proceedings  
7 nunc pro tunc when the stay is no longer in effect. The stay shall terminate and no longer be in effect  
8 upon the written request filed in Court by any Petitioner in either of the consolidated proceedings to set  
9 aside the dismissal and reinstate the proceedings, following notice to all Parties hereto through their  
10 counsel of record. Upon such request, the dismissal shall be set aside, and the proceedings shall be  
11 reinstated without the necessity to refile the pleadings or other papers filed in the proceedings prior to  
12 the dismissal, all of which shall be deemed filed as of their original filing dates. Until such request is  
13 made by Petitioners, the stay shall remain in effect, except as expressly provided herein. The request by  
14 any Petitioner to set aside the dismissal and reinstate the proceedings shall not be filed in Court prior to  
15 30 calendar days following personal service of written notice from such Petitioner(s) to undersigned  
16 counsel of record for each of the Respondents herein of the intention of Petitioner(s) to file such a  
17 request ("Request Notice"), but if Respondents have already served Petitioners with a Construction  
18 Notice (defined in paragraph 4 herein), Petitioners shall not be required to serve a Request Notice.  
19 Unless Petitioners and Respondents otherwise agree in writing, Petitioners and Respondents shall meet  
20 and confer within 15 days of personal service of the Request Notice to discuss the proposed request and  
21 whether and under what conditions the Parties could avoid the need to reinstate these proceedings while  
22 avoiding prejudice to Petitioners' right to challenge the Project and the EIR for the Project.

23           3.       Any period applicable to Petitioners within which Petitioners may be required to  
24 prosecute or complete legal proceedings for their claims in these consolidated actions shall be deemed  
25 tolled in favor of Petitioners during all periods in which a stay of proceedings was or has been in effect,  
26 including but not limited to the period between dismissal and reinstatement of the proceedings.

27           4.       Respondents shall, prior to start of construction of the Project in reliance on the approvals  
28 challenged in these proceedings (i.e., certification of the Final Subsequent EIR ("EIR") for the Project

1 and approval of the Project), give written notice of 60 calendar days by personal service to undersigned  
2 counsel of record for each of the Petitioners herein of Respondents' start of construction of the Project  
3 ("Construction Notice"). Respondents may give the Construction Notice at any time in their discretion  
4 that is in excess of 60 days prior to the start of construction of the Project, including any time when  
5 Respondents may not yet have any scheduled date for the start of construction. For the purposes of this  
6 paragraph, the term "construction" does not include design activities or the evaluation of any of the  
7 following: the impacts of the Project, mitigation measures or alternatives to the Project. For the  
8 purposes of this paragraph, the term "Project" includes the Project as previously approved by TCA and  
9 any variation thereof or alternative thereto, and the term "construction" means (1) the issuance of a  
10 "notice to proceed" with construction, or equivalent direction, by Respondents to any construction  
11 contractor for the Project or to any public entity undertaking such activities, including but not limited to  
12 TCA, or (2) grading of the Project alignment, including any vegetation clearance in preparation for  
13 grading of the Project. Unless Petitioners and Respondents otherwise agree in writing, Petitioners and  
14 Respondents shall meet and confer within 15 days of personal service of the Construction Notice to  
15 discuss the proposed action and whether and under what conditions the action could be undertaken  
16 without the need to reinstate these proceedings while avoiding prejudice to Petitioners' right to  
17 challenge the Project and the EIR for the Project, but this meet and confer requirement shall only apply  
18 to the extent that it would not duplicate any meet and confer conference that was previously held  
19 pursuant to paragraph 2, in order to avoid duplication of requirements. If, following the required meet  
20 and confer conference, the Petitioners and Respondents have not otherwise stipulated in writing,  
21 Petitioners shall reinstate these proceedings within 90 days of personal service of the Construction  
22 Notice, or else Petitioners shall be deemed to have forfeited their right under Paragraph 2 of this  
23 stipulated order to reinstate the proceedings. In addition to the Construction Notice, Respondents shall  
24 provide by mail service to Petitioners' counsel (a) a copy of any notice of preparation of a supplemental  
25 environmental impact report or subsequent environmental impact report regarding the Project, and (b) a  
26 copy of any addendum to the EIR.

27 5. Respondents and Proposed Intervenors waive, and shall not assert, any defense to  
28 Petitioners' claims based on (1) the non-prosecution of these proceedings during the period between

1 dismissal and reinstatement of the proceedings or any other period in which a stay was in effect, (2) a  
2 challenge to the Court's authority to set aside the dismissal and reinstate the proceedings in accordance  
3 with this stipulated order, or (3) any other claim, argument, defense, or challenge that would undermine  
4 the intent of the Parties to permit Petitioners, in accordance with the terms and conditions of this  
5 stipulated order, to reinstate these proceedings without prejudice as if the dismissal had not occurred.  
6 This waiver includes, but is not limited to, any defenses against Petitioners of statutes of limitations,  
7 laches, or the five-year dismissal statute (Code Civ. Proc., § 583.10).

8         6.       Except as expressly provided, nothing in this Interim Settlement or order shall prevent  
9 any of the Petitioners from reinstating these proceedings or otherwise pursuing their claims herein, at  
10 any time for any reason, including but not limited to, any action by the TCA to implement any aspect of  
11 the Project. Respondents and Proposed Intervenors further agree that Petitioners' right to reinstate these  
12 proceedings shall not be limited by Petitioners' failure to bring an administrative or judicial challenge to  
13 a future action taken by Respondents in reliance on the EIR or in furtherance of the Project, including  
14 but not limited to the approval by TCA of a subsequent or supplemental EIR for the Project, an  
15 addendum to the EIR, or any amendment or modification of the Project, and Respondents and Proposed  
16 Intervenors hereby waive any defense to the claims in any reinstated proceedings based on Petitioners'  
17 failure to challenge such future actions.

18         7.       Attorneys Fees.

19             a.       Because the dismissal of these proceedings is for the purpose of continuing the  
20 stay of litigation, this stipulated order does not reflect in any way on the merits of Petitioners' claims or  
21 Respondents' defenses. Except as expressly provided in section 7(b) below, this stipulated order does  
22 not support or prejudice any Party's claim for attorneys fees or costs, whether incurred before or after  
23 the entry of this stipulated order ("Entry Date"), and nothing in this stipulated order shall be construed as  
24 an admission or denial by any Party as to the validity of any claims for such attorneys fees or costs, or as  
25 prejudicing any Party's ability to assert any and all of its rights and positions in support of, or in  
26 opposition to, any future claim for such attorneys fees or costs.



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Dated: December \_\_, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY;  
THE BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY

By: Tom Margro  
Tom Margro

Chief Executive Officer,  
Foothill/Eastern Transportation Corridor Agency;  
authorized representative on behalf of  
The Board of Directors of the Foothill/Eastern  
Transportation Corridor Agency

Dated: December \_\_, 2010

SHUTE, MIHALY & WEINBERGER, LLP  
WILLIAM J. WHITE

By: \_\_\_\_\_  
William J. White

Attorneys for Petitioners,  
California State Parks Foundation;  
Endangered Habitats League;  
Laguna Greenbelt, Inc.;  
Natural Resources Defense Council, Inc.;  
Sea and Sage Audubon Society;  
Sierra Club; and  
Surfrider Foundation

Dated: December \_\_, 2010

CALIFORNIA STATE PARKS FOUNDATION

By: \_\_\_\_\_  
Elizabeth Goldstein  
President

Dated: December \_\_, 2010

ENDANGERED HABITATS LEAGUE

By: \_\_\_\_\_  
Dan Silver  
Executive Director

[signatures continued on the following page]

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Dated: December \_\_, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY;  
THE BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY

By: \_\_\_\_\_  
Tom Margro  
Chief Executive Officer,  
Foothill/Eastern Transportation Corridor Agency;  
authorized representative on behalf of  
The Board of Directors of the Foothill/Eastern  
Transportation Corridor Agency

Dated: December ~~28~~, 2010

SHUTE, MIHALY & WEINBERGER, LLP  
WILLIAM J. WHITE

By:   
William J. White  
Attorneys for Petitioners,  
California State Parks Foundation;  
Endangered Habitats League;  
Laguna Greenbelt, Inc.;  
Natural Resources Defense Council, Inc.;  
Sea and Sage Audubon Society;  
Sierra Club; and  
Surfrider Foundation

Dated: December \_\_, 2010

CALIFORNIA STATE PARKS FOUNDATION

By: \_\_\_\_\_  
Elizabeth Goldstein  
President

Dated: December \_\_, 2010

ENDANGERED HABITATS LEAGUE

By: \_\_\_\_\_  
Dan Silver  
Executive Director

[signatures continued on the following page]

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Dated: December \_\_, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY;  
THE BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY

By: \_\_\_\_\_  
Tom Margro  
Chief Executive Officer,  
Foothill/Eastern Transportation Corridor Agency;  
authorized representative on behalf of  
The Board of Directors of the Foothill/Eastern  
Transportation Corridor Agency

Dated: December \_\_, 2010

SHUTE, MIHALY & WEINBERGER, LLP  
WILLIAM J. WHITE

By: \_\_\_\_\_  
William J. White  
Attorneys for Petitioners,  
California State Parks Foundation;  
Endangered Habitats League;  
Laguna Greenbelt, Inc.;  
Natural Resources Defense Council, Inc.;  
Sea and Sage Audubon Society;  
Sierra Club; and  
Surfrider Foundation

Dated: December ~~20~~ 2010

CALIFORNIA STATE PARKS FOUNDATION

By:   
Elizabeth Goldstein  
President

Dated: December \_\_, 2010

ENDANGERED HABITATS LEAGUE

By: \_\_\_\_\_  
Dan Silver  
Executive Director

[signatures continued on the following page]

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Dated: December \_\_, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY;  
THE BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY

By: \_\_\_\_\_  
Tom Margro  
Chief Executive Officer,  
Foothill/Eastern Transportation Corridor Agency,  
authorized representative on behalf of  
The Board of Directors of the Foothill/Eastern  
Transportation Corridor Agency

Dated: December \_\_, 2010

SHUTE, MIHALY & WEINBERGER, LLP  
WILLIAM J. WHITE

By: \_\_\_\_\_  
William J. White  
Attorneys for Petitioners,  
California State Parks Foundation;  
Endangered Habitats League;  
Laguna Greenbelt, Inc.;  
Natural Resources Defense Council, Inc.;  
Sea and Sage Audubon Society;  
Sierra Club; and  
Surfrider Foundation

Dated: December \_\_, 2010

CALIFORNIA STATE PARKS FOUNDATION

By: \_\_\_\_\_  
Elizabeth Goldstein  
President

Dated: December 14, 2010

ENDANGERED HABITATS LEAGUE

By:   
Dan Silver  
Executive Director

[signatures continued on the following page]

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Dated: December 17, 2010

LAGUNA GREENBELT, INC.

By: Elisabeth Brown  
Elisabeth Brown  
President

Dated: December \_\_, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: \_\_\_\_\_  
Joel Reynolds  
Senior Attorney

Dated: December \_\_, 2010

SEA AND SAGE AUDUBON SOCIETY

By: \_\_\_\_\_  
Scott Thomas  
Vice President

Dated: December \_\_, 2010

SIERRA CLUB

By: \_\_\_\_\_  
Hersh Kelley  
Executive Committee Chair,  
Angeles Chapter

Dated: December \_\_, 2010

SURFRIDER FOUNDATION

By: \_\_\_\_\_  
Jim Moriarty  
Chief Executive Officer

[signatures continued on the following page]

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Dated: December \_\_, 2010

LAGUNA GREENBELT, INC.

By: \_\_\_\_\_  
Elisabeth Brown  
President

Dated: December 29, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By:   
Joel Reynolds  
Senior Attorney

Dated: December \_\_, 2010

SEA AND SAGE AUDUBON SOCIETY

By: \_\_\_\_\_  
Scott Thomas  
Vice President

Dated: December \_\_, 2010

SIERRA CLUB

By: \_\_\_\_\_  
Hersh Kelley  
Executive Committee Chair,  
Angeles Chapter

Dated: December \_\_, 2010

SURFRIDER FOUNDATION

By: \_\_\_\_\_  
Jim Moriarty  
Chief Executive Officer

[signatures continued on the following page]

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Dated: December \_\_, 2010.

LAGUNA GREENBELT, INC.

By: \_\_\_\_\_  
Elisabeth Brown  
President

Dated: December \_\_, 2010.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: \_\_\_\_\_  
Joel Reynolds  
Senior Attorney

Dated: December 19, 2010.

SEA AND SAGE AUDUBON SOCIETY

By: Scott Thomas  
Scott Thomas  
Vice President

Dated: December \_\_, 2010.

SIERRA CLUB

By: \_\_\_\_\_  
Hersh Kelley  
Executive Committee Chair,  
Angeles Chapter

Dated: December \_\_, 2010.

SURFRIDER FOUNDATION

By: \_\_\_\_\_  
Jim Moriarty  
Chief Executive Officer

[signatures continued on the following page]

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Dated: December \_\_, 2010

LAGUNA GREENBELT, INC.

By: \_\_\_\_\_  
Elisabeth Brown  
President

Dated: December \_\_, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: \_\_\_\_\_  
Joel Reynolds  
Senior Attorney

Dated: December \_\_, 2010

SEA AND SAGE AUDUBON SOCIETY

By: \_\_\_\_\_  
Scott Thomas  
Vice President

Dated: December 20, 2010

SIERRA CLUB

By: Hersh Kelley  
Hersh Kelley  
Executive Committee Chair,  
Angeles Chapter

Dated: December \_\_, 2010

SURFRIDER FOUNDATION

By: \_\_\_\_\_  
Jim Moriarty  
Chief Executive Officer

[signatures continued on the following page]

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Dated: December \_\_, 2010

LAGUNA GREENBELT, INC.

By: \_\_\_\_\_  
Elisabeth Brown  
President

Dated: December \_\_, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: \_\_\_\_\_  
Joel Reynolds  
Senior Attorney

Dated: December \_\_, 2010

SEA AND SAGE AUDUBON SOCIETY

By: \_\_\_\_\_  
Scott Thomas  
Vice President

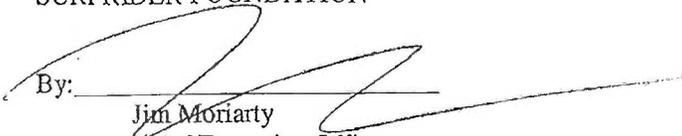
Dated: December \_\_, 2010

SIERRA CLUB

By: \_\_\_\_\_  
Hersh Kelley  
Executive Committee Chair,  
Angeles Chapter

Dated: December <sup>20</sup>\_\_, 2010

SURFRIDER FOUNDATION

By: \_\_\_\_\_  
  
Jim Moriarty  
Chief Executive Officer

[signatures continued on the following page]

1  
2 Dated: December 27, 2010

EDMUND G. BROWN, JR., ATTORNEY GENERAL  
MATT RODRIQUEZ, CHIEF ASSISTANT ATTORNEY  
GENERAL  
KEN ALEX, SENIOR ASSISTANT ATTORNEY GENERAL  
BRIAN HEMBACHER  
HELEN G. ARENS  
OLIVIA W. KARLIN

3  
4  
5  
6 By:   
7 Brian Hembacher

8 Attorneys for Petitioners,  
9 The People of the State of California, ex rel.  
10 Attorney General Edmund G. Brown, Jr.;  
11 State Park and Recreation Commission

11 Dated: December \_\_, 2010

STATE PARK AND RECREATION COMMISSION

12  
13 By: \_\_\_\_\_  
14 Caryl Hart  
15 Chair, State Park and Recreation  
16 Commission

17 [signatures continued on the following page]

18 ///

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Dated: December 27, 2010

ALVARADO SMITH  
THIERRY R. MONTOYA

By:   
Thierry R. Montoya

Attorneys for Proposed Intervenors  
Orange County Business Council; Orange  
County Hispanic Chamber of Commerce; South  
Orange County Chamber of Commerce; Black  
Chamber of Commerce of Orange County; Los  
Angeles and Orange County Building and  
Construction Trades Council; Orange County  
Taxpayers Association

Dated: December \_\_, 2010

ORANGE COUNTY BUSINESS COUNCIL

By:   
Lucy Dunn

Dated: December \_\_, 2010

ORANGE COUNTY HISPANIC CHAMBER OF  
COMMERCE

By: \_\_\_\_\_  
Joel Ayala

Dated: December \_\_, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By: \_\_\_\_\_  
Duane Cave

[signatures continued on the following page]

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Dated: December \_\_, 2010

ALVARADO SMITH  
THIERRY R. MONTOYA

By: \_\_\_\_\_  
Thierry R. Montoya  
Attorneys for Proposed Intervenor  
Orange County Business Council; Orange  
County Hispanic Chamber of Commerce; South  
Orange County Chamber of Commerce; Black  
Chamber of Commerce of Orange County; Los  
Angeles and Orange County Building and  
Construction Trades Council; Orange County  
Taxpayers Association

Dated: December \_\_, 2010

ORANGE COUNTY BUSINESS COUNCIL

By: \_\_\_\_\_  
Lucy Dunn

Dated: December \_\_, 2010

ORANGE COUNTY HISPANIC CHAMBER OF  
COMMERCE

By: \_\_\_\_\_  
Javier Mier

Dated: December \_\_, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By: \_\_\_\_\_  
Diane Cave

[signatures continued on the following page]

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Dated: December \_\_, 2010

ALVARADO SMITH  
THIERRY R. MONTOYA

By: \_\_\_\_\_  
Thierry R. Montoya

Attorneys for Proposed Intervenor:  
Orange County Business Council; Orange  
County Hispanic Chamber of Commerce; South  
Orange County Chamber of Commerce; Black  
Chamber of Commerce of Orange County; Los  
Angeles and Orange County Building and  
Construction Trades Council; Orange County  
Taxpayers Association

Dated: December \_\_, 2010

ORANGE COUNTY BUSINESS COUNCIL

By: \_\_\_\_\_  
Lucy Dunn

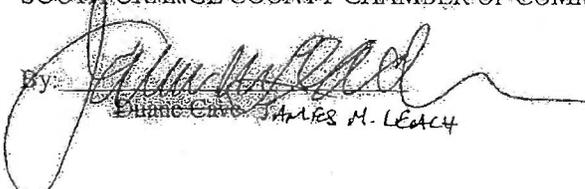
Dated: December \_\_, 2010

ORANGE COUNTY HISPANIC CHAMBER OF  
COMMERCE

By: \_\_\_\_\_  
Joel Ayala

Dated: December 29, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By:   
James M. Leach

[signatures continued on the following page]

1 Dated: December \_\_, 2010

BLACK CHAMBER OF COMMERCE OF ORANGE  
COUNTY

2  
3 By: \_\_\_\_\_  
4 Bobby McDonald

5  
6 Dated: December \_\_, 2010

LOS ANGELES AND ORANGE COUNTY BUILDING  
AND CONSTRUCTION TRADES COUNCIL

7  
8 By:   
9 Richard Slauson

10  
11 **STIPULATED ORDER**

12 The "[Proposed] Stipulated Order Approving Interim Settlement with Tolling Agreement and  
13 Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce  
14 Interim Settlement," having been fully considered by the Court, and with good cause being shown to the  
15 satisfaction of the Court,

16 **IT IS HEREBY ORDERED AS FOLLOWS:**

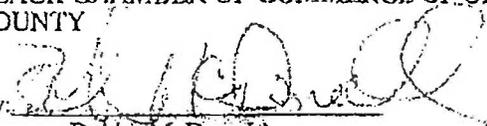
- 17  
18 1. The stipulated terms and conditions set forth in full in paragraphs 1 through 9, inclusive,  
19 of the foregoing Interim Settlement are hereby adopted as an order of the Court and are expressly  
20 incorporated herein.  
21 2. Counsel for Respondents shall give notice of entry of this stipulated order.

22 Dated: December \_\_, 2010

23 \_\_\_\_\_  
24 Hon. Thomas P. Nugent  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28

1 Dated: December \_\_, 2010

BLACK CHAMBER OF COMMERCE OF ORANGE  
COUNTY

2  
3 By:   
4 Bobby McDonald

5  
6 Dated: December \_\_, 2010

LOS ANGELES AND ORANGE COUNTY BUILDING  
AND CONSTRUCTION TRADES COUNCIL

7  
8 By: \_\_\_\_\_  
9 Richard Stanson

10  
11 **STIPULATED ORDER**

12 The "[Proposed] Stipulated Order Approving Interim Settlement with Tolling Agreement and  
13 Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce  
14 Interim Settlement," having been fully considered by the Court, and with good cause being shown to the  
15 satisfaction of the Court,

16 **IT IS HEREBY ORDERED AS FOLLOWS:**

17 1. The stipulated terms and conditions set forth in full in paragraphs 1 through 9, inclusive,  
18 of the foregoing Interim Settlement are hereby adopted as an order of the Court and are expressly  
19 incorporated herein.

20 2. Counsel for Respondents shall give notice of entry of this stipulated order.

21  
22 Dated: December \_\_, 2010  
JAN 1 2 2011

THOMAS P. NUGENT

23 \_\_\_\_\_  
24 Hon. Thomas P. Nugent  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
4 and am not a party to the within action; my business address is Nossaman, LLP, 445 S. Figueroa Street,  
31st Floor Los Angeles, California 90071-1602.

5 On January 10, 2011, at my employer's above-stated place of business, I served the  
6 foregoing document(s) described as **[PROPOSED] STIPULATED ORDER APPROVING**  
7 **INTERIM SETTLEMENT WITH TOLLING AGREEMENT AND DISMISSAL WITHOUT**  
8 **PREJUDICE AND RETAINING THE COURT'S JURISDICTION TO SET ASIDE DISMISSAL**  
9 **AND ENFORCE INTERIM SETTLEMENT** on interested parties in this action by placing ( ) the  
10 original (X) a true copy thereof enclosed in a separate sealed envelope to each addressee as follows:

11 **[SEE ATTACHED SERVICE LIST]**

12 (X) **(By U.S. Mail)** I am readily familiar with my employer's business practice for collection  
13 and processing of correspondence for mailing with the United States Postal Service. I am  
14 aware that on motion of the party served, service is presumed invalid if postal  
15 cancellation date or postage meter is more than one day after date of deposit for mailing  
16 in affidavit. I deposited such envelope(s) with postage thereon fully prepaid in a  
17 collection box from where it would be placed in the United States Mail at Los Angeles,  
18 California that same day in my employer's ordinary course of business.

19 ( ) **(By Personal Service)** I caused to be delivered by hand true and correct copies thereof  
20 on the interested parties in this action by having the \_\_\_\_\_  
21 messenger service personally deliver same in a sealed envelope to the office of the  
22 addressee(s) as above indicated.

23 ( ) **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P 1013(e),  
24 to the number(s) listed above or on attached sheet. Said transmission was reported  
25 complete and without error.

26 ( ) **(By Federal Express)** I served a true and correct copy by Federal Express or other  
27 overnight delivery service, for delivery on the next business day. A true and correct copy  
28 of the Federal Express or other overnight delivery service airbill is attached hereto.

(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct.

( ) **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this  
court at whose direction the service was made.

Executed on January 10, 2011 at Los Angeles, California.

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\_\_\_\_\_  
Judith Robbins

SERVICE LIST

California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency, et al.  
San Diego County Superior Court Case No.: GIN051194 (Consolidated)

William J. White, Esq. SHUTE, MIHALY & WEINBERGER, LLP 396 Hayes Street San Francisco, California 94102 Telephone: (415) 552-7272 Facsimile: (415) 552-5816	Attorneys for Petitioners CALIFORNIA STATE PARKS FOUNDATION, ENDANGERED HABITATS LEAGUE, LAGUNA GREENBELT, INC., NATURAL RESOURCES DEFENSE COUNCIL, SEA AND SAGE AUDUBON SOCIETY, SIERRA CLUB, and SURFRIDER FOUNDATION
Joel R. Reynolds, Esq. NATURAL RESOURCES DEFENSE COUNCIL 1314 Second Street Santa Monica, California 90401 Telephone: (310) 434-2300 Facsimile: (310) 434-2399	Attorneys for Petitioner NATURAL RESOURCES DEFENSE COUNCIL
Michael D. Fitts, Esq. 1718 Esplanade, Apt. 523 Redondo Beach, California 90277-5339 Telephone: (310) 947-1908 Facsimile: (323) 908-3543	Attorneys for Petitioner ENDANGERED HABITATS LEAGUE
EDMUND G. BROWN JR., Attorney General MATT RODRIQUEZ, Chief Assistant Attorney General KEN ALEX, Senior Assistant Attorney General BRIAN HEMBACHER OLIVIA W. KARLIN Deputy Attorneys General 300 South Spring Street, Suite 1702 Los Angeles, California 90013 Telephone: (213) 897-2638 Facsimile: (213) 897-2802	Attorneys for Petitioners THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. ATTORNEY GENERAL EDMUND G. BROWN JR. and STATE PARK AND RECREATION COMMISSION
Ruben A. Smith Keith E. McCullough Thierry R. Montoya Reginald Roberts, Jr. ADORNO YOSS ALVARADO & SMITH 1 MacArthur Place, Suite 200 Santa Ana, California 92707 Telephone: (714) 852-6800 Facsimile: (714) 852-6899	Attorneys for Intervenors, ORANGE COUNTY BUSINESS COUNCIL, et al.

# **EXHIBIT 9**

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

**REVISED<sup>#</sup> MEETING NOTICE AND  
AGENDA<sup>1</sup>**

Wednesday, June 19, 2013  
# 11:00 a.m.

Water Quality Control Board  
Board Meeting Room  
9174 Sky Park Court  
San Diego, California

The purpose of this meeting is for the San Diego Water Board to obtain testimony and information from concerned and affected persons and to make decisions based on the information received. Persons who want to submit written comments or evidence on any agenda item must comply with the procedures described in the agenda and agenda notes. Persons wishing to speak at the meeting should complete an attendance card (see Note F, attached to this Notice). The San Diego Water Board requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the San Diego Water Board members and staff have the opportunity to review and consider written material, comments should be received in the San Diego Water Board's office no later than noon on Tuesday, June 4, 2013\* and should indicate the agenda item to which it is applicable. If the submitted written material is more than 5 pages or contains foldouts, color graphics, maps, etc., 15 copies must be submitted for distribution to the Board members and staff. Written material submitted after 5:00 P.M. on Tuesday, June 11, 2013, will not be provided to the Board members and may not be considered by the San Diego Water Board (See Note D, attached to this Notice).

***\*PLEASE NOTE THAT SOME ITEMS ON THE AGENDA MAY HAVE BEEN PREVIOUSLY NOTICED WITH EARLIER DEADLINES FOR SUBMITTING WRITTEN COMMENTS OR MAY HAVE A SEPARATE HEARING PROCEDURES DOCUMENT THAT ESTABLISHES DIFFERENT DEADLINES OR PROCEDURES FOR SUBMITTING WRITTEN MATERIALS. IN THOSE CASES THE DIFFERENT DEADLINES OR PROCEDURES APPLY.***

Comments on agenda items will be accepted by E-mail subject to the same conditions set forth for other written submissions as long as the total submittal (including

<sup>1</sup> Versión en español disponible también en:  
[http://www.waterboards.ca.gov/sandiego/board\\_info/agendas/index.shtml](http://www.waterboards.ca.gov/sandiego/board_info/agendas/index.shtml)

attachments) does not exceed five printed pages in length. E-mail must be submitted to: [rb9agenda@waterboards.ca.gov](mailto:rb9agenda@waterboards.ca.gov). Type the word "Agenda" in the subject line.

Pursuant to Title 23, California Code of Regulations, section 648.4, the San Diego Water Board may refuse to admit written testimony or evidence into the record if it is not submitted to the San Diego Water Board in a timely manner and shall refuse to do so if admitting it would prejudice any party or the board, unless the proponent demonstrates that compliance with the deadline would create an unreasonable hardship.

NOTE D, attached to this Notice, refers to the procedures that will be followed by the San Diego Water Board in contested adjudicatory matters if a separate Hearing Procedures Document has not been issued for a particular agenda item. Parties requesting an alternate hearing process must do so in accord with the directions in NOTE D. Any such request, together with supporting material, must be received in the San Diego Water Board's office no later than noon on Tuesday, June 4, 2013.

**Copies of the agenda items to be considered by the San Diego Water Board are posted on the San Diego Water Board's website at [http://www.waterboards.ca.gov/sandiego/board\\_info/agendas](http://www.waterboards.ca.gov/sandiego/board_info/agendas)**

***Except for items designated as time certain, there are no set times for agenda items. Items may be taken out of order at the discretion of the Chairman.***

1. Roll Call and Introductions.
2. PUBLIC FORUM: Any person may address the Board regarding a matter within the Board's jurisdiction that is not related to an item on this Meeting agenda and is not scheduled for a future Meeting. **Comments will generally be limited to three minutes, unless otherwise directed by the Board Chairperson.** Any person wishing to make a longer presentation should contact the Executive Officer at least ten days prior to the meeting.
3. Minutes of Board Meeting: April 10-11, 2013, and May 8, 2013.
4. Chairman's, Board Members', State Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

***Consent Calendar: Items 5 through 7 are considered non-controversial issues. (NOTE: If there is public interest, concern, or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed.)***

5. Waste Discharge Requirements Addendum: Modification of Order No. 99-74, Waste Discharge Requirements for the Sycamore Landfill Inc., A Subsidiary of Republic Services Inc., Sycamore Landfill, San Diego County. (*Amy Grove*)

6. Rescission of Waste Discharge Requirements: Order No. 94-07, Hanson Aggregates Pacific Southwest Region, Otay Plant, San Diego County; and Order No. 93-82, Buena Sanitation District, Shadowridge Water Reclamation Plant, San Diego County (Tentative Order No. R9-2013-0056 rescinding Orders No. 94-07 and 93-82). (Tyler Kirkendall)
7. Revision of Waste Discharge Requirements for Order No. R9-2009-0007, The Garcia Residence, Onsite Wastewater Treatment System, San Diego County (Tentative Addendum No. 1 to Order No. R9-2009-0007). (Tyler Kirkendall)

***Remainder of the Agenda (Non-Consent Items):***

8. Public Hearing: A Resolution Amending the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) to incorporate Total Maximum Daily Loads (TMDLs) for Toxic Pollutants in Sediment at the Mouths of Paleta, Chollas, and Switzer Creeks in San Diego Bay and Miscellaneous Changes to Chapter 5 to Update the Regional Board Resolutions List (Tentative Resolution No. R9-2013-0003). (Lisa Honma) **THIS ITEM HAS BEEN POSTPONED**
9. Waste Discharge Requirements: Foothill/Eastern Transportation, Corridor Agency Tesoro (SR 241) Extension, Orange County (Tentative Order No. R9-2013-0007). (Darren Bradford) **PLEASE NOTE: The Board will not consider this item prior to 1:00 p.m.**

10. *CLOSED SESSION*

The Board may meet in closed session to consider personnel matters [Authority: Government Code section 11126(a)]; to deliberate on a decision to be reached based upon evidence introduced in a hearing [Authority: Government Code section 11126(c)(3)]; or to discuss matters in litigation, including discussion of initiated litigation, significant exposure to litigation, or decisions to initiate litigation [Authority: Government Code section 11126(e)]. Litigation items that may be discussed are listed below by the type of item:

**Civil Actions (Judicial and Administrative, other than Petitions for Review filed with the State Water Board)**

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, an individual in his capacity as Commissioner of the International Boundary and Water Commission, United States Section, et al.*, Complaint for Violations of the Clean Water Act and Related State Law Claims. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (David Gibson)
- b. *In re: Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES No. CAS0108758) Waste*

*Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority adopted on January 24, 2007. Test Claim filed by San Diego County, et al., with Commission on State Mandates, No. 07-TC-09 (filed June 2008). (Catherine George Hagan)*

- c. *State of California Department of Finance, State Water Resources Control Board, And California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010). (Catherine George Hagan)*
- d. *In re: Citizens Development Corporation, Debtor and Debtor in Possession, Case No. 10-15142-LT11. United States Bankruptcy Court, Southern District of California. (San Diego Water Board Claim in Bankruptcy) (filed June 2011). (Catherine George Hagan)*
- e. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, (NPDES No. CAS0108740) Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of the County of Orange, and the Orange County Flood Control District adopted on December 16, 2009. Test Claim filed by County of Orange, et al., with Commission on State Mandates, No. 10-TC-11 (filed June 2011). (Catherine George Hagan)*
- f. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (NPDES No. CAS0108766) adopted November 10, 2010, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula and Wildomar, Co-Claimants, filed with Commission on State Mandates, No. 11-TC-03 (filed November 2011). (Catherine George Hagan)*
- g. *City of San Diego v. California Regional Water Quality Control Board, San Diego Division, SFPP., L.P., A Delaware Limited Partnership, and Kinder Morgan Energy Partners, L.P., a Delaware Limited Partnership, Real Parties-in-Interest. Petition for Writ of Administrative Mandamus. San Diego County Superior Court, Case No. 37-2013-00047614-CU-WM-CTL (filed May 2013). (Ben Neill)*

**Petitions for Review Pending Before State Water Resources Control Board<sup>2</sup>**

- h.* Petitions of the National Fireworks Association and Fireworks & Stage FX America Inc., Coastal Environmental Rights Foundation, and San Diego Coastkeeper (General National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2011-0022 (NPDES No. CAG999002) for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks), SWRCB/OCC Files A-2164(a)-(c), filed June and July 2011. (*Michelle Mata*)
- i.* Petition of Citizens Development Corporation (Water Code Section 13267 Investigative Order No. R9-2011-0033 dated September 14, 2011, Requiring Submission of Technical Reports Pertaining to Investigation of Lake San Marcos Nutrient Impairment, San Diego County), SWRCB/OCC File A-2185, filed October 2011. (*Laurie Walsh*)
- j.* Petition of City of San Diego (Time Schedule Order No. R9-2011-0052 dated September 14, 2011, for the Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek, San Diego County), SWRCB/OCC File A-2186, filed October 2011. (*Ben Neill*)
- k.* Petition of Jack Eitzen (Administrative Assessment of Civil Liability Order Nos. R9-2011-0048 and R9-2011-0049 against Jack Eitzen for 38175 and 38155 Via Vista Grande, Murrieta, Riverside County), issued October 12, 2011), SWRCB/OCC File A-2193, filed November 2011. (*Rebecca Stewart*)
- l.* Petitions for Review of San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024 for National Steel and Shipbuilding Company (NASSCO), BAE Systems, San Diego Ship Repair (BAE Systems), Campbell Industries, City of San Diego, San Diego Gas & Electric (SDG&E) and San Diego Unified Port District (Port District) issued March 14, 2012. Petitions for Review and Requests for Stay filed by NASSCO, BAE Systems and City of San Diego. Petitions for Review w/o requests for stay filed by SDG&E, Star & Crescent Boat Company and Port District. SWRCB/OCC File A-2205(a) – (e), filed April 2012. (*Frank Melbourne*)
- m.* Petition of NASSCO for Review of Resolution No. R9-2012-0025 (Certifying Final Environmental Impact Report for San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024), adopted March 14, 2012, SWRCB/OCC File A-XXXX, filed April 2012. (*Frank Melbourne*)
- n.* Petition of South Laguna Civic Association for Review of Order No. R9-2012-0013, NPDES No. CA0107611, NPDES Permit Reissuance: South

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<sup>2</sup> Petitions for review of San Diego Water Board actions or inactions filed with the State Water Board being held in abeyance by the State Water Board are not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at [chagan@waterboards.ca.gov](mailto:chagan@waterboards.ca.gov) or 858-467-2958 for more information.

Orange County Waste Authority, Discharges to the Pacific Ocean via Aliso Creek Ocean Outfall, adopted April 11, 2012, SWRCB/OCC File A-2211, filed May 2012. (*Joann Lim*)

- o. Petition of City of San Diego for Review of Resolution No. R9-2012-0045, re NPDES Permit Notice of Enrollment Amendment for Kinder Morgan Energy Partners, June 13, 2012, SWRCB/OCC File A-XXXX, filed July 2012. (*Ben Neill*)

11. Arrangements for Next Meeting and Adjournment:

Wednesday, July 10, 2013 – 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

## NOTIFICATIONS

- A. **Completed Cleanup Action – 30-day Notice.** The San Diego Water Board intends to issue a no further action letter for completion of cleanup of pollutants from a leaking underground storage tank (UST) system at 728 North Escondido Boulevard, Escondido, California. This notification is made pursuant to California Code of Regulations, Title 23, section 2728. The information relied upon by the San Diego Water Board indicates that the pollutants associated with the UST system at this facility have been remediated. Groundwater pollution from the adjacent gas station, however, has migrated beneath portions of this property. A deed restriction has been placed on the property to restrict land use until such time as the remediation of the adjacent gas station has been completed and any potential risk to human health and environment has been mitigated. Additional details about this case are available on the GeoTracker website at:

[http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T060730229](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T060730229)

8. Provided no significant issues arise during the public notification period, the San Diego Water Board will issue a no further action letter in July 2013. (*John Anderson*)

- B. **Completed Cleanup Action – 30 Day Public Notice.** The San Diego Water Board intends to issue a no further action letter for completing a Human Health Risk Assessment (HHRA) at the former Lane Field site located at 970 Broadway Avenue in San Diego, California. This public notice fulfills the San Diego Water Board's obligation to inform the public of the proposed actions pursuant to the State and Regional Water Quality Control Boards' Public Participation guidance document. Redevelopment plans at the site currently include the construction of two hotel towers and a nearly two-acre public park and open air plaza. The HHRA concluded that the residual concentrations in soil, soil vapor, and groundwater do not pose a risk to human health and the environment pursuant to the redevelopment plans. The residual concentrations in soil vapor in the southwest corner of the site, however, may pose a risk to

human health if a building is placed directly over the impacted area. According to the redevelopment plans the proposed park will occupy this area. The no further action letter will include a provision that no buildings will be built on top of the impacted area unless the elevated soil vapor concentrations are further mitigated to be protective of any future land use (e.g., residential dwellings, day care facilities, and commercial/industrial buildings). Additional details about this case are available from the GeoTracker website at:

[https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000002492](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000002492). Please note that the final version of the HHRA will be uploaded into GeoTracker by May 31, 2013. Provided no significant issues arise during the public notification period, the San Diego Water Board will issue a no further action letter in July. (Tom Alo)

- C. **Follow the Board Meeting on Twitter:** Updates on the progress of the San Diego Water Board meeting will be posted on Twitter at [www.twitter.com/SDWaterBoard](http://www.twitter.com/SDWaterBoard). The San Diego Water Board's use of Twitter is a courtesy and is for informational purposes only. It is not always reliable, and is not a substitute for personal attendance at a Board meeting.

#### ***DIRECTIONS TO MEETING***

From Downtown: I-15 north – take the Aero Drive exit – turn left (west). Proceed to the 3<sup>rd</sup> stoplight, which is Ruffin Road – turn right. Turn left on Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.

From the North: I-15 south – take the Balboa Ave. exit – turn right (west). Proceed to the 2<sup>nd</sup> stoplight, which is Ruffin Road – turn left. Turn right onto Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
Summary of Board Actions and Proceedings  
At the May 8, 2013, Board Meeting

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**MINUTES**

Minutes of the April 10-11, 2013, Board Meeting

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**REGIONAL BOARD ACTIONS**

Approval of the minutes was postponed until the June Board meeting.

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**NON-CONSENT ITEMS**

General NPDES Permit Issuance: General Waste Discharge Requirements for Discharges from Boatyards and Boat Maintenance and Repair Facilities Adjacent to Surface Waters within the San Diego Region (Tentative Order No. R9-2013-0026, NPDES No. CAG719001). (*Kristin Schwall and Michelle Malkin*)

Approved Order No. R9-2013-0026, NPDES No. CAG719001.

Administrative Civil Liability: Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, City of San Diego, Sanitary Sewer Overflow to Los Peñasquitos Creek, Peñasquitos Lagoon, and the Pacific Ocean. Settlement to resolve violations of Order Nos. 2006-0003-DWQ and R9-2007-0005 as set forth in Tentative Order No. R9-2013-0032. The Settlement would impose monetary liability of \$1,245,414 against the City of San Diego, of which \$622,707 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account and \$622,707 in liability would be suspended upon successful completion of an Enhanced Compliance Action as described in Tentative Order No. R9-2013-0032. (*Barry Pulver*)

Approved Order No. R9-2013-0032.

Public Hearing: Issuance of a NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Tentative Order No. R9-2013-0001). Continued from April 11, 2013. (*Wayne Chiu, Laurie Walsh, Christina Arias*)

Approved Order No. R9-2013-0001

## NOTES:

A. GENERAL STATEMENT

The primary duty of the San Diego Water Board is to protect the quality of the waters within the region for all beneficial uses. This duty is implemented by formulation and adoption of water quality plans for specific ground or surface water basins and by prescribing and enforcing requirements on all domestic and industrial waste discharges. Responsibilities and procedures of the Regional Water Quality Control Board come from the State's Porter-Cologne Water Quality Act and the Nation's Clean Water Act.

The purpose of the meeting is for the Board to obtain testimony and information from concerned and affected parties and make decisions after considering the recommendations made by the Executive Officer.

All interested persons may speak at the San Diego Water Board meeting and are expected to orally summarize their written submittals. Testimony should be presented in writing prior to the meeting and only a summary of pertinent points presented orally. Oral testimony (i.e., direct testimony or comment) will be limited in time by the Board Chair (typically 3 minutes for interested persons and no more than 10 minutes for designated parties). A timer may be used and speakers are expected to honor the time limits.

B. PROCEDURE FOR CONSENT (UNCONTESTED) CALENDAR (see also 23 C.C.R. § 647.2)

Consent or uncontested agenda items are items for which there appears to be no controversy and which can be acted upon by the San Diego Water Board with no discussion. Such items have been properly noticed and all interested parties consent to the staff recommendation. The San Diego Water Board Chair will recognize late revisions submitted by staff and will then call for a motion and vote on all of the consent calendar items by the San Diego Water Board.

If any San Diego Water Board member or member of the public raises a question or issue regarding an item that requires San Diego Water Board discussion, the item may be removed from the consent calendar and considered separately in an order determined by the Chair. Anyone wishing to contest a consent item on the agenda is expected to appear in person at the San Diego Water Board meeting and explain to the San Diego Water Board the reason that it is contested.

C. PROCEDURE FOR INFORMATION ITEMS (see also 23 C.C.R. 649, et. seq.)

Information items are items presented to the San Diego Water Board for discussion only and for which no San Diego Water Board action or vote is normally taken. The San Diego Water Board usually will hear a presentation by staff, but may hear presentations by others. Comments by interested persons shall also be allowed. Members of the public wishing to address the San Diego Water Board on the topic under discussion should submit an attendance card

beforehand indicating their request to speak to the San Diego Water Board. Comment from the public should be for clarification or to add to the San Diego Water Board's understanding of the item; such comment must not be testimonial in nature or argumentative, as speakers are not under oath and the proceeding is not adversarial. Time limits may be imposed on interested persons.

D. PROCEDURES FOR NON-CONSENT (CONTESTED) AGENDA ITEMS

Non-consent or contested agenda items are items to which the parties involved have not consented and the staff recommendation is in dispute. The procedure that applies to such items depends on the nature of the matter. Matters before the San Diego Water Board may be quasi-legislative or quasi-judicial (adjudicative proceedings). Such items may require a public hearing and all interested persons will be provided an opportunity to make comments.

**Contested Adjudicative Matters**

Contested agenda items that are adjudicative, not quasi-legislative, are governed by the rules for adjudicative proceedings. State Water Resources Control Board (State Water Board) regulations setting forth the procedures for adjudicative proceedings before the State and Regional Water Boards are codified in Title 23, California Code of Regulations, Division 3. Adjudicative proceedings before the State and Regional Water Boards are governed by State Water Board regulations as authorized by Chapter 4.5 of the Administrative Procedures Act (commencing with section 11400 of the Government Code). State Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with sections 800-805 of the Evidence Code and section 11513 of Chapter 5 of the Government Code. (Other provisions of Chapter 5 of the Government Code do not apply to adjudicative proceedings before the State and Regional Water Boards). A copy of those regulations and Chapter 4.5 of the Administrative Procedures Act, section 11513 of the Government Code and sections 801-805 of the Evidence Code can be found at [http://www.waterboards.ca.gov/laws\\_regulations/](http://www.waterboards.ca.gov/laws_regulations/).

An adjudicative proceeding is a hearing to receive evidence for determination of facts pursuant to which the State or Regional Water Board formulates and issues a decision. A decision determines a legal right, duty, privilege, immunity or other legal interest of a particular person or persons. Examples of adjudicative proceedings include hearings to receive evidence concerning the issuance of waste discharge requirements or National Pollutant Discharge Elimination System (NPDES) permits, concerning cease and desist orders, and concerning orders imposing administrative civil liability. Adjudicative proceedings are not conducted according to the technical rules of evidence, and the San Diego Water Board will accept testimony and comments that are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded.

In some adjudicative matters, most frequently administrative civil liability matters, a separate Hearing Procedures Document has been issued. In those

cases, the procedures set forth in that Document will apply, subject to discretionary modification by the Chairman. For other adjudicatory matters, the Chair may establish specific procedures for each item, and consistent with section 648, subdivision (d) of title 23 of the California Code of Regulations may waive nonstatutory provisions of the regulations. Generally, all witnesses testifying before the San Diego Water Board must affirm the truth of their testimony and are subject to questioning by the Board Members.

Absent a separate Hearing Procedures Document, the Board normally conducts adjudicative proceedings in an informal manner. That is, the Board does not, generally, require the designation of parties, the prior identification of witnesses, prior submission of written testimony, or the cross examination of witnesses. Any requests for an alternate hearing process should be directed to the Executive Officer and must be received by the San Diego Water Board by the deadline set forth on pages 1-2 of the Agenda.

When the San Diego Water Board determines that a hearing will be formal (as opposed to informal, as described above), participants in a contested agenda item are either "designated parties" or "interested persons." Only designated parties will have the right to cross-examination, and may be subject to cross-examination. Interested persons (i.e., nondesignated parties) do not have a right to cross-examination, but may ask the San Diego Water Board to clarify testimony. Interested persons may also be asked to clarify their statements at the discretion of the San Diego Water Board.

Designated parties include:

- Discharger or Responsible Party
- Persons directly affected by the discharge
- Staff of the San Diego Water Board (if specified in the applicable hearing procedures)

All other persons wishing to testify or provide comments for a formal hearing are "interested persons" and not "designated parties." Such interested persons may request status as a designated party for purposes of the formal hearing by submitting such request in writing to the San Diego Water Board no later than the date specified at the beginning of the Agenda Notice or in the applicable Notice of Public Hearing or Hearing Procedures Document. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for formal hearings generally will be as follows, unless modified by the San Diego Water Board Chair:

- Testimony and cross-examination of San Diego Water Board staff
- Testimony and cross-examination of discharger

- Testimony and cross-examination of other designated parties
- Testimony by interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close hearing
- Deliberation and voting by San Diego Water Board

Closing statements shall be for the purpose of summarization and rebuttal and are not to be used to introduce new evidence or testimony. After considering evidence, testimony, and comments, the San Diego Water Board may choose to adopt an order regarding a proposed agenda item.

### **Quasi-legislative Matters**

Quasi-legislative matters include rulemaking and some informational proceedings. These matters may include hearings for the adoption or amendment of regulations, water quality control plans, and hearings to gather information to assist the State and Regional Water Boards in formulating policy for future action. They are not adjudicative proceedings and are subject to different procedures. (See PROCEDURE FOR INFORMATION ITEMS, above, and Cal. Code Regs. Tit. 23, § 649, et seq.)

#### **E. CONTRIBUTIONS TO SAN DIEGO WATER BOARD MEMBERS**

Persons applying for or actively supporting or opposing waste discharge requirements or other San Diego Water Board orders must comply with legal requirements if they or their agents have contributed or proposed to contribute \$250 or more to the campaign of a San Diego Water Board member for elected office. Contact the San Diego Water Board for details if you fall into this category.

#### **F. PROCEDURAL INFORMATION**

The San Diego Water Board may meet in closed session to discuss matters in litigation, including discussion of initiated litigation, significant exposure to litigation, or decisions to initiate litigation [Authority: Government Code § 11126(e)]; deliberate on a decision to be reached based upon evidence introduced in an adjudicatory hearing [Authority: Government Code § 11126(d)]; or to consider the appointment, employment or dismissal of a public employee to hear complaints or charges brought against a public employee [Authority: Government Code §11126(a)].

The San Diego Water Board may break for lunch at approximately noon at the discretion of the Chairman. During the lunch break San Diego Water Board members may have lunch together. Other than properly noticed closed session items, San Diego Water Board business will not be discussed.

Agenda items are subject to postponement. A listing of postponed items will be

posted in the meeting room. You may contact the designated staff contact person in advance of the meeting day for information on the status of any agenda item.

Speaker Cards. All persons desiring to address the San Diego Water Board are required to fill out a speaker card. Cards are normally provided near the entrance to the meeting room. San Diego Water Board staff can assist you in locating the cards.

Please fill out a separate card for each item you plan to speak on. All relevant sections, including the oath, must be completed. Please use the appropriate color card, as indicated below:

Blue: Public Comments (for items requiring no San Diego Water Board action - Public Forum, status reports, etc.).

Green: Public Testimony, in support of the tentative action.

Pink: Public Testimony, opposed to the tentative action.

G. AVAILABILITY OF EXECUTIVE OFFICER'S REPORT AND AGENDA MATERIAL

Visit our website at [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego) to view the Executive Officer's Report over the internet two days prior to the San Diego Water Board meeting. A copy can also be obtained by contacting the staff office. A limited number of copies are available at the meeting.

Copies of most agenda items to be considered by the San Diego Water Board are posted on the San Diego Water Board's website at [http://www.waterboards.ca.gov/sandiego/board\\_info/agendas](http://www.waterboards.ca.gov/sandiego/board_info/agendas).

Details concerning other agenda items are available for public reference during normal working hours at the San Diego Water Board's office. The appropriate staff contact person, indicated with the specific agenda item, can answer questions and provide additional information. For additional information about the Board, please see the attached sheet.

H. PETITION OF SAN DIEGO WATER BOARD ACTION

In accordance with California Water Code section 13320, any person affected adversely by most decisions of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may petition the State Water Resources Control Board (State Board) to review the decision. The petition must be received by the State Board within 30 days of the San Diego Water Board's meeting at which the adverse action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I. HEARING RECORD

Material presented to the Board as part of testimony (e.g. photographs, slides, charts, diagrams etc.) that is to be made part of the record must be left with the Board. Photographs or slides of large exhibits are acceptable.

All Board files, exhibits, and agenda material pertaining to items on this agenda are hereby made a part of the record.

J. ACCESSIBILITY

The facility is accessible to people with disabilities. Individuals who have special accommodation or language needs, please contact Ms. Chris Witte at (858) 467-2974 or [cwitte@waterboards.ca.gov](mailto:cwitte@waterboards.ca.gov) at least 5 working days prior to the meeting. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

K. PRESENTATION EQUIPMENT

Providing and operating projectors and other presentation aids are the responsibilities of the speakers. Some equipment may be available at the Board Meeting; however, the type of equipment available will vary dependent on the meeting location. Because of compatibility issues, provision and operation of laptop computers and projectors for Power Point presentations will generally be the responsibility of the individual speakers. To ascertain the availability of presentation equipment please contact Ms. Chris Witte at (858) 467-2974 or [cwitte@waterboards.ca.gov](mailto:cwitte@waterboards.ca.gov) at least 5 working days prior to the meeting.