

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2013

- ITEM: 8
- SUBJECT: Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*)
- PURPOSE: To consider adopting Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County* (Tesoro Extension Project)
- RECOMMENDATION: Adoption of Tentative Order No. R9-2013-0007 is recommended.
- KEY ISSUES:
1. The Save San Onofre Coalition, a broad-based coalition of Orange County environmental non-governmental organizations (NGOs), claims that F/ETCA failed to submit a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely on in considering the adoption of the Tentative Order. F/ETCA argues, in rebuttal to the Coalition's claims, that the Final Subsequent Environmental Impact Report (FSEIR), certified by F/ETCA complies with CEQA and meets all requirements for the San Diego Water Board to adopt the Tentative Order. F/ETCA also argues that the recent addendum to the FSEIR further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR.
 2. The Save San Onofre Coalition asserts that F/ETCA's Report of Waste Discharge (ROWD), submitted in the application for the Tentative Order, fails to address the requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). F/ETCA asserts in response that the Tesoro Extension Project will comply with the hydromodification requirements of

the recently adopted Caltrans statewide storm water permit (Order No. 2012-0011-DWQ, NPDES No. CAS000003) which were developed specifically for state highways.

3. The Save San Onofre Coalition argues that given the complexity of the Tesoro Extension Project, the multiplicity of technical and legal issues, and the alleged late availability of key documents, today's hearing should be converted to a workshop. The Coalition also argues that the hearing to consider adoption of the Tentative Order, should be held at a location in San Diego County. F/ETCA argues in rebuttal that the San Diego Water Board has made all of the key documents available for public review in a timely manner. F/ETCA also asserts that because the Tesoro Extension Project is located entirely within Orange County, today's hearing in Costa Mesa is the appropriate forum and location and the San Diego Water Board should move forward with considering adoption of the Tentative Order.

DISCUSSION:

Project Description

F/ETCA proposes to construct the "Tesoro Extension Project," an approximate 5.5 mile long limited access highway extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. This extension will be operated as a toll road, as are the existing portions of SR-241. The purpose of the Tesoro Extension Project is to provide improvements to the south Orange County transportation infrastructure that will help reduce existing and future traffic congestion on the Interstate 5 (I-5) freeway and the arterial network in south Orange County. F/ETCA is the Tesoro Extension Project sponsor overseeing construction and is also the California Environmental Quality (CEQA) lead agency for the proposed Project. Upon opening of the Tesoro Extension roadway, the California Department of Transportation (Caltrans) will assume ownership of the roadway facility and responsibility for roadway maintenance. F/ETCA will be the toll operator for the roadway and maintain tolling equipment.

The Tesoro Extension Project site is tributary to Cañada Gobernadora Creek, Cañada Chiquita Creek, and

associated tributaries in the San Juan Creek Watershed (**Supporting Document No. 1**). Through a process of avoidance and minimization of impacts to these surface waters, F/ETCA avoided all impacts to federal jurisdictional waters and as a result is not required to obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers for the Tesoro Extension Project.

Overview of the Tentative Order

Tentative Order No. R9-2013-0007 (**Supporting Document No. 2**) will, if adopted, establish waste discharge requirements for the discharge of waste attributable to the Tesoro Extension Project to waters of the State, pursuant to Water Code section 13260 et. seq. The Tentative Order was released for public review and comment on January 17, 2013. In response to a request for an extension of the public comment period by Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, the deadline for submission of comments on the Tentative Order was extended from February 18, 2013 to February 25, 2013 (**Supporting Document No. 3**).

Construction of the Tesoro Extension Project will result in the discharge of fill to 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts, of which 0.20 acre are wetlands. To compensate for unavoidable impacts to wetland and non-wetland waters of the State, F/ETCA proposes 20.31 acres (10,316 linear feet) of mitigation and an additional 13.55 acres of upland buffer restoration. The Tentative Order finds that this level of compensatory mitigation is sufficient to offset the adverse impacts to waters of the State attributed to the Tesoro Extension Project considering the overall size and scope of the impacts.

The Tesoro Extension Project includes the construction of new pavement and various related structures which add approximately 100 acres of impervious surfaces. The increase of impervious surfaces will reduce the amount of natural ground surface over which percolation of rainfall and other surface water can occur, which increases the peak storm runoff flow rate and volume. The Tentative Order requires implementation of a runoff management strategy to prevent impacts to aquatic resources through Best Management Practices (BMPs) and incorporation of

various project design features for erosion control, and water quality treatment. These BMPs and design features include a pipeline network and flow splitters to route runoff flows to treatment BMPs which include sand filters, biofiltration swales, and extended detention basins. The Tentative Order also requires that post construction BMPs provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces and compliance with the South Orange County Hydromodification Plan (HMP) and the draft Model Water Quality Management Plan (Model WQMP) for South Orange County.

The Tentative Order includes, in Attachment B, a detailed Information Sheet that sets forth the principal background information and facts, regulatory and legal citations, references and additional explanatory information in support of the requirements of the Tentative Order.
(Supporting Document No. 2)

Save San Onofre Coalition Comments

By letter dated February 6, 2013, Shute, Mihaly & Weinberger requested, on behalf of the Save San Onofre Coalition, that the San Diego Water Board postpone consideration of the Tentative Order until F/ETCA has identified the route for the entire Toll Road project and analyzed its environmental impacts in an environmental impact report, as required by CEQA **(Supporting Document No. 4)**. The Save San Onofre Coalition is a broad-based coalition of Orange County NGOs that includes: Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WILD COAST-COSTASALVAJE, and Orange County Coastkeeper. Shute, Mihaly & Weinberger submitted additional comments on behalf of the Save San Onofre Coalition by letters dated February 22, 2013 **(Supporting Document No. 5)** and February 25, 2013 **(Supporting Document No. 6)** expressing various concerns with F/ETCA's CEQA documentation submitted in the application for the Tentative Order.

The Save San Onofre Coalition's fundamental claim is that the San Diego Water Board cannot rely on the 2006 South

Orange County Transportation Infrastructure Improvement Project (SOCTIIP) FSEIR certified by F/ETCA or a recent addendum to the FSEIR submitted by F/ETCA, to satisfy CEQA's requirements in adopting the Tentative Order. The project described in the 2006 SOCTIIP FSEIR document was to construct a limited access highway (Toll Road), approximately 16 miles long, extending from the existing SR-241, south from its existing southern terminus at Oso Parkway, to I-5 in the vicinity of Trestles Beach at the Orange County/San Diego County border line. The Coalition asserts that the San Diego Water Board cannot rely on the 2006 SOCTIIP FSEIR or the addendum because the project described in that document was found by the Coastal Commission and the U.S. Department of Commerce to violate the Coastal Zone Management Act due to the impacts of the Toll Road (the last four miles of which ran through San Onofre State Beach) on the coastal zone. The Coalition also maintains that the San Diego Water Board may not consider the environmental impacts of the Tesoro Extension separate and apart from those of the Toll Road project as a whole. The Coalition further asserts that F/ETCA is seeking to piecemeal the environmental review of the Toll Road project (i.e. the project described in the 2006 SOCTIIP FSEIR) in violation of CEQA by moving forward with the first phase of the project (i.e. the 5.5 mile long Tesoro Extension Project) without analyzing the impacts of the entire project-or identifying the proposed route of the Toll Road.

By letter dated February 15, 2013, the Endangered Habitats League (EHL), an NGO member of the Save San Onofre Coalition, submitted comments (prepared by ESA PWA for EHL) regarding the hydromodification impacts of the Tesoro Extension Project. EHL claims that, while the ROWD application for the proposed Project appears to address the flow control portion of the HMP, it does not address the bedload preservation portion of the HMP. EHL asserts that receiving waters will experience a reduction in bedload that would negatively affect beneficial uses and that the project's proposed mitigation does not properly address these anticipated impacts (**Supporting Document No. 7**). Additionally, by letter dated February 25, 2013, Hamilton Biological submitted comments regarding the Tesoro Extension Project Habitat Mitigation and Monitoring Plan at the request of EHL. The Hamilton Biological comments relate to absence of survey results for the San Diego Cactus Wren and the lack of analysis

regarding the Arroyo Toad population in San Juan Creek (**Supporting Document No. 8**).

F/ETCA Comments and Rebuttal

By letters dated February 20, 2013 (**Supporting Document No. 9**), and February 25, 2013 (**Supporting Document No. 10**) F/ETCA maintains that the 2006 SOCTIIP FSEIR it certified as the lead CEQA agency and provided in the ROWD is valid and that the San Diego Water Board should rely on it in considering the adoption of the Tentative Order. F/ETCA asserts that the Tesoro Extension Project is proposed to be built within the footprint previously analyzed in the FSEIR between Oso Parkway and Ortega Highway (as shown in Attachment A to F/ETCA's February 20, 2013 letter). F/ETCA reports that the operational characteristics and width of the Tesoro Extension Project are the same as analyzed in the FSEIR. F/ETCA also maintains that the February 15, 2013 addendum to the 2006 FSEIR it approved further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR. F/ETCA also asserts that because the Tesoro Extension Project is located entirely within Orange County, today's hearing in Costa Mesa is the appropriate forum and location for the hearing. Accordingly the San Diego Water Board should reject Save San Onofre Coalition's request for a hearing location in San Diego County. Additionally, by letter dated February 25, 2013, F/ECTA rebutted the February 15, 2013 letter from EHL stating that the Tesoro Extension Project will comply with the hydromodification requirements of the recently adopted Caltrans statewide storm water permit (Order No. 2012-0011-DWQ, NPDES No. CAS000003) which are developed specifically for state highways and specify analysis and mitigation that is compatible with state highway projects. F/ETCA has proposed a change in the Tentative Order to reflect such compliance (**Supporting Document No. 11**). Based on all of these reasons and other considerations described in its comment letters, F/ETCA maintains the San Diego Water Board should move forward at today's meeting with considering adoption of the Tentative Order.

By letter dated February 25, 2013 (**Supporting Document No. 12**) F/ETCA requested specific modifications to the Tentative Order. San Diego Water Board staff responses to these requested changes and any errata will be included

in a supplemental Executive Officer Summary Report. On February 25, 2013 F/ETCA also provided an overview document for San Diego Water Board members describing the water quality and environmental protection measures to be implemented in the Tesoro Extension Project (**Supporting Document No. 13**).

Additional Comment Letters Regarding the Tentative Order

By letter dated February 25, 2013 Rancho Mission Viejo requested specific modifications to the Tentative Order regarding the conservation easement and inspection and entry requirements. San Diego Water Board staff responses to these requested changes and any errata will be included in a supplemental Executive Officer Summary Report (**Supporting Document No. 14**). The San Diego Water Board also received several hundred form letters and over seventy non-form letters from private citizens, organizations, and elected officials in support of the Tesoro Extension Project and one letter against the Project (**Supporting Document No. 15**). All of these comment letters were timely submitted by the close of the comment period.

San Diego Water Board Staff Analysis of Comments Received

San Diego Water Board staff are in the process of reviewing the various technical and legal issues raised in the comment letters on the Tentative Order. Written responses to the comment letters are being prepared for inclusion in a Response to Comments document which will be provided to San Diego Water Board members in a supplemental Executive Officer Summary Report and posted on the Board website for review by interested persons prior to today's hearing.

LEGAL CONCERNS:

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

SUPPORTING DOCUMENTS:

1. Location Maps (Hardcopy)
2. Tentative Order No. R9-2013-0007 with attachments (Hardcopy)
3. Notice of Availability (Hardcopy)
4. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Request for Public Comment Period Extension, dated 2/6/2013 (Hardcopy)

5. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Additional Comments on Proposed Waste Discharge Requirements, dated 2/22/2013 (Electronic Copy)¹
6. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Response to Transportation Corridor Agencies Letter dated February 20, 2013, dated 2/25/2013 (Hard Copy)
7. Endangered Habitats League, ESA PWA Comment Letter Dated February 15, 2013 (Electronic Copy)
8. Hamilton Biological Comments on HMMP, dated 2/25/2013 (Electronic Copy)
9. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger's February 6, 2013 Request for Extension, dated 2/20/2013 (Electronic Copy)
10. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger Letter Dated February 22, 2013, dated 2/25/2013 (Electronic Copy)
11. Transportation Corridor Agencies, F/ETCA Response to EHL (ESA PWA) Letter Dated February 15, 2013, dated 2/25/2013 (Electronic Copy)
12. Transportation Corridor Agencies, F/ETCA Comments - Tentative Order No. R9-2013-0007 (including explanation of edits), dated 2/25/2013 (Electronic Copy)
13. F/ETCA State Route 241 Tesoro Extension Project Water Quality and Environmental Measures document, dated 2/25/2013 (Hardcopy)
14. Rancho Mission Viejo Comments dated 2/25/2013 (Electronic Copy)
15. Comment Letters Regarding Tentative Order (Electronic Copy)

PUBLIC NOTICE:

Notification of this action was sent to the known interested parties via e-mail on January 17, 2013. Tentative Order No. R9-2013-0007 was noticed and posted on the San Diego Water Board website on January 17, 2013.

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

State of California
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SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2013

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

After the close of the comment period, approximately 5,350 additional comment letters have been received regarding the Tentative Order as of March 7, 2013. In

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

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

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

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

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

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

LEGAL CONCERNS:

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

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DOCUMENTS:

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10. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger Letter Dated February 22, 2013, dated 2/25/2013 (Electronic Copy)
11. Transportation Corridor Agencies, F/ETCA

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

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