

EXECUTIVE OFFICER SUMMARY REPORT
March 16, 2015

ITEM: 9

SUBJECT: Tentative Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (State Route 241) Project, Orange County (Tentative Resolution No. R9-2015-0022) (*Darren Bradford*)

PURPOSE: To consider adoption of Tentative Resolution No. R9-2015-0022.

RECOMMENDATION: Adoption of Tentative Resolution No. R9-2015-0022 (**Supporting Document No. 1**) is recommended.

KEY ISSUES: Consideration of the Tentative Resolution for adoption is required to comply with State Water Board Order WQ 2014-0154 (**Supporting Document No. 2**) directon that the San Diego Water Board provide the factual and legal basis for its prior decision to deny Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA) Tesoro Extension of State Route 241 in southern Orange County (Tesoro Extension).

PRACTICAL VISION: The Tentative Resolution supports the prinicple that the San Diego Water Board, in issuing waste discharge requirements, must consider and assess the full range of impacts to aquatic resources from projects in order to protect the beneficial uses of the waters that are receiving both direct, and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharges. This principle is consistent with the *Recovery of Stream Wetlands and Riparian System* chapter of the Practical Vision strategy document which calls for the the San Diego Water Board to make informed decisions through comprehensive assessments of potential project impacts to more effectively protect and restore the health of stream, wetland and riparian systems in the San Diego Region.

DISCUSSION:

On March 13, 2013, the San Diego Water Board held a public hearing to consider adoption of Waste Discharge Requirements (WDRs), Tentative Order No. R9-2013-0007 (Tentative Order), for the Tesoro Extension (**Location Map, Supporting Document No. 3**). The San Diego Water Board received testimony and accepted written comments but did not take final action on the Tentative Order. During the hearing the Chair of the San Diego Water Board announced that a second hearing would be scheduled to receive comments related to California Environmental Quality Act (CEQA) issues and proposed revisions to the Tentative Order.

On June 19, 2013, the San Diego Water Board conducted a second public hearing to consider adoption of Revised Tentative Order No. R9-2013-0007 (Revised Tentative Order). Comments regarding Tesoro Extension Project compliance with CEQA, the Project's water quality impacts, and the revisions to the Tentative Order were considered at the hearing.

At both hearings, the San Diego Water Board heard extensive testimony from a large diverse group of stakeholders including San Diego Water Board staff, F/ETCA, the Save San Onofre Coalition (SSOC), elected officials, and other interested persons.

At the conclusion of the June 19, 2013 hearing, a majority of San Diego Water Board members voted to deny adoption of the Revised Tentative Order. Board members in the majority cited concerns about water quality impacts and an inaccurate and incomplete project description. Board members determined that, based on testimony received and evidence in the record, the Tesoro Extension Project was part of the larger Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP) that would extend the State Route 241 toll road south, crossing San Juan Creek and ultimately connecting to Interstate 5.

On July 19, 2013, F/ETCA submitted a timely petition to the State Water Board for *Reconsideration of Denial of Waste Discharge Requirements Revised Tentative Order No. R9-2013-0007 for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project* (SWRCB/OCC File A-2259) (**Supporting Document No. 4**). By memorandum dated December 9, 2013, the San

Diego Water Board Executive Officer provided the State Water Board with a response to the F/ETCA petition supporting the Board's denial of the Revised Tentative Order (**Supporting Document No. 5**).

On September 23, 2014, after accepting comments from interested parties, the State Water Board adopted Order WQ 2014-0154 (**Supporting Document No. 2**). State Water Board Order WQ 2014-0154 remanded the matter to the San Diego Water Board and provided direction to the Board to further explain the factual and legal basis for its denial of the Revised Tentative Order.

Tentative Resolution No. R9-2015-0022 (Tentative Resolution) is provided for the San Diego Water Board's consideration and describes the factual and legal basis for the Board's prior denial of the Revised Tentative Order (**Supporting Document No. 1**). The Tentative Resolution constitutes the San Diego Water Board's proposed response to State Water Board Order WQ 2014-0154.

By letter dated February 4, 2015 the Tentative Resolution was released for a 14 day public review and comment period. Comments were limited to the findings of the Tentative Resolution; additional evidence related to the Revised Tentative Order was not accepted. F/ETCA commented, by letter dated February 18, 2015, that the San Diego Water Board should deny the Tentative Resolution for a variety of reasons as it does not comply with the State Water Board Order and there is no evidence in the record to support the findings required by the State Water Board (**Supporting Document No. 6**). By letter dated February 18, 2015, the Save San Onofre Coalition commented that it supports the Tentative Resolution for a variety of reasons and requests that the San Diego Water Board adopt it (**Supporting Document 7**). The San Diego Water Board also received 6 comment letters from other non-governmental organizations and 2,759 letters from private citizens in support of the Tentative Resolution (**Supporting Documents 8 and 9**). Three letters were received from private citizens opposing adoption of the Tentative Resolution (**Supporting Document 10**). All of these comment letters were timely submitted by the close of the comment period. A Response to Comments document containing San Diego Water Board responses to all of the timely received comments is provided in **Supporting Document No. 11**. No change to the

Tentative Resolution was made from the comments received.

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

1. Tentative Resolution No. R9-2015-0022
2. State Water Board Order WQ 2014-0154
3. Project Location Map
4. F/ETCA petition to the State Water Board for:
Reconsideration of Denial of Waste Discharge Requirements Revised Tentative Order No. R9-2013-0007
5. San Diego Water Board December 9, 2013 Response to F/ETCA Petition
6. F/ETCA February 18, 2015 Comment Letter Regarding the Tentative Resolution
7. Save San Onofre Coalition February 18, 2015 Comment Letter Regarding the Tentative Resolution
8. Other Non-Governmental Organization Comment Letters in Support of the Tentative Resolution
9. Private Citizen Comment Letters in Support of the Tentative Resolution
10. Private Citizen Comment Letters Against the Tentative Resolution
11. San Diego Water Board Response to Comments document