

San Joaquin Hills
Transportation
Corridor Agency

Chairman:
Scott Schoeffel
Dana Point



Transportation Corridor Agencies™

Foothill/Eastern
Transportation
Corridor Agency

Chairman:
Sam Allevato
San Juan Capistrano

February 18, 2015

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108

Via E-Mail:
RB9_DredgeFill@waterboards.ca.gov

Re: Comment – Tentative Resolution No. R9-2015-0022, Place ID: 785677;
Findings Regarding Denial of Waste Discharge Requirements for Tesoro
Extension of SR 241

Dear Mr. Bradford:

Thank you for providing the Foothill/Eastern Transportation Corridor Agency (“TCA”) the opportunity to provide comments on the San Diego Regional Water Quality Control Board’s (Regional Board) Tentative Resolution relating to the denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County. The following comments are for the Regional Board’s consideration.¹

As background, the Tesoro Extension Project is a 5 ½ mile link of a regional transportation network that serves all of Southern California. As TCA designs each project, the transportation benefit of each phase is evaluated along with ways to minimize environmental impacts. This same approach was used in the design of the Tesoro Extension. The Tesoro Extension will serve not only regional traffic, but also local traffic for a growing South Orange County.

In the past, TCA planned to pursue an alignment for the SR 241 that traversed through areas that raised concerns for some stakeholders. During the Regional Water Board’s two public hearings, many of the comments provided were unrelated to the Tesoro Extension, but instead focused on the former and longer alignment. As the TCA documented at length during the Regional Board’s prior proceeding, the construction of the Tesoro Extension is separate and distinct from potential future extensions of SR

¹ The TCA incorporates by reference the TCA’s submissions to the State Board including, but not limited to, the Petition for Review and Memorandum of Points and Authorities in Support thereof dated July 18, 2013. All of the TCA’s submissions to the State Board were previously served on the Regional Board.

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241. However, due to the on-going controversy regarding future extensions, TCA initiated a stakeholder process to re-evaluate the future transportation needs of South Orange County.

Although TCA is in the early stages working with stakeholders, there is optimism that consensus will be reached on the need for further improvements south of the Tesoro Extension. As such, any solution will require new state and federal environmental processes, including project permits. However, due to the emerging nature of the stakeholder process, any readily available information regarding potential future impacts does not exist at this time. As the process is more fully developed and stakeholder consensus is gained, the TCA will engage the Regional Board to provide further input on design and minimization measures.

As for our review of the Tentative Resolution, it does not appear to reflect the State Board's Order adopted at its September 23, 2014 hearing. The State Board's Order requires the Regional Board to adopt "detailed findings" explaining "why the regional board would be limited in its ability to exercise its full authority in the future" to restrict future discharges from future extensions of SR 241. (State Board Order No. WQ-2014-0154, at p. 11.)

Additionally, there is no evidence in the record to support a finding that the Regional Board's authority to restrict future discharges would be limited. As the Tentative Resolution concedes, any future extension of SR 241 south of Cow Camp Road would cross waters of the State -- thus providing the Regional Board with extensive authority to restrict future discharges. Because it is uncontested that Regional Board would have authority over future extensions of SR 241, the Regional Board should not adopt the Tentative Resolution as this would go against the direction provided in the State Board Order.

To eliminate any doubt that the TCA agrees that the Regional Board has authority to restrict any discharges associated with future extensions of State Route 241, on January 20, 2015², TCA delivered an executed agreement to Regional Board staff that stated the following (Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241 (January 15, 2015) [Attachment 1] that provides:

"The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to prohibit or otherwise restrict future discharges or other

² The TCA submitted a draft of the Stipulation to Regional Board staff on December 2, 2014 and request Regional Board staff comment on the draft Stipulation. Regional Board staff never responded to the TCA's request.

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impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.”

On February 3, 2015, TCA’s counsel discussed the Stipulation with Regional Board counsel Nathan Jacobsen. Mr. Jacobsen informed TCA counsel the Stipulation was not required because the Regional Board already had the full authority to restrict discharges to waters of the state of future extensions of SR 241. The statement by Regional Board counsel constitutes an acknowledgement of the obvious – the Regional Board is unable to support the finding required by the State Board Order.

In addition to the submitted stipulation, and subsequent to the June 2013 denial of our WDR, the Regional Board authorized the grading of Planning Area (PA) 2 of Rancho Mission Viejo’s “Ranch Plan.” As permitted, the development of PA 2 included mass grading (Attachment 2) that eliminated certain waters of the state. These same waters were included in the Tesoro Extension’s WDR application and calculated as an impact. As a result of the grading that was authorized by the Regional Board, the already minimal impacts of the Tesoro Extension (0.40 acre) on waters of the state have been reduced to 0.29 acre. The Regional Board’s approval of the mass grading, and the resulting reduction in the water quality impacts associated with the Tesoro Extension, is significant new evidence that should be considered by the Regional Board.

TCA staff discussed this reduced impact during a meeting with Regional Board staff on November 13, 2014, and requested an opportunity to present this important new evidence to the Regional Board. The Regional Board staff, however, advised the TCA that the Regional Board would not allow the introduction of any new evidence as part of the Board’s consideration of the Tentative Resolution. It is unclear to TCA why the Regional Board would not want to consider this important new evidence prior to making a decision on the Tentative Resolution. While the Regional Board has prohibited the TCA from introducing any new evidence, it has invited the public to submit comments without restriction. This highly irregular and unfair procedure raises fundamental questions of due process.

In addition to the impact this Tentative Resolution would have on the Tesoro Extension, it would also set a dangerous precedent for infrastructure projects throughout the state. The following transportation agencies throughout California testified before the State Board and testified that it is standard practice to permit and construct transportation projects in phases:

Metropolitan Transportation Commission of San Francisco Bay Area
Los Angeles County Metropolitan Transportation Authority
Southern California Association of Governments
San Bernardino Associated Governments
Exposition Metro-Line Construction Authority
Metro Gold Line Foothill Extension Construction Transportation
Authority

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County of Orange³

For example, Metropolitan Transportation Commission of the San Francisco Bay Area testified:

“Almost all transportation projects in the State are permitted by regional quality control boards and other permitting agencies in phases. ¶ The factual setting raised by the proposed Tesoro Extension . . . is very common in the transportation community. [Metropolitan Transportation Commission’s] Regional Transportation Plan includes major transportation improvements . . . that will be permitted and constructed in phases over the next several decades. ”

(Letter from Metropolitan Transportation Commission to State Board, p. 2 (Sept. 8, 2014).)

The agency building the Exposition light rail transit line in Los Angeles also testified that it is very common for one phase of a transit project to be permitted and built while the agency seeks to resolve community and other issues regarding subsequent phases:

“The Expo Line is a classic example of why it is necessary that transportation agencies retain the flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived and planned over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. in Santa Monica and Venice), the Los Angeles County Metropolitan Transportation Authority decided that the project should be permitted and built in phases. In 2005, L.A. Metro approved Phase 1 (from Downtown to Culver City), but deferred the consideration of Phase 2 until a later date. This decision allowed the Phase 1 light rail transit line to be completed and opened for service while the Expo Authority worked to resolve a complex array of environmental and community issues in Phase 2. The Expo Authority spent the next five years working to resolve Phase 2 issues and in February 2010 approved an alignment and project design for Phase 2. The experience on Expo Project demonstrates that it is essential that transportation agencies retain the flexibility to

³ Attachment 3 contains letters submitted by several transportation agencies to the State Board on this issue.

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phase the permitting and construction of major new transportation improvements.”

(Letter to State Board from Exposition Metro Line Construction Authority to State Board, p. 2 (Sept. 2, 2014).)⁴

The State Board’s Order clearly states that in “most cases” regional boards may issue WDRs for the current project and “defer issuance of WDRs for future discharges . . . until the point in time that those discharges are actually proposed.” (State Board Order, p. 10.)

The State Board provided assurances to the transportation agencies that regional boards may not deny a WDR for a proposed phase because of potential impacts of subsequent phases, unless the regional board adopted findings that it would not have the full authority to restrict water quality impacts of future phases. By failing to adopt the express finding required by the State Board Order, the Tentative Resolution ignores the assurances made to the transportation agencies by the State Board and creates the potential for enormous adverse impacts on transportation projects throughout the state that are being permitted in phases including, but not limited to, the California High Speed Rail project and the many project identified in the letters to the State Board from the transportation agencies.

In conclusion and based upon the above comments, the TCA respectfully requests the Regional Board deny the Tentative Resolution as it does not comply with the State Board Order. There is no evidence in the record to support the finding required by the State Board. Indeed, the Tentative Resolution concedes that the Regional Board will have authority to restrict discharges associated with future extensions of SR 241.

Respectfully,



Michael A. Kraman
Chief Executive Officer

Attachments:

- 1.) Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241
- 2.) Tesoro Extension’s eliminated impacts due to grading of PA2 (aerial map)

⁴ Attached is a table of projects provided to the State Board further documenting that regional water quality control boards routinely permit transportation projects in phases.

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3.) Transportation agency letters submitted to State Water Board

Cc: State Water Resources Control Board Members
State Board Executive Director and Counsel
San Diego Regional Water Quality Control Board Members
Dave Gibson, Executive Director

**Stipulation to Full Authority of
Regional Water Quality Control Board
Regarding Extension of State Route 241**

This stipulated agreement ("Agreement") is entered into by the Foothill/Eastern Transportation Corridor Agency ("Agency") with regard to the authority of the Regional Water Quality Control Board, San Diego Region ("Regional Board") to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of extensions of State Route 241 south of Cow Camp Road.

Recitals

1. On September 23, 2014 the State Water Resources Control Board ("State Board") issued Order WQ 2014-0154 (the "Order") with regard to the Petition filed by the Agency for Review of the Denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2013-0007 for the extension of State Route 241 from Oso Parkway to Cow Camp Road in Orange County (the "Tesoro Extension"). The Order requires the Regional Board "to provide the factual and legal basis for [the Regional Board's decision], consistent with the Order."

2. The Order provides in pertinent part the following:

"There is a heightened need for detailed findings based on evidence in the record if a regional water board declines to issue WDRs for a project because it will likely lead to additional, future discharges of waste or other water quality impacts. Those findings should describe the potential for future discharges of waste or other water quality impacts, explain why they are likely to result from the current project before the regional water board, and most importantly, explain why the regional water board would be limited in its ability to exercise its full authority in the future

to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board's obligation to protect waters of the state." (Order, p. 11.)

3. The Agency has not decided whether to construct an extension of State Route 241 south of Cow Camp Road. The Agency is evaluating alternatives to an extension of State Route 241 south of Cow Camp Road. Any extension of State Route 241 south of Cow Camp Road will require the construction of bridge columns in San Juan Creek and thus will require Regional Board review of potential water quality impacts and Regional Board approvals of such impacts pursuant to section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and pursuant to California Water Code section 13263 and the applicable regulations of the State Board. The operation of any extension will also necessarily include discharges of storm water to Waters of the State and will thus require Regional Board review and approval pursuant to California law.

4. By this Agreement, the Agency intends to stipulate and agree that the Regional Board has the full legal authority to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of State Route 241 south of Cow Camp Road.

Agreement

1. The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to

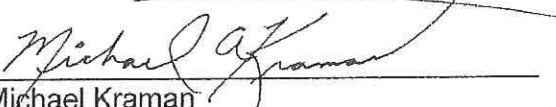
prohibit or otherwise restrict future discharges or other impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.

2. The Agency hereby consents to the Regional Board exercise of its full authority as described in Paragraph 1 above.

Dated: January 15, 2015

TRANSPORTATION CORRIDOR AGENCIES

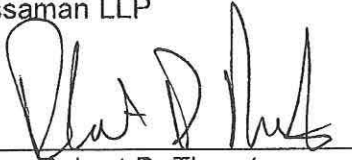
By:


Michael Kraman
Chief Executive Officer

APPROVED AS TO FORM:

Nossaman LLP

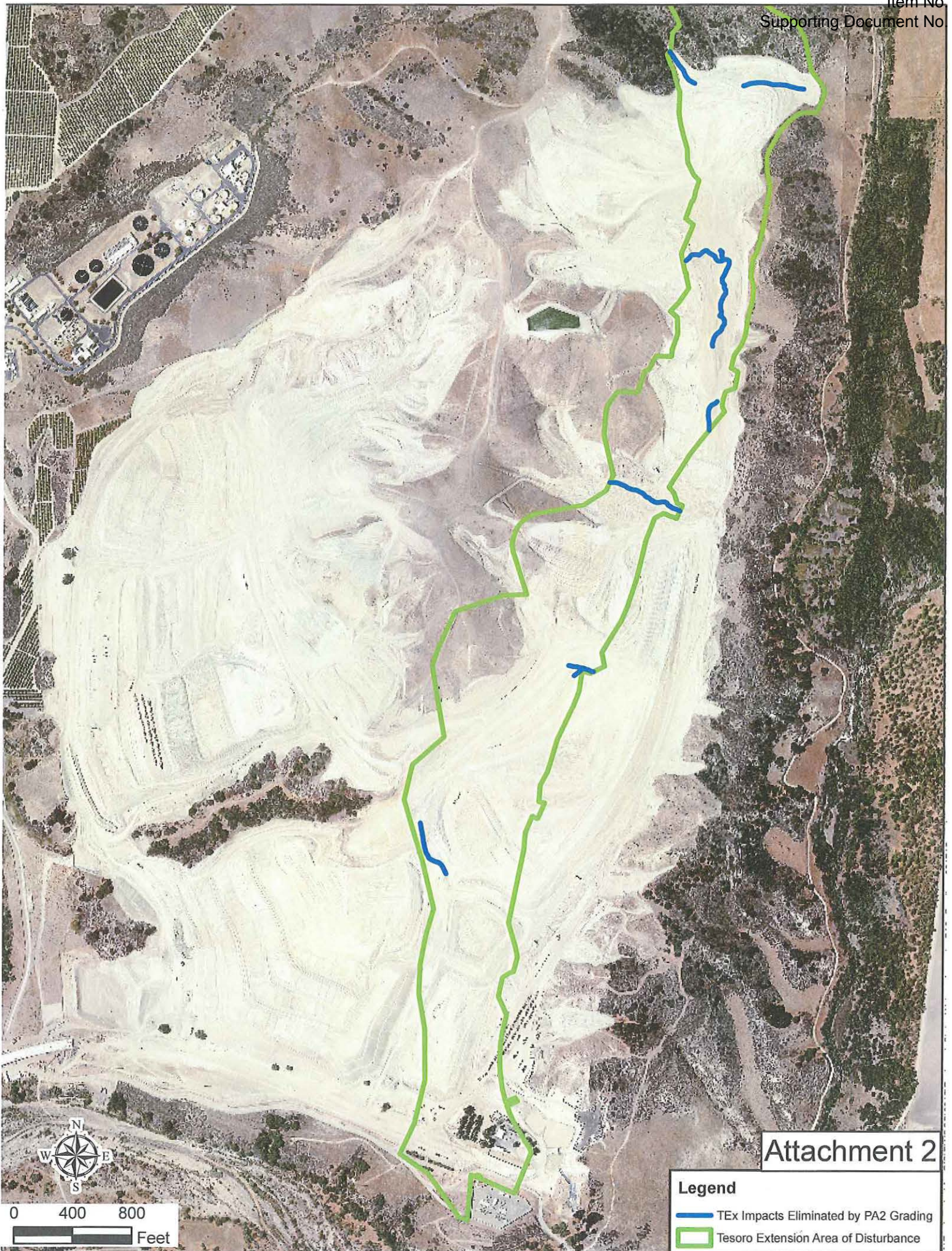
By:


Robert D. Thornton
Counsel to Foothill/Eastern
Transportation Corridor Agency

ACKNOWLEDGEMENT:

Regional Water Quality Control Board,
San Diego Region

By _____



Attachment 3

EXHIBIT 2



**METROPOLITAN
TRANSPORTATION
COMMISSION**

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September 8, 2014

Via E Mail: commentletters@waterboards.ca.gov

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Cities of Contra Costa County

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Steve Kinsey
Marin County and Cities

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Deputy Executive Director, Operations

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 95812 - 0100

Re: Comments on A-2259; - September 23, 2014 Board Meeting. Petition of
Foothill/Eastern Transportation Corridor Agency -- Waste Discharge
Requirements Tentative Order No. R-9-2013-0007 -- Tesoro Extension Project --
State Route 241

Dear Ms. Townsend:

The Metropolitan Transportation Commission (MTC), Bay Area Infrastructure Financing Authority (BAIFA) and the Bay Area Toll Authority (BATA) are concerned that the interpretation of the Porter Cologne Act in the State Board staff report on the above-referenced Petition will have an adverse impact on the timely implementation of important regional transportation improvements in the San Francisco Bay Area.

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. It is responsible for updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, freight, bicycle and pedestrian facilities. The most recent version of the Regional Transportation Plan -- known as the Bay Area Plan -- is an integrated transportation and land-use strategy through 2040 that marks the nine-county region's first long-range plan to meet the requirements of California legislation (Senate Bill 375), which calls on California's 18 metropolitan areas to develop a Sustainable Communities Strategy to accommodate future population growth and reduce greenhouse gas emissions from cars and light trucks. Successful implementation of the Bay Area Plan depends on the ability of the region's transportation agencies to deliver the transportation improvements identified in the Plan in a timely and cost-effective manner.

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Almost all major transportation projects in the State are permitted by regional water quality control boards and other permitting agencies in phases. The State Board staff report acknowledges this reality, but then goes on to indicate that regional boards may require transportation agencies to obtain regional board approval for discharges for potential future phases of a transportation improvement that are not currently proposed to be constructed, and that may not be built for many years. We request that the State Board modify the Staff Report to make it clear that regional boards should limit their review of proposed WDRs and water quality certifications to the scope of the transportation improvement and discharge proposed by the transportation agency at the time of a particular application.

The regional transportation plan for San Francisco Bay Area identifies a large number of transportation improvements that will be implemented over the next two decades. Many of these improvements will be constructed in phases as funding becomes available, as the CEQA process is completed for each phase and as regulatory approvals are obtained. It is simply not feasible or practical to obtain regional board approvals or other permits for the entire length of each improvement identified in a multi-decade transportation plan at the time that BAIFA, BATA and/or MTC propose to construct an initial phase of a larger improvement described in the regional transportation plan.

The factual setting raised by the proposed Tesoro Extension to State Route 241 is very common in the transportation community. For example, MTC's Regional Transportation Plan includes major transportation improvements in the I-80, I-680, I-880/SR237, I-880, SR-84, SR-85 and SR-92 corridors that will be permitted and constructed in phases over the next several decades. This is an extremely complex project that extends 270 miles and crosses many state waters. The State Board Staff Report suggests that the regional water board will have unlimited discretion to require transportation agencies to obtain a WDR or water quality certification for future portions of the above improvements that will not be designed and built for decades. Transit improvements are also commonly permitted and constructed in phases. For example, the BART extensions to Santa Clara County are being permitted and constructed in phases. Expansions of the ferry system are also being permitted and constructed in phases as funding becomes available.

The well-established procedure in all of the state's metropolitan areas is to apply for regional water board discharge approvals at the time that the CEQA process for the particular improvement is complete, when preliminary engineering is complete and funding is available to construct the improvement. The following are examples of projects in Bay Area where this approach was followed by the regional board.

- BART extensions to the Livermore Valley
- BART extensions to Santa Clara County
- Expansions of the ferry system
- Expansion of the HOV/Express Lane system
- Caltrain grade separation projects and track improvements
- San Francisco MUNI Third Street light rail improvements
- Santa Clara VTA light rail extensions

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Capital Corridor rail improvements
Hercules California Intermodal Station improvements
Treasure Island transit capital improvements
Sonoma Marin Rail Corridor improvements
San Francisco Transbay - Caltrain Transit Center

We respectfully request that the State Board revise the proposed order to recognize that regional boards should limit the scope of their review of water quality impacts of proposed transportation improvement proposed to be constructed by the transportation agency.

Sincerely,



Adrienne D. Weil
General Counsel

cc: Steve Heminger
Alix Bockelman

EXHIBIT 3



Exposition Metro Line
Construction Authority

707 Wilshire Boulevard
34th Floor
Los Angeles, CA 90017

213.243.5500
BuildExpo.org

Expo

September 3, 2014

EXPO2 02068
CA 112

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 92814

Via E Mail: commentletters@waterboard.ca.gov

Re: Comments on A-2259; - September 23, 2014 Board Meeting. Petition of Foothill/Eastern Transportation Corridor Agency -- Waste Discharge Requirements Tentative Order No. R-9-2013-0007 – Tesoro Extension Project – State Route 241

Dear Ms. Townsend:

The Exposition Metro Line Construction Authority (“Expo Authority”) submits the following comments on the Draft Order in the above-referenced matter. The Expo Authority is the public agency responsible for designing and building the Expo Corridor 15-mile light rail transit line from downtown Los Angeles to Santa Monica. As is the case with most complex transportation projects, the Expo Line is being designed, permitted and built in phases. The first phase of the Expo project (from downtown L.A. to Culver City) opened in 2012. The second phase (from Culver City to Santa Monica) is under construction.

We request that the State Board modify the report accompanying the Draft Order to make it clear that regional boards should limit their review of proposed Waste Discharge Requirements (WDRs) and water quality certifications to the scope of the transportation improvement and discharge proposed by the transportation agency.

The State Water Board draft order in the above matter indicates that regional water boards may require transportation agencies to obtain water board review and approval of discharges associated with future phases of a transportation improvement at the time of the initial phase – even in circumstances where the future phase is not funded and may not be built for many years. This interpretation is contrary to the existing practice of transportation permitting agencies in Los Angeles County. If adopted, the interpretation reflected in the Draft Order will adversely impact the timely and cost-effective delivery of important transportation improvements.

Ms. Jeanine Townsend
State Water Resources Control Board
September 3, 2014
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The Expo Line is a classic example of why it is necessary that transportation agencies retain the flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. from Culver City to Santa Monica), the Los Angeles County Metropolitan Transportation Authority (Metro) decided that the project should be permitted and built in phases. In 2005, Metro approved Phase 1 (from Downtown to Culver City), but deferred the consideration of Phase 2 until a later date. This decision allowed the Phase 1 light rail transit line to be completed and opened for service while the Expo Authority worked to resolve a complex array of environmental and community issues in Phase 2. The Expo Authority spent the next five years working to resolve Phase 2 issues and in February 2010 approved an alignment and project design for Phase 2. The experience on Expo Project demonstrates that it is essential that transportation agencies retain the flexibility to phase the permitting and construction of major new transportation improvements.

Sincerely,



Samantha Bricker
Chief Operating Officer

cc: Rob Thornton
Document Control

EXHIBIT 5



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Riverside County Transportation Commission

September 11, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on Draft Order WQ 2014-xx, Petition of Foothill/Eastern Transportation Corridor Agency (SWRCB/OCC File A-2259)

Dear Ms. Townsend:

The Riverside County Transportation Commission (Commission) appreciates the opportunity to submit comments on the State Water Resources Control Board's (State Board) Draft Order, WQ 2014-xx, in the matter of the petition of Foothill/Eastern Transportation Corridor Agency (Draft Order). The Commission supports the State Board's goal of protecting the quality of water within the state. The Commission also supports the Draft Order's holding, which requires a decision regarding waste discharge requirements to be supported by evidence in the record. This letter requests the removal or correction of a subtle, but consequential, misstatement of the law contained in the Draft Order.

The misstatement appears to arise from a conflation of the regional boards' obligation under the California Environmental Quality Act (CEQA) to consider the environmental impacts of a proposed "project" with the obligation under Porter-Cologne Water Quality Control Act (Porter-Cologne) to consider the impact of a "proposed discharge." This apparent confusion expands the regional boards' authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For this reason, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and the first paragraph on page 10. These paragraphs are dicta and are not necessary to support the Draft Order's holding.

CEQA Requires Consideration of a "Project"

An environmental impact report (EIR) prepared pursuant to CEQA must consider "the whole of an action" and cannot piecemeal a large project into multiple smaller projects to avoid consideration of cumulative impacts. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., § 15378, subd. (a).) An EIR for a multi-phase project, such as the

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linear transportation projects undertaken by the Commission and Foothill/Eastern Transportation Corridor Agency, considers the impacts from the whole of a project. A supplemental or subsequent EIR (SEIR) or other tiered document providing greater detail may be prepared for a later phase of a multi-phase project prior to approving that phase.

Porter-Cologne Authorizes Consideration of a "Proposed Discharge"

Water Code section 13263(a) authorizes a regional board to "prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge[.]" Prescribed requirements must implement any relevant and adopted water quality control plans and consider, among other things, "other waste discharges[.]" (*Ibid.*) Porter-Cologne is interpreted consistently with the federal Water Pollution Control Act, which defines a discharge as the "addition" of a pollutant to navigable waters or to waters in a contiguous zone. (33 U.S.C. § 1362, subs. (12), (16).) Discharges are "proposed" when a potential permittee submits a report of waste discharge pursuant to Water Code section 13260(a). A potential permittee is required to submit a separate report of waste discharge for each disposal area. (23 Cal. Code Regs., § 2207.) "Other waste discharges" may include additions of pollutants, proposed or occurring, in disposal sites or by dischargers other than those proposed in a report of waste discharge. (See, Water Code, § 13263, subd. (a).)

When an agency, such as the Commission, undertakes a specific phase of a multi-phase project, it may submit a report of waste discharge for that specific phase. The report of waste discharge proposes discharges accompanying that specific phase, but does not propose discharges from future phases. Future phases may never be approved by the Commission's Board. Funding may never become available for future phases. Permits may not be granted for future phases. Such future discharges are not "proposed discharges," as they are not proposed in a report of waste discharge. (Water Code, § 13263, subd. (a).) They are also not "other waste discharges," because they are not actual additions of pollutants and may never constitute discharges. (*Ibid.*; 33 U.S.C. § 1362, subs. (12), (16).)

Porter-Cologne does not permit regional boards to condition or deny waste discharge requirements based on future phases of a CEQA "project" because the future phases do not constitute additions of pollutants and do not qualify as "proposed discharges" or "other waste discharges."

Draft Order Expands Regional Board Authority Contrary to Porter-Cologne

The Draft Order expands the regional boards' authority contrary to Water Code section 13263(a) by authorizing regional boards to prescribe or deny waste discharge requirements based on activities that do not constitute "proposed discharges" or "other waste discharges." Specifically, the Draft Order authorizes regional boards to "request available information on those future phases in connection with a pending report of waste discharge or application for the current phase" if a future phase is "likely to occur and may have

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water quality impacts[.]” (Draft Order, p. 10.) The Draft Order further authorizes regional boards to consider future phases of a project “when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharges of waste or other water quality impacts in the future.” (*Ibid.*)

Conditioning or denying waste discharge requirements for a proposed project based on future phases of a CEQA “project” that do not constitute “proposed discharges” or “other waste discharges” violates Water Code section 13262(a). This violation appears to arise from a confusion of an EIR’s consideration of all phases in a multi-phase project under CEQA with a regional board’s authority to consider discharges proposed in a report of waste discharge for one phase of a multi-phase project under Porter-Cologne. As noted above, this confusion impermissibly expands the regional boards’ authority in violation of Porter-Cologne. The last paragraph on page 9 and the first paragraph on page 10 are dicta and are not necessary to support the proposed holding of the Draft Order. For this reason, the Commission requests the deletion of these two paragraphs.

Draft Order Establishes an Unintelligible Standard

If the last paragraph on page 9 and the first paragraph on page 10 are not deleted, not only will the State Board’s Draft Order violate Porter-Cologne, but the Draft Order will establish an unintelligible standard for determining whether a future phase of a multi-phase project is a proper consideration in issuing or denying waste discharge requirements. (Gov. Code, § 11425.60; State Board Order No. WR 96-1, fn. 11 [unless stated otherwise, all State Board Orders adopted at a public meeting are precedential].) Regional boards will be expected to determine whether a future phase is “likely to occur and may have water quality impacts” even though the future phase is not the subject of a report of waste discharge, may never be approved, may never receive funding, and may never obtain relevant permits. A regional board is not in a position to determine the likelihood that a future phase will occur, and Porter-Cologne does not permit such consideration as part of the issuance or denial of waste discharge requirements.

In the event the last paragraph on page 9 and the first paragraph on page 10 are not deleted, they should be revised to clarify that regional boards may only consider future phases of a multi-phased project in the context of CEQA and not for the purpose of issuing or denying waste discharge requirements under Porter-Cologne. The Draft Order should clarify that waste discharge requirements cannot be denied or conditioned based on a future action which does not constitute a “proposed discharge” or “other waste discharge.”

Conclusion

The Draft Order’s apparent conflation of a CEQA “project” and a “proposed discharge” under Porter-Cologne expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For these reasons, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and first paragraph on page 10.

Ms. Jeanine Townsend
Clerk to the Board
Page 4
September 11, 2014

In the alternative, these paragraphs should be revised to clarify, consistent with Porter-Cologne, that waste discharge requirements cannot be denied or conditioned based on a future action, which does not constitute a "proposed discharge" or "other waste discharge."

Thank you for your consideration of these comments.

Sincerely,



Anne Mayer
Executive Director

Via email (commentletters@waterboards.ca.gov)

EXHIBIT 6



County of Orange
California

September 12, 2014

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento CA 92814

Via email: commentletters@waterboard.ca.gov

Re: Comments on A-2259 – September 23, 2014 Board Meeting. Petition of Foothill/Eastern Transportation Corridor Agency – Waste Discharge Requirements Tentative Order No. R-9-2013-0007 – Tesoro Extension Project – State Route 241

Dear Ms. Townsend,

The County of Orange is undergoing several critical infrastructure projects that are critical to the quality of life and economic growth of our community.

According to the Draft A-2259 Order as proposed: "A regional water board is not required to put on blinders when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharge of waste or other water quality impacts in the future."

We would add that a regional water board cannot make assumptions about a future project when the actual details of that project are not before them and cannot be properly evaluated.

This proposed Draft Order puts the process for acquiring necessary permitting for public works projects throughout our county, and others, at risk. I strongly encourage that you change the wording in the Draft Order to disallow your Regional Boards from considering potential project extensions that have not been proposed or perhaps even contemplated by the applicant.

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The Orange County Board of Supervisors (Board) supports the extension of State Route 241 to Interstate 5, which has been on the County's Master Plan of Arterial Highways for more than 35 years. Further, the Board supports issuance of a Waste Discharge Permit for the Tesoro extension as defined. This extension is needed to serve future residents of Rancho Mission Viejo as well as regional traffic now using Ortega Highway.

Sincerely,



Michael B. Giancola

County Executive Officer

EXHIBIT 11

RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
Transit/Light Rail/Bikeway Projects			
Bay Area	BART Extension to Silicon Valley	16-mile extension of the Bay Area Rapid Transit (BART).	Phase 1: 10-mile, two-station BART extension. Phase 2: A future phase will include a 5-mile-long subway tunnel through downtown San Jose and extend the BART system from the planned Berryessa Extension terminus for approximately 6 miles, ending at-grade in Santa Clara near the Caltrain Station.
Los Angeles	Exposition Transit Corridor	15.2 mile light rail transit project.	Phase 1: 8.6-mile extension of the Metro Rail System from downtown Los Angeles to Culver City. Phase 2: 6.6 mile extension of the rail system from Culver City to Santa Monica.
Los Angeles	Foothill Gold Line	Light project from Los Angeles to Montclair in San Bernardino County.	Phase 1: Los Angeles to Pasadena Phase 2a: Pasadena to Azusa. Phase 2b: Azusa to Montclair Phase 2c: Montclair to the Ontario Airport
Los Angeles	Westside Subway Extension (Metro Purple Line)	Extension of metro line.	Phase 1: Wilshire/Western to Wilshire/La Cienega. Phase 2: Wilshire/La Cienega to Century City. Phase 3: Century City to Westwood/VA Hospital.
Riverside	Metrolink Perris Valley Line Extensions	24-mile Metrolink extension.	Perris Valley Line: Continues rail service 24 miles from the downtown Riverside station to south Perris, with the construction of four new stations, construction and rehabilitation of railroad tracks, upgrade at-grade crossings, and improvement of existing tracks. Future extensions: Anticipated but not yet planned.
Statewide	California High-Speed Rail Project	High-speed rail project from Los Angeles to San Francisco, with San Diego and Sacramento extensions.	Permitting Phase 1: 24 miles of the HST Project along the southern end of the Merced to Fresno segment. The overall project footprint is approximately 885 acres. Additional Permitting Phases: Separate environmental documents and permits will be obtained for each segment of the project (Merced to Fresno, Fresno to Bakersfield, Palmdale to Los Angeles, etc.).
San Bernardino	Downtown San Bernardino and Redlands Passenger Rail Project	Metrolink extension.	Phase 1: 1-mile extension of the existing passenger rail service. Phase 2: 9-mile construction of passenger rail line.
San Diego	Inland Rail Trail Bikeway	21-mile bike trail.	Phase 1: 6 miles of the bikeway. Phase 2: 7 miles of bikeway. Phase 3: 8 miles of bikeway.
Sacramento/ Multiple	Sacramento Downtown/Riverfront Streetcar Project	9-mile urban streetcar network.	Phase 1: 3.- mile Streetcar network. Phase 2: Connecting South R Street and Broadway corridors.

RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
Sacramento/ Multiple	Union Pacific Third Track	17.8-mile railroad track.	4 total segments.
Sacramento	I-5 Bus/Carpool (HOV) Lanes	Construction of bus/carpool HOV lanes in both directions on I-5.	Phase 1: 13 miles of bus/carpool lanes on I-5 in the Sacramento area. Phase 2: 6.8 miles of bus/carpool lanes.
San Francisco	MUNI Third Street Light Rail Improvements	6.9-mile light rail project.	Phase 1: 5.1 miles of light rail construction. Phase 2: 1.7 miles of light rail construction.
Highway Projects			
Bay Area (Multiple Counties)	Bay Area Express Lanes	550-mile network of Bay Area express lanes.	Phase 1: Conversion of 150 miles of HOV lanes to express lanes. Addition of 120 miles of new lanes. Phase 2: 90 miles of express lanes. Phase 3: Improvements and additions to express lanes for a total of 190 miles in Silicon Valley.
El Dorado	Bass Lake Road Improvements	Road widening and reconstruction.	Phase 1 A: US 50 to Hollow Oak Rd. Phase 1B: US 50 to Silver Springs Parkway.
El Dorado	Diamond Springs Pkwy	Construction of 4-lane divided roadway.	Phase 1A: SR 49 realignment - Pleasant Valley Road to Lime Kiln. Realign SR-49/Diamond Rd from Pleasant Valley Rd to north of Lime Kiln Rd; SR-49/Diamond Rd will be improved with two 12-ft lanes and 8-ft shoulders; includes signal modification at Pleasant Valley Rd/SR-49 intersection and potential underground utility district. Phase 1A split from Phase 1 (CIP72334/ELD15990) to advance this new roadway project. Phase 1B: New 2-lane roadway connecting Missouri Flat Road to SR 49. Phase 2: Widening/improvement to 4-lanes from Missouri Flat Road to Highway 49. Phase 3: Ultimate widening/improvements for 4-lane divided SR-49.
El Dorado	US 50 Bus/ Carpool Lanes	13 miles of HOV and bus/carpool lanes.	Phase 1 Add HOV lanes from El Dorado Hills Blvd to Bass Lake Grade. Phase 2A: Add HOV lanes from Bass Lake Road to Cameron Park Drive. Phase 2B: Add HOV lanes from Cameron Park Dr. to Ponderosa Rd. Phase 3: Add Bus/Carpool lanes from Ponderosa Rd to Greenstone Rd.
El Dorado	Western Placerville Interchanges	Improvements on and around US 50.	Phase 1A/1B: Construct westbound access ramp from Ray Lawyer Drive onto US 50 and auxiliary lane between westbound access ramp and the existing westbound off-ramp at Placerville Drive. Realign Faird Lane to accommodate new improvements, bicycle/pedestrian improvements, widened shoulders, retaining walls Phase 2: Replacement and widening of overcrossing, improved interchange, new ramps at the existing

RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
			overcrossing, and new auxiliary lanes between interchanges.
Los Angeles	I-10 HOV Lanes	11 miles of HOV lanes.	Phase 1: I-605 to Puente Ave. Phase 2: Puente Ave. to Citrus Ave (9.2 miles of carpool lanes in each direction of I-10) Phase 3: Citrus Ave. to SR-57
Los Angeles	I-405 Sepulveda Pass	10 miles of HOV lanes and infrastructure improvements.	Project includes: Mulholland Dr. Bridge Demolition and Reconstruction; Wilshire Boulevard Ramps Reconstruction; Sunset Bridge Ramp Reconstruction; and Skirball Center Drive On-ramps and Bridge Reconstruction
Los Angeles	I-5 HOV/Truck Lanes Project	14 miles of HOV lanes; 4 miles of truck climbing lanes.	Phase 1: Truck lanes for 3.7 miles southbound and 1.4 miles northbound. Phase 2: Truck lane and HOV lanes from SR-14 to Parker Road. Phase 3: Truck lane and HOV lanes from SR-14 to Parker Road.
Los Angeles/ San Bernardino	High Desert Corridor	Construction of a new multi-modal link between State Route (SR)-14 in Los Angeles County and SR-18 in San Bernardino County.	Los Angeles County Project: 9 miles from SR-14 to 50 th Street East. East/West Connection Project: 32 miles from 50 th Street East to US-395. San Bernardino County Project: 20 miles from US-395 to SR-18.
Los Angeles/Orange	I-5 Corridor Improvements	Corridor improvements consisting of 17 projects.	I-5 North Improvements: HOV Lanes – Carpool lanes; Direct HOV Connectors; Interchange Improvements; bridge widening and bridge reconstruction; truck lane designation; Pavement Replacements; and Grade Separation. I-5 South Improvements: High-Occupancy Vehicle (HOV or carpool) Lanes; Interchange Modifications; Pedestrian Overcrossing; and Frontage Road Modification
Riverside/Orange	SR-91 Corridor Improvements	20 miles of capacity, operational, and safety enhancements.	Phase 1: 8 miles of improvements; 3 miles of direct connectors. Construction of two express lanes, one general purpose lane, and auxiliary lanes. Phase 2: Construction of general purpose lanes, express lanes, and direct connectors; conversion of HOV lane to express lane.
San Diego	I-15 Express Lanes	20 miles of express lanes.	Middle Segment: SR-56 to Centre City Parkway. South Segment: SR-163 to SR-56. North Segment: Centre City Parkway to SR-78.
San Diego	SR-52 Improvements	Construction of 2 HOV lanes and 2 managed lanes.	SR-52 East – Extension of the SR-52 freeway through Santee into East San Diego County; included SR-52/SR-67 interchange. SR-52 West – Construction of 1 additional general purpose lane in each direction and 2 reversible Managed Lanes from I-15 to SR-125. Additional Improvements – Construction of 2 HOV lanes between I-805 and I-15.

RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
Placer	I-80 Capacity & Operational Improvements	Freeway widening and extension of carpool lanes.	Phase 1: Extension of eastbound on-ramp. Phase 2: Eastbound and westbound carpool and auxiliary lanes. Phase 3: Added auxiliary lanes and carpool lanes on both eastbound and westbound sides, approximately 2.2 miles.
Placer	SR-65 Lincoln Bypass	Construction of a new 4-lane and 2-lane expressway.	Phase 1: A 4-lane highway expressway on a new alignment from Industrial Avenue to north of North Ingram Slough and continue north with 2 lanes to Sheridan. Also design and construct a Park and Ride facility at SR 65 Bypass and Industrial Avenue. Phase 2A: Adds 2 southbound lanes to extend 4-lane section of Lincoln Bypass from its Phase 1 terminus. Phase 2B: 2 lanes from north of West Wise Road to Sheridan, providing a full 4 lanes (2 in each direction).
Sacramento	Auburn Blvd Complete Streets Revitalization Project	Construction of pedestrian and bicycle lanes; various infrastructure improvements.	Phase 1: Construct wide sidewalks, bike lanes, a pedestrian/bike bridge, enhanced transit stops and shelters, pedestrian-scale street lighting, raised medians and landscaping, and consolidated multiple driveways. Phase 2: ADA, Ped, Bicycle, and Transit Improvements, new street light installations, hardscape, landscape, full road reconstruction. Phase 3: Design, ROW acquisition and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape. Phase 4: Design and construction; ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape. Phase 5: Design, ROW, and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, hardscape and landscape.
San Bernardino	SR-138 Capacity Enhancement	54 miles of highway widening.	Phase 1: 13 miles of highway widening. Phase 2: LA County to San Bernardino County.
San Bernardino	US-395 Operational Improvements	90 miles of highway widening.	Multiple projects in various stages.
San Diego	SR-76 Improvements	Upgrade of SR-76 to a freeway or expressway.	West Segment: I-5 to Melrose Dr. Middle Segment: 5.5-mile segment. East Segment: 5.2-mile segment.
San Diego	I-805 Managed Lanes	28-mile Express Lanes facility.	I-805 HOV/Carroll Canyon Road Extension Project: 10-mile HOV lane in two directions. I-805 North Express Lanes Project: 4-mile project in multiple phases.

RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

Project Location (County)	Project Name	Description	Permit Construction Phases
			Stage 1: 1 carpool lane in each direction. Stages 2-4: Second carpool lane in the median. Stage 5: Direct freeway to freeway HOV connector in the median.
San Diego	I-5 North Coast Corridor Program	27-mile series of highway, rail, transit, bicycle, and pedestrian projects.	Highway - Phases 1-3: I-5 Widening to accommodate four new Express Lanes and HOV connectors. Rail: Double tracking of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor. Transit: Enhanced Coastal Bus and a Bus Rapid Transit service. Bikeways: A new 27 mile NCC Bikeway. Trails: 7 miles of the Coastal Rail Trail, as well as other shorter connections to existing trail networks and transit stations.
San Joaquin Valley	SR 99 Corridor Improvements	44 programmed projects and 66 candidate projects to increase capacity and improve operations.	Capacity increasing projects: Freeway widening Major Operational Improvements New Interchanges
Utility/Transmission Line Projects			
Los Angeles/ San Bernardino	SCE Tehachapi Renewable Transmission Line	250 miles of transmission facilities.	11 Segments: Include substation expansions and construction of a 25.6 mile transmission line. The following permits have been issued: Segment 3B - Water Quality Order No. 2012-0007-DWQ; Waste Discharge Requirements WDID No. SB12009IN Segments 4 and 5 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB10003IN Waste Discharge Requirements Segment 6 - Section 401 Certification File No. SB11003IN Segments 7 and 8 - Section 401 Certification File No. SB10002IN Segment 9 - Water Quality Order No. 2004-004-DWQ; File No. SB10001IN Segment 10 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB10003IN Waste Discharge Requirements Segment 11 - Section 401 Certification File No. SB13003IN



San Bernardino Associated Governments

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•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
 •San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

September 15, 2014

Ms. Jeanine Townsend
 Clerk to the Board
 State Water Resources Control Board
 1001 I Street, 24th Floor
 P.O. Box 100
 Sacramento, CA 95812

RE: Comments on A-2259 – Petition of Foothill/Eastern Transportation Corridor Agency –
 Waste Discharge Requirements Tentative Order No. R-9-2013-0007 – Tesoro Extension Project
 – State Route 241

Dear Ms. Townsend:

The San Bernardino Associated Governments (SANBAG) appreciates the opportunity to comment on Tentative Order No. R9-2013-0007 regarding the Transportation Corridor Agencies (TCA) Tesoro Extension Project for State Route 241.

SANBAG is the council of governments, county transportation commission, and transportation planning agency for San Bernardino County. As such, we are responsible for planning and implementing an efficient multi-modal transportation system to serve the 1.9 million residents of our county. SANBAG also administers Measure I, the half-cent transportation sales tax approved by county voters in 1989 and reaffirmed in 2004.

SANBAG is also part of the Southern California Association of Governments (SCAG) region. SCAG is the metropolitan planning organization (MPO) responsible for the adoption of the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) as required under SB 375 (Chapter 728, Statutes of 2008). This multi-modal plan contemplates a number of transportation improvements through 2035 and it is critical that the transportation agencies in the region are able to successfully implement the projects contained within these plans in a timely and cost-effective way.

Historically, the State Water Resources Control Board has considered it appropriate for regional water quality control boards to permit projects in phases, reflecting the current conditions and funding availability for the actual project being constructed at that time. The revised tentative order now indicates that regional boards may now require that transportation agencies obtain approval for discharges associated with future phases of a transportation improvement – even if that future phase is not funded and not scheduled for construction for many years. This goes well beyond a reasonable approach to permitting projects and associated California Environmental Quality Act (CEQA) requirements.

Ms. Jeanine Townsend
September 15, 2014
Page 2

Given the cyclical and sometimes inconsistent nature of transportation funding, it is typical for improvements to be funded and constructed in phases, spanning multiple decades. Given the length of time that can pass between phases, it seems premature to judge the project in its entirety when it is still unknown whether the entire project will ever be fully funded or constructed. If this precedent is established, it will become increasingly difficult for transportation agencies to match projects with available funding and permitting requirements – thus resulting in delays to project delivery and an inability to meet greenhouse gas reduction requirements and federal air quality standards.

We respectfully request that you reconsider the tentative order to limit the ruling to the scope of the transportation improvement proposed at the time of the application and any discharge that may result. Transportation agencies must retain the necessary flexibility to phase major improvements in our regions in order to efficiently and effectively serve our respective populations and meet major state and federal environmental standards.

Sincerely,



Raymond W. Wolfe
Executive Director
San Bernardino Associated Governments

cc: Gonzales, Quintana & Hunter LLC