



Inland Empire Waterkeeper

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IP-4

March 1, 2013

Ms. Cathy Bechtel
Riverside County Transportation Commission
P.O. Box 12008
Riverside, CA 92502

RE: Mid County Parkway Project

Dear Ms. Cathy Bechtel:

Inland Empire Waterkeeper (“Waterkeeper”) is an environmental, non-profit organization dedicated to advocacy, education, restoration, and enforcement in the Santa Ana River watershed. Waterkeeper’s members use and enjoy the unique waterways of the Inland Empire and rely on our region’s groundwater on an everyday basis. For these reasons, we have been following the Mid County Parkway Project (“Project”) and have focused our attention on the Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement and Revised Draft Section 4(F) Evaluation (“Draft EIR”).

The Draft EIR is deficient because it fails to provide the public with an adequate description of the full environmental impacts of the Project and fails to fully address means of mitigating such adverse effects. First, more information is necessary to provide the public with an adequate understanding of the reasoning behind confining the environmental impact assessment to the selected study area. Second, the Project and its Build Alternatives will adversely impact the surrounding wetland areas, and the conceptual mitigation plan fails to adequately describe mitigation steps that will maintain the functional value of the impacted wetland areas. Third, storm water runoff from the Project is likely to contain pollutants that will contribute to the existing impairment of water bodies in the San Jacinto River watershed, and the Draft EIR fails to adequately analyze the feasibility of best management practices (“BMPs”) to mitigate such impairment. Finally, the Riverside County Transportation Commission (“RCTC”) and the Federal Highway Administration (“FHWA”) should consider the cumulative environmental impact of all development projects in the San Jacinto River watershed.

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The following are Waterkeeper’s principal comments on the Draft EIR. Waterkeeper and our members strongly encourage RCTC and FHWA to consider these issues and amend the Draft

EIR to better comply with environmental regulations and provide for the ongoing health of the San Jacinto River watershed.

I. The Basis for Selection of the Project’s Study Area is Unclear.

The study area for the Project covers a significantly smaller area north of the Project than south of the Project.¹ While the northern border of the study area closely follows the northern edge of the right-of-way (“ROW”), the southern border of the study area was drawn significantly further south of the southern edge of the ROW.² As a result, the study area includes land south of the Project that has been slated for commercial and residential development, but does not include Lake Perris and significant wetland areas in the San Jacinto Wildlife Area (“SJWA”), both of which are immediately adjacent to the Project. We are concerned that this discrepancy may affect the assessment of the Project’s environmental impact on the surrounding region and give greater weight to development concerns, rather than focusing on the totality of positive and negative impacts caused by the Project. We request that RCTC provide information describing the study area selection process and methodology.

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II. The Modified Build Alternatives will Result in Permanent Impacts to Sensitive Wetland Areas for Which the Conceptual Mitigation Plan Fails to Adequately Address.

Found throughout the United States, wetlands are unique ecological features that serve not only as habitats for the plants and animals within their discrete borders, but also as transitional habitats between uplands and aquatic systems. They play a crucial role in the hydrologic regimes they belong to, providing for protection of upland areas from storm damage and erosion, and regulating flow of water and pollutants into their adjacent water bodies.³ Over time, however, wetland area in the United States has significantly diminished as the result of filling for development purposes. California alone has lost 90% of its wetland area over the last century.

Recognizing this drastic loss, as well as the important role wetlands play in the health of our waters and our communities who depend on those waters, both California and the United States have “zero net loss” requirements for wetlands use and preservation.⁴ A zero net loss requirement prohibits fill of wetlands without a minimum one-to-one replacement of filled area.⁵

¹ U.S. Dep’t Transp. Fed. Highway Admin., Cal. Dep’t Transp., and Riverside Cnty. Transp. Comm’n, Mid Cnty. Parkway Recirculated Draft Evtl. Impact Rep./Supplemental Draft Evtl. Impact Statement and Revised Draft Section 4(F) Evaluation, Chapter 1.0 Proposed Project, Figure 1.1.1, *available at* http://midcountyparkway.org/uploads/rdeir-sdeis-rds4fe_vol1_chapter-1_proposed-project.pdf [hereinafter Draft EIR].

² *Id.*

³ 40 C.F.R. § 230.41.

⁴ See “Wetlands,” USDA Natural Resources Conservation Service Topics page, *available at* <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/water/wetlands/>; “California Wetlands Policies and Programs,” California Natural Resources Agency Wetlands Information System page, *available at* http://ceres.ca.gov/wetlands/introduction/policies_and_programs.html.

⁵ 40 C.F.R. § 230.93(f)(1).

The requirement also mandates that the minimum replacement ratio be increased when the replacement land will not be able to restore the full functional value of the filled wetlands.⁶ Determining functional value and setting mitigation ratios requires considering all of the following:

[H]abitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment . . . current development trends . . . requirements of other regulatory and non-regulatory programs that affect the watershed . . . [and] protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed.⁷

In sum, the functional value should be determined by assessing “the suite of functions typically provided by the affected aquatic resource” and setting compensation requirements according to those assessments.⁸

Although the zero net loss requirement provides for wetland protection and mitigation through replacement, the requirement at its base demands that all practicable steps be taken to avoid adverse impacts to United States waters.⁹ Practicable steps are those that are “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”¹⁰ Mitigation is allowable when adverse impacts are unavoidable.¹¹

The Project and its alignment alternatives impact wetlands through fill or other impacts resulting from Project construction and use at two general locations: (1) where the Project crosses the San Jacinto River just west of Lake Perris; and (2) where the Project merges with State Route 79 (“SR-79”), approaching and crossing the San Jacinto River just south of Gilman Springs Road.¹² The Draft EIR includes a mitigation plan to account for the impacts caused by the Project, but for the following reasons, Waterkeeper finds that the mitigation plan inadequately compensates for the loss in functional value of impacted wetlands and fails to fully comply with applicable wetlands regulations.

A. Where the Project Crosses the San Jacinto River just west of Lake Perris, an Avoidance Alignment Could Provide for Preservation of Wetlands Habitat.

The Project’s proposed alignment requires acquiring 3.4 acres of land within the San Jacinto Wildlife Area.¹³ This area is wetland habitat that was established as mitigation property and

⁶ 40 C.F.R. § 230.93(f)(2).

⁷ 40 C.F.R. § 230.93(c)(2)(i).

⁸ *Id.* Further guidance and factors for consideration are contained within the entirety of 40 C.F.R. § 230.93 and its parent sections.

⁹ 40 C.F.R. § 230.91(c)(2).

¹⁰ *Id.*

¹¹ *Id.*

¹² Draft EIR, *supra* note 1, at Appendix M, Figure 3.

¹³ *Id.* at Appendix B, Section 7.4.2.

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serves as a buffer zone for the rest of the San Jacinto Wildlife Area that extends to the north of this parcel.¹⁴ Buffer zones, though perhaps less ecologically healthy than the areas which they border, serve a crucial function in preventing encroachment upon ecologically thriving habitats and ensuring that these areas do not degrade to lower levels of health. Additionally, this particular area was chosen as mitigation property in part because it provides habitat for the Stephen's kangaroo rat, which has established burrows there. We, as well as the California Department of Fish and Game, believe that the proposed alignment's use of the buffer zone will adversely affect the entirety of the San Jacinto Wildlife Area due to the loss of the buffer zone and its habitat.¹⁵

The Draft EIR discusses a Southern Avoidance Alternative to the proposed Project alignment that would not require use of the buffer zone. This alignment moves the relevant portion of the Project about 250 feet south, affecting about 1.6 miles of the Project.¹⁶ Despite the minor change and low cost needed to avoid affecting sensitive habitat, the Draft EIR explains that this change would adversely affect the surrounding area by using more area protected by the Western Riverside County Multi-Species Habitat Conservation Plan ("MSHCP"), would require use of farmland, and require land used by a culturally significant milling station, though this site is not listed or eligible for listing on the National Register.¹⁷ However, the Draft EIR also indicates that the existing Villages of Lakeview Specific Plan ("Specific Plan") sites residential development on this same farmland, MSHCP land, and milling station.¹⁸ It thus concludes that the Southern Avoidance Alternative is not feasible because it would require altering the layout of the residential development in the adopted Specific Plan and would not result in the establishment of mitigation properties, as would be required should the SJWA land be acquired.¹⁹

This conclusion is not supported by the no net loss requirement which advocates for avoiding use of wetlands unless it is unfeasible to do so. The Draft EIR indicates that the Southern Avoidance Alternative is feasible by all measures, but relies on the fact that the mitigation property would provide a net benefit to the area and thus the proposed alignments are superior to the avoidance alternative.²⁰ The mitigation property, however, would not fulfill the same functions as the existing buffer zone and loss of this zone would threaten degradation healthy areas of the SJWA, potentially diminishing the effect of the benefits conferred by the mitigation property. Additionally, disruption of a potential development within a Specific Plan is not a consideration under 23 C.F.R. § 774.17, which looks only at existing communities.

Waterkeeper recommends that MCTC reconsider the Southern Avoidance Alternative.

¹⁴ *Id.* at Appendix B, Attachment B, February 2012 Emails between CDFG and RCTC.

¹⁵ *Id.*

¹⁶ *Id.* at Appendix B, Section 7.4

¹⁷ *Id.*

¹⁸ *Id.* at Appendix B, Figure 7.6

¹⁹ *Id.* at Appendix B, Table 7.7

²⁰ *Id.* at Appendix B, Section 7.6.2

B. Where the Project Crosses the San Jacinto River just West of Lake Perris, the Proposed Mitigation Measures Cannot Ensure that the Functional Value of the Impacted Wetlands will be Maintained.

Should MCTC not decide to adopt the Southern Avoidance Alternative, Waterkeeper recommends that MCTC be required to take further mitigation steps to ensure the functional value of the impacted wetlands be maintained. Although the Draft EIR indicates that the 3.4 acres of acquired SJWA land will be replaced with 6.8 acres of habitat elsewhere in the SJWA, Waterkeeper advocates for the 3:1 mitigation ratio requested by CDFG.²¹ Further, the Conceptual Mitigation Plan (“CMP”) lacks specificity as to how mitigation and restoration of full functional value will be achieved.²² The CMP lists the sections that will be covered in a later iteration of the mitigation plan, to be completed “as the project moves closer to implementation,” but does not give an idea of what particular mitigation methods will be used. Examples of such methods are given throughout the CMP, but none of these are singled out for implementation or preference. Lastly, the CMP does not indicate that monitoring requirements will be discussed in the detailed mitigation plan, although this is required per 40 C.F.R. § 230.94 and 33 C.F.R. § 332.4.

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Waterkeeper recommends that MCTC prepare a mitigation plan that indicates the specific steps and methods that will be used to ensure adequate mitigation occurs under the no net loss requirement. We also recommend reconsidering the mitigation ratio as it is likely too low to compensate for the lost functional value of the SJWA buffer zone wetland habitat.

C. Where the Project Merges with SR 79 and Approaches and Crosses the San Jacinto River just South of Gilman Springs Road, the Proposed Mitigation Measures Cannot Ensure Compliance with EPA Compensatory Mitigation Requirements.

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The CMP indicates both temporary and permanent impacts to wetland habitats.²³ It also indicates that wetland impacts at the San Jose River crossing along SR 79 will occur in conjunction with impacts to the same area caused by a separate SR 79 realignment project.²⁴ Consequently, the CMP does not account for impacts that are “wholly attributable” to that project.²⁵ The CMP does not go on to specify, however, what impacts the MCP Project itself will have on the area, instead combining the acreage of affected wetlands along SR 79 with the total acreage of affected wetlands along the entire Project. Waterkeeper is concerned that RCTC has not adequately explored the impacts to wetland habitats along SR 79 because they believe these will undergo mitigation measures under the SR 79 realignment project. Waterkeeper recommends that when preparing the detailed mitigation plan, RCTC should ensure that the effects to wetlands along SR 79 caused by this Project are accounted for and appropriately mitigated. We also recommend that

²¹ *Id.* at Appendix B, Attachment B, October 27 Email from Jeff Brandt, CDFG.

²² *Id.* at Appendix P

²³ *Id.* at Table A

²⁴ *Id.*

²⁵ *Id.*

in setting mitigation requirements, RCTC consider the cumulative effects to these wetland areas caused by both this Project and the SR 79 realignment project. While impacts under each may be insignificant, the cumulative impact of both projects may significantly and adversely affect these sensitive wetland habitats.

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III. The Proposed Best Management Practices Cannot Ensure that the Project Will Not Contribute to Existing Pollutant Impaired of Water Bodies on the Clean Water Act Section 303(d) List.

The Clean Water Act (“CWA”) “makes the addition of pollutants to waters of the United States . . . unlawful unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.”²⁶ The CWA specifically “requires permits for discharges of storm water from industrial/construction and municipal separate storm sewer systems (MS4s).”²⁷ All Caltrans rights of way are covered by the Caltrans’ MS4 permit.²⁸ The MS4 requires storm water dischargers to meet CWA required water quality standards through compliance with low impact development requirements. In order to comply with the MS4, Caltrans developed the Statewide Storm Water Management Plan (“SWMP”), which outlines selection and implementation of BMPs.²⁹ BMPs must be “designed and implemented to reduce the discharge of pollutants . . . to the ‘maximum extent practicable’ (MEP), and to control the discharge of pollutants from regulated construction projects by employing ‘best conventional technology’ (BCT) and ‘best available technology’ (BAT).”³⁰

The Project is located within the San Jacinto River watershed and will drain to various hydrologic areas within the San Jacinto Valley Hydrologic Unit, which include tributaries to other bodies of water beyond the immediate area surrounding the Project.³¹ Some of these hydrologic areas contain waters included on the Clean Water Act’s 303(d) list of impaired waters.³² The Draft EIR states that compliance with the SWMP will ensure that the Project will not have an adverse environmental impact on the water quality of the surrounding hydrologic areas.³³ For the following reasons, we strongly recommend further analysis of the proposed BMPs.

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²⁶ Clean Water Act, 33 U.S.C. § 1311(a) (2012); Draft EIR, *supra* note 1, at 3.10-1.

²⁷ Clean Water Act, 33 U.S.C. § 1342(p) (2012); Draft EIR, *supra* note 1, at 3.10-1.

²⁸ Draft EIR, *supra* note 1, at 3.10-3; National Pollutant Discharge Elimination System Permit for Storm Water Discharges from the State of California, Department of Transportation (Caltrans) Properties, Facilities, and Activities (Order No. 99-06, NPDES No. CAS000003).

²⁹ *Id.* at 3.10-4.

³⁰ Cal. Dep’t Transp., CTSW-RT-02-008, Statewide Storm Water Management Plan, page 3-1 (May 2003), available at http://www.dot.ca.gov/hq/env/stormwater/pdf/swmp_may2003final.pdf [hereinafter SWMP].

³¹ Draft EIR, *supra* note 1, at 3.10-6.

³² *Id.* at 3.10-14.

³³ *Id.* at 3.10-39.

A. Infiltration basins.

Infiltration is the preferred method for runoff treatment. However, infiltration basins require large areas of space and have strict soil requirements. Furthermore, the basins' infiltrative capacity is reduced if they are not preceded by presettling basins for removal of sediment particles.³⁴ The Draft EIR states that between 36 and 41 infiltration basins are proposed for the modified Build Alternatives as a BMP that will prevent contribution to existing impairment of the impaired water bodies affected by the Project. The Draft EIR does not, however, fully assess the feasibility of implementation of the BMP.

The MS4 Permit establishes pretreatment-of-runoff-prior-to-infiltration requirements with which the Draft EIR's proposed infiltration basins must be consistent.³⁵ The Draft EIR does not propose a method for removal of sediment particles prior to infiltration. Sediments and solids are pollutants of concern associated with highway projects.³⁶ If infiltration basins are implemented, presettling basins must also be implemented in order for the Project to comply with the MS4 Permit. If presettling basins are not implemented, the infiltrative capacity of the basins will be reduced and cannot be found to ensure that the Project will not contribute to the existing pollutant impairment of affected impaired water bodies.

The Draft EIR does not specify how the basin infiltration locations were selected or how the basins will be designed to best comply with the recommended 72-hour drawdown rate, the groundwater separation constraints, and the overflow control requirements.³⁷ Furthermore, the Draft EIR does not propose to determine the suitability of the soil conditions until final design. Without these specifications and determinations, the Draft EIR is an inadequate assessment of the feasibility of the proposed infiltration basin BMP.

Even if current soil conditions at the proposed infiltration basin sites are determined inappropriate for implementation of infiltration basins, soil amendments should be considered as a method of restoring the soil to an appropriate condition. Soil amendments include compost and other organic material that help minimize adverse effects of storm water runoff by acting as a filtration medium for the treatment of highway runoff.³⁸ Compost is especially suitable for treatment of highway runoff because it "has a high cation exchange capacity (CEC) that

³⁴ Wash. State Dep't Transp., M 31-16.03, Highway Runoff Manual, page 5-4 (Nov. 2011), *available at* <http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-16/HighwayRunoff.pdf> [hereinafter WA HRM] (discussing guidelines for implementation of stormwater management techniques in areas with climate conditions similar to the Inland Empire).

³⁵ Santa Ana Regional Water Quality Control Board, Riverside County Water Quality Management Plan, Exhibit D Transportation Project Guidance, page 3-6 (Oct. 2012) *available at* http://www.waterboards.ca.gov/rwqcb8/water_issues/programs/stormwater/docs/rcpermit/wqmp/final/EXHIBITD-Transportation_Project_Guidance.pdf [hereinafter WQMP].

³⁶ U.S. Dep't Transp. Fed. Highway Admin., Cal. Dep't Transp., and Riverside Cnty. Transp. Comm'n, Mid County Parkway Revised Water Quality Assessment Report, page iv, (Aug. 2011), *available at* http://midcountyparkway.org/uploads/rdeir-sdeis-rds4fe_technical-report-26.pdf [hereinafter MCP WQAR].

³⁷ WQMP, *supra* at note 35.

³⁸ WA HRM, *supra* note 34, at 5-195-5-197.

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chemically traps dissolved heavy metals. . . . Oils, grease, and floatables are also removed from stormwater as it is filtered through the compost.”³⁹ RCTC should consider the use of soil amendments in conjunction with infiltration basins in order to improve soil permeability and treatment of highway runoff.

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B. Detention Basins.

In areas where infiltration is not feasible, runoff detention must be implemented.⁴⁰ The Draft EIR proposes the implementation of detention basins if the soil conditions are found to be inappropriate for infiltration as a result of infiltration testing at final design. Although the detention basins are proposed as a substitute BMP if infiltration basins cannot be implemented, the Draft EIR does not include sufficient details to support a conclusion that detention basins would be a feasible alternative to the infiltration basins.

Infiltration basins remove a wider range of pollutants than detention basins.⁴¹ Pathogens, dissolved metals, nitrogen, and phosphorous are pollutants of concern in highway runoff.⁴² Each of these pollutants can be removed by infiltration basins, but not by detention basins placed in areas without adequate soil infiltration capacity.⁴³ If infiltration testing results determine soil conditions are inadequate for implementation of infiltration basins, the Draft EIR does not discuss how the substitution of detention basins will be sufficient to prevent runoff from contributing to existing pollutant impaired of the affected impaired water bodies. Tables 3.10E–J in Chapter 3.10 of the Draft EIR compare existing pollutant loading and concentration to anticipated pollutant loading and concentration of developed conditions with BMPs. However, the tables do not provide the anticipated loading and concentration of developed conditions with infiltration basins implemented as compared to developed conditions with detention basins implemented. Infiltration basins’ potential to remove a broader range of highway runoff pollutants than detention basins can affect the anticipated loading and concentration figures provided in these tables. As a result, it is not clear whether the proposed BMPs will prevent the Project from contributing to existing pollutant impairment of affected water bodies.

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In addition, the Draft EIR does not specify the expected drawdown rate of the detention basins, nor does it discuss the means by which the basins will control discharge in the event of overflow. If detention basins are implemented, because they do not treat storm water runoff, discharge from detention basins should be filtered through a system such as a sand filter.⁴⁴ This will better prevent runoff from the Project from contributing to surrounding water bodies’ existing pollutant impairment. We believe further research into the feasibility of detention basins is warranted.

³⁹ *Id.* at 5-196.

⁴⁰ *Id.* at 5-177.

⁴¹ Draft EIR, *supra* note 1, at 3.10-27; MCP WQAR, *supra* note 15 at 31.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ WA HRM, *supra* note 34, at 6A-39.

C. Bioswales.

Biofiltration swales are designed to remove suspended solids from runoff. However, they are not recommended for construction-stage runoff unless methods of presettling are used as well.⁴⁵ If bioswales are implemented during the construction stage of the Project, presettling methods must be required and incorporated into the Stormwater Pollution Prevention Plan's BMPs, as mentioned on page 3.10-39 of the Draft EIR. Bioswales also require soil conditions that allow for infiltration.⁴⁶ Because soil conditions have an impact on the effectiveness of bioswales, the proposed location for the bioswales should be tested for soil permeability.

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D. Maintenance of BMPs.

In order for BMPs to maintain long-term effectiveness, various maintenance requirements must be met.⁴⁷ The Draft EIR states that BMPs will be maintained through the project's compliance with the Storm Water Management Plan. The Draft EIR does not, however, discuss the funding that will be acquired in order to ensure continued maintenance of BMPs or how landscaping plans will accommodate the irrigation needs of the biofiltration BMP. Over time, the permeability of soil decreases, which significantly impacts the effectiveness of infiltration basins and bioswales. The health of the bioswale vegetation must be monitored, infiltration and detention basins must be inspected for problems such as damage or blockage caused by debris, and sediment buildup must frequently be removed from presettling basins.⁴⁸ Without a comprehensive maintenance plan, the feasibility of the proposed BMPs is unclear.

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IV. The Cumulative Impact of All the Projects Occurring in the San Jacinto River Watershed Must be Considered.

The Project is only one of numerous development projects occurring throughout the San Jacinto River watershed. Currently, plans are under way to make improvements to three other regional thoroughfares: Cajalco Road, I-215, and SR-79. There are also plans to site the large-scale World Logistics Center off I-60 to receive shipments from coastal ports. Lastly, the General Plan Land Use Designations indicate future commercial and residential developments south of the Project.⁴⁹ All these developments surround the SJWA and will inevitably result in increased construction and traffic, cumulatively detracting from water quality and wetland health in the SJWA, the San Jacinto River watershed, and the surrounding region. We strongly urge the RCTC to take the cumulative impact of these development projects into account in assessing the need for the Project, as required by the Guidelines for Implementation of the California Environmental Quality Act.⁵⁰

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⁴⁵ *Id.* at 5-54.

⁴⁶ WQMP, *supra* at note 35.

⁴⁷ *Id.* at 3-7.

⁴⁸ MCP WQAR, *supra* note 36, at 5-225-5-237.

⁴⁹ Draft EIR, *supra* note 1, at Appendix B, Figure 7.4.

⁵⁰ 14 C.C.R. § 15130.

In conclusion, while we do not oppose the Project, Waterkeeper has concluded that the Draft EIR's assessment must be expanded to adequately analyze the environmental impacts to the San Jacinto River watershed and to adequately explore mitigation methods. The Project affects vast wetland areas and numerous bodies of water, some of which are already impaired by pollutants. To preserve the health of the region and the benefits provided by these environmental resources, RCTC must develop a more comprehensive risk analysis and mitigation plan before the final version of the Environmental Impact Report/Supplemental Environmental Impact Statement is issued.

We look forward to working with you and will continue to follow the Mid County Parkway Project. If you have any questions regarding our position, please do not hesitate to contact me at (714) 850-1965 or at colin@coastkeeper.org.

Sincerely,

Colin Kelly
Staff Attorney
Inland Empire Waterkeeper