

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, California 92123

MINUTES OF MEETING
May 8, 2002

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Chairman Minan at 9:00 a.m. at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call: Board Members Present: Chairman John Minan, Gary Stephany, Terese Ghio, Richard Wright, Eric Anderson and Vickie Butcher.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Deborah Jayne, Mark Alpert, Bob Morris, John Anderson, Pete Michael, Brian Kelley, Julie Chan, Stacey Baczkowski, Craig Carlisle, Frank Melbourn, Rebecca Stewart, Whitney Ghoram, Sue Pease, Sabine Knedlik, Chehreh Komeilyan, Mo Lahsaie, Ben Neill, Victor Vasquez, Alan Monji, Lisa Brown, Jody Ebsen, Eric Becker, Claudia Villacorta, Don Perrin, Amy Fortin, Brennan Ott, Christina Arias, Leslie Dobalian.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Park Avenue Deposition Service: Grace Verhoven. Public Attendance: RK Ryan, Kathy Steffen, Rick Barthel, Jose Garcia, Jerry Suppa, David Uieuk, self; Everett DeLano, Law Office of Everett DeLano; Laura Hunter, EHC; Bruce Reznik, Stephanie Pacey, SD BayKeeper; Bud Summers, Barbara Biernacka, Hines Nurseries; Richard Watson, RWA; Jayne Joy, David Moryez, Eastern MWD; Chuck Houser, So. CA Soils Testing; Eric Larson, Farm Bureau; Don Weaver, Duke Energy; Rod Lorang, Dan Steuer, Jon Van Rhyn, Paul Davy, Amy King, Jack Miller, Sheri McPherson, County of San Diego; Suzanne Varco, Varco & Assoc.; Gary Clossin, I-Cubed Consulting; Michael Katz, Promenade Mall; Valerie Miller, Farm and Home Advisor; Michael Hazzard, Kevin Craig, So. CA Watershed Alliance; David Gomez, TIA Valley County WD; Joe Jackson, Bob James, Keith Lewinger, Fallbrook PUD; Jim Hsu, Budget Trade & Gas; Steven McDonald, Luce Forward Hamilton & Scripps; Howard Muelle, Jason Jackson, USDA NRCC; Terry Rodgers, Union-Tribune; Bill Ragan, Roberto Ramirez, Robert & Elisabeth Crouch, Mountain Meadow Mushroom Farm; John Wardon, Al and Jill Carrozzo, Hans Christensen, Rick Ruby, Dan Winne, John McFadden,

neighbors to Mushroom Farm; Larry Carlson, USMC Camp Pendleton; Ken Schiff, SCCWRP; Joe Naiman, Fallbrook Village News; Patty Vainik, City of San Diego; Tim Read, Del Mar Thoroughbred Club; David Merk, San Diego Unified Port District.

Item 2 – Public Forum

Rick Ryan, resident of San Diego, expressed his concerns about the implementation of the Adobe Falls Supplemental Environmental Project for Adobe Park in Alverado Canyon.

Laura Hunter, Environmental Health Coalition, talked about the results of a recent poll taken on a Defense Authorization bill. Ms. Hunter also talked about a symposium on power plant dry cooling applications sponsored by the Air & Waste Management Association.

Michael Hazzard, Clean Aliso Creek Association, said there was basically no provisions for water quality in the EIR for the proposed strip mall at the top of Aliso Creek. He also expressed his concerns about the bacterial pollutants in the Aliso Creek watershed.

Bruce Reznik, San Diego BayKeeper, expressed his thanks to staff for scheduling the sediment cleanup workshop for San Diego Bay. He also said he was surprised that the Point Loma Permit that was approved by the Board in April was being appealed and offered support for the permit.

Item 3 – Minutes of Board Meeting of April 10, 2002

This record of the minutes of the meeting on this date is not intended for the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the Regional Board office for assistance.

Mr. Stephany moved approval of the April 10, 2002 minutes. The motion was seconded by Ms. Butcher and approved by unanimous vote.

Item 4 – Chairman's, Board Member's, State Board Liaison's and Executive Officer's Reports.

Mr. Wright briefly spoke about the Watershed Perspectives conference he co-chaired on April 25 & 26, 2002.

Mr. Anderson thanked Executive Officer Robertus for the presentation he gave to the Flower & Plant Association.

Mr. Stephany said he didn't have anything to report on the budget.

Ms. Ghio asked Mr. Robertus questions about the hiring freeze.

Chairman Minan encouraged the Board Member's that hadn't turned in their Form 700's to do so.

Chairman Minan said he was concerned about some proposed legislation by Senator Bill Morrow that supported the scaling back of stormwater regulations. He felt Mr. Morrow had misinformation as to the operative effects of the stormwater permit and encouraged Mr. Robertus to contact and provide him with accurate information. Mr. Stephany said he felt a Board Member should talk to Mr. Morrow.

Chairman Minan talked about the CODAR system presentation by Scripps Institution of Oceanography he attended. He also talked about some issues that were discussed at the State Board Chair's meeting. He said the next WQCC would be held November 7 & 8, 2002 in San Francisco.

Mr. Robertus talked about several items in his report including the Watershed Perspectives conference, Chollas Creek TMDL issue, Model SUSMP, Warm Springs Creek, Proposition 13 projects, list of SEPs, the quarterly Compliance Report, update on the 303(d) list and two workshops coming up.

Mr. Stephany referred to the Monthly Management Report and said he was disturbed that the first five projects in the priority ranking were always on hold. He suggested changing the ranking. Ms. Ghio suggested adding another column explaining why the project was on hold and what was being done to get it off hold. Mr. Robertus said he would review the list.

Board Members asked questions of Mr. Robertus.

Item 5 – Waste Discharge Requirements Rescission: America's Cup Harbor (WDR Orders No. 94-100 Mauricio & Sons, Inc.; Order No. 94-101, Bay City Marine, Inc.; Order No. 94-102, Kettenburg Marine Corp.; Order No. 99-06, Driscoll Custom Boats and Port of San Diego, San Diego County) and U.S. Navy, Project P-338S,

Pier 3 Dredging, San Diego County (Order No. 97-063) (tentative Order No. R9-2002-0072) (*Dat Quach*)

Mr. Stephany moved approval of Item 5. The motion was seconded by Mr. Wright and approved by unanimous vote.

Item 7 - PUBLIC HEARING (Continued): Administrative Assessment for Civil Liability against Chung Kwan Hsu and Hui Mei Hsu, owners and operators of Budget Trade & Gas, Escondido, CA (tentative Order No. R9-2002-0122) (*Sue Pease*)

The public hearing was opened at 10:10 a.m. Mr. Robertus introduced the item and staff member Sue Pease gave the presentation.

Board Members asked questions of Ms. Pease.

Susan Gehring, translator for Mr. Hsu, read a statement prepared by Mr. Hsu that gave a brief history of the site. Mr. Hsu said he was having financial difficulties and was not able to pay all the fines.

Chuck Houser, So. CA Soils and Testing, consultant for Budget Trade and Gas, spoke briefly about the project he was working on and answered questions asked by the Board.

Chairman Minan asked that staff assist Mr. Houser in talking with the City of Escondido to request they waive the refundable deposit they require to put in a well at a site.

Mr. Stephany asked Ms. Pease if the leaks had been stopped. Ms. Pease said the County records demonstrated that he had passed all his leak detection tests. She also said there didn't appear to be any new leaks.

Chairman Minan talked about the recommendations made by Ms. Pease in her presentation.

Mr. Richards said the Regional Board had the ability to shelve the first ACL that was adopted by the Board and said if asked, he would advise the Attorney General's office that it could be deferred indefinitely.

Mr. Robertus talked about the Board's options in taking an action.

The public hearing was closed at 11:40 a.m.

Ms. Ghio said she felt Mr. Hsu had demonstrated his intent to comply with the cleanup order and didn't want to put additional financial burdens on him as long as he continued to comply.

Ms. Ghio made a motion to put a stay on the collection of fines from ACL No. 2000-23 and not request any additional funds. The motion was seconded by Mr. Wright and approved by unanimous vote.

A motion was made by Mr. Stephany to suspend taking action on ACL Complaint No. 2000-56 and asked staff to give a report on the site every six months. The motion was seconded by Mr. Wright and approved by unanimous vote.

Chairman Minan said that the guidance from the Board was that Pay for Performance should occur.

Item 6 - PUBLIC HEARING: Administrative Assessment for Civil Liability containing a Mandatory Penalty against Promenade Mall Development Corporation for Violation of Order No. 96-41, NPDES Permit No. CAG919002, Waste Discharge Requirements for a Permanent Dewatering System at Pacific Beach Promenade, 4150 Mission Blvd., San Diego CA. If the discharger elects to waive their right to a hearing, the matter will be rescheduled to allow for a 30-day public review period at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2002-0052) *(Rebecca Stewart)*

Mr. Robertus introduced the item and staff member Rebecca Stewart gave the presentation.

Other speakers included:

Suzanne Varco, Varco & Associates, attorney for Promenade Mall

Michael Katz, President, Promenade Mall

Gary Clossin, I-Cubed Consulting, consultant for Promenade Mall

Board Members asked question of Ms. Varco, Mr. Katz and Mr. Clossin.

Mr. Stephany said staff should review the Pollution Prevention Plan.

Ms. Varco made closing remarks. Ms. Stewart made closing remarks.

Board Members asked questions of Ms. Stewart.

Mr. Robertus recommended adopting the amended order of \$48,000 with the possible consideration of the Pollution Prevention Plan.

Chairman Minan discussed three options for the Board to consider. First, if it was determined that the cause of the discharge was a result of an intentional act by a third party, the penalty could be dismissed. Second, if it was determined that there was an operational upset, the three violations could be counted as one. Third, adopt the amended order as recommended by Mr. Robertus.

Mr. Stephany made a motion to approve Order No. R9-2002-0052 with the amendments that, as a result of a single operational upset, the cooper and zinc violations be treated as one violation reducing the amount of liability to \$33,000 with potential offset if staff and the Board approved the Pollution Prevention Plan. The motion was seconded by Ms. Ghio and approved by unanimous vote.

Mr. Richards recommended that staff assess the Pollution Prevention Plan and report back to the Board with their recommendation later in the day.

The meeting was recessed for lunch at 12:45 p.m.

Item 15 - Executive Session - Discussion of Ongoing Litigation.

The Regional Board may meet in closed session to discuss ongoing litigation for the following case(s) with counsel:

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section, et al.. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61; and the related "Surfrider" case:

Surfrider Foundation, San Diego Chapter v. Robert Ortega, et al., Case No. 99-CV-2441-BTM(JFS)

Building Industry Association of San Diego County, et al. vs. State Water Resources Control Board, et al.; San Diego County Superior Court; Case No. GIC 7890263.

The Executive Session was held during the lunch break and the Building Industry Association lawsuit was discussed.

The meeting reconvened at 1:35 p.m.

Item 8 - Waste Discharge Requirements: Robert and Elisabeth Crouch, Mountain Meadow Mushroom Farm, San Diego County (tentative Order No. R9-2002-0115) (*Bob Morris*)

Mr. Robertus introduced the item and senior staff member Bob Morris gave the presentation.

Mr. Stephany was concerned with the wording about the six inches of rainfall and said it could be interpreted many different ways and asked that it be reworded.

Chairman Minan noted that the item was being brought to the Board to issue waste discharge requirements and was not an enforcement action.

Mr. Richards said the waste discharge requirements were categorically exempt from the California Environmental Quality Act.

Mr. Anderson disclosed that he knew Mr. Crouch and had been to his farm but felt he could make an impartial decision.

Other speakers included:

Robert Crouch, owner of the Mountain Meadow Mushroom Farm

Bill Ragen, consultant with Ragen & Associates

Steven McDonald, Luce, Forward, Hamilton & Scripps, represented Mr. Crouch

Eric Larson, San Diego County Farm Bureau

Everett DeLano, Law Offices of Everett DeLano

John McFadden, neighbor to the farm

Tim Read, Del Mar Thoroughbred Club

Dan Winne, property owner near the farm

Al Carrozzo, resident near the farm

John Wardon, resident near the farm

Hans Christensen, neighbor

Stephanie Pacey, represented the San Diego Bay Council

Mr. Richards read statements left by Kendrick Barthel and Richard Ruby, neighbors of the Mushroom Farm.

Mr. Crouch made closing remarks.

Board Members discussed ground water monitoring with Mr. Morris.

Mr. Morris addressed Mr. Stephany's earlier comment and proposed changing the wording in Finding 4, Bullet 4, Page 1 to read "Construct an additional retention pond in the wharf area to provide containment for a 25 year intensity, 24-hour duration storm. Mr. Morris also said he didn't object to revising Finding 3 to add the words "that would pose a threat to water quality" at the end of the sentence, per Mr. DeLano's earlier request.

Mr. Anderson asked that the words "industrial activities" be changed to "agricultural activities."

Mr. Morris suggested that staff further evaluate ground water monitoring and get back to the Board with a report on whether or not they recommend changes to the ground water monitoring.

Mr. Morris recommended adding a new requirement to facility design and operations specifications which would be C-7, Pesticide Storage and Handling, and would read "Areas where pesticides are stored or handled should be isolated from stormwater runoff and ground water."

Mr. Robertus recommended that the Waste Discharge Requirement's with errata and the amendments be adopted by the Board.

Mr. Stephany suggested monitoring the discharge before it went into the groundwater.

Chairman Minan said he was concerned about the language in the discharge specifications, B-6, Page 4, having to do with odors. He made a motion to change the wording to "The discharger shall not cause water pollution and nuisance, including unusual odors or other nuisances beyond the limits of the dischargers property." The motion was seconded by Mr. Anderson and approved with abstention from Mr. Wright.

The Board directed Mr. Robertus to use the 13267 letter to require effluent monitoring.

Chairman Minan made a motion to approve Order No. R9-2002-0115 with errata and amendments. The motion was seconded by Ms. Ghio and approved by unanimous vote.

Item 9 - **PUBLIC HEARING:** Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate Total Maximum Daily Loads (TMDLs) for Nutrients in the Rainbow Creek Watershed, San Diego County (tentative Order No. R9-2002-0108). (*Lisa Brown*)

Mr. Robertus introduced the item and staff member Lisa Brown gave the presentation.

Other speakers included:

Jack Miller, County of San Diego

Rod Lorang, County of San Diego

Bud Summers, Hines Nurseries

Richard Watson, planning consultant for Hines Nurseries

Eric Larson, San Diego County Farm Bureau

Board Members discussed the item and were in agreement that there were too many issues that needed to be addressed to take action at that time.

Chairman Minan said he was uncomfortable in closing the public comment period.

Mr. Richards recommended closing the public comment and participation period and explained why. Mr. Stephany disagreed with Mr. Richards.

Mr. Stephany made a motion to continue the hearing within 60 days after the State Board's consideration of the 303(d) list. The motion was seconded by Ms Ghio and approved by unanimous vote. Staff was directed to work with the County and other parties in the meantime to develop an agreeable working document.

Item 10 - Fallbrook Public Utility District (PUD) request for review of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies* as a result of Divers Against Polluters' intent to sue Fallbrook PUD for violations of the Clean Water Act (*John Robertus*)

Mr. Robertus introduced the item.

Keith Lewinger, Manager, Fallbrook Public Utility District, explained his situation to the Board. He asked that staff form a task force of representatives from the regulated community to write a permit that could be adopted by the Board that would keep third parties from suing for events that couldn't be prevented.

Other speakers included:

Stephanie Pacey, represented the San Diego Bay Council

Robert James, Fallbrook Public Utility District

Joe Jackson, Fallbrook Public Utility District

Staff member Victor Vasquez made a few brief comments.

Mr. Robertus recommended leaving the Order as written.

Chairman Minan asked Ms. Ghio and Mr. Wright to look into the concerns expressed by Mr. Lewinger with Mr. Robertus and Mr. Richards.

Item 6 was reopened for discussion.

Michael Katz expressed his opinion of Mr. Robertus' and Mr. Richard's decisions and advice to the Board on the item.

Ms. Stewart said staff reviewed the regulations for offsetting penalties for Pollution Prevention Plans. She said only one \$3,000 offset could be allowed for the Pollution Prevention Plan if it was approved.

Board Members asked Mr. Richards and Mr. Robertus questions about the possibility of a Supplemental Environmental Project.

Board Members also expressed concern for the lack of notification to NPDES dischargers that Migden penalties went into effect on January 1, 2000. Ms. Ghio made a motion to reopen the discussion that lead to the earlier adoption of Order No. R9-2002-0052 and reconsider their action.

Mr. Wright left the meeting at 6:43 p.m.

Chairman Minan said he felt it was the consensus of the Board that the item should be continued. The earlier action that adopted Order No. R9-2002-0052 was withdrawn.

Mr. Robertus said he would refrain from issuing the Order and would bring the item back at a future meeting.

Item 11 - Status Report: Water and Wastewater Infrastructure Projects in Tijuana and Tecate Mexico (*Claudia Villacorta*)

Mr. Robertus introduced the item. Staff member Claudia Villacorta gave a brief presentation.

Lori Saldaña, Border Environment Corporation Commission, gave a status report on the water and wastewater infrastructure projects.

Ms. Ghio asked for copies of the overheads.

Item 12 - Status Report: Southern California Coastal Water Research Project Model Monitoring Program for Large Ocean Discharges in Southern California. The Board will receive a report on the project for development of tools for basic design of ocean monitoring programs. (*Art Coe*)

Mr. Coe introduced the item. Ken Schiff, Southern California Coastal Water Research Project Authority, gave the presentation.

Item 13 - Executive Session - Consideration of Initiation of Litigation. The Regional Board may meet in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control or the federal Clean Water Act.

The Executive Session was not held.

Item 14 - Executive Session - Discussion of Pending Litigation. The Regional Board may meet in closed session to discuss pending litigation.

The Executive Session was not held.

Item 16 - *Executive Session* – Personnel.

The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)].

The Executive Session was not held.

Item 17 - Arrangements for Next Meeting and Adjournment

Wednesday, June 12, 2002 - 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

There being no further business, the meeting was adjourned at 7:41 p.m.

These minutes were prepared by:

Lori Costa
Executive Assistant

Signature of Executive Officer:

John H. Robertus