

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

MINUTES OF MEETING
December 11, 2002

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Vice Chairman Stephany 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: Gary Stephany, Janet Keller, Richard Wright, Laurie Black and Vickie Butcher.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Julie Chan, John Anderson, Brian Kelley, John Phillips, Mark Alpert, John Odermatt, Craig Carlisle, Frank Melbourn, Sue Pease, Sherrie Komeylyan, Barry Pulver, Vicente Rodriguez, Brian McDaniel, Alan Monji, Victor Vasquez, Jody Ebsen, Paul Richter and Kelly Dorsey.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Pete Silva. Park Avenue Deposition Service: Grace Verhoeven. Public Attendance: Ted Bromfield, Chris Gonaver, Grace Lowenberg, Ted Olson, Jeff Shoaf, City of San Diego; Veryl Wittig, URS; Scott Martin, Levine Fricke; Karrie Field, Kinder Morgan; Marge Knothe, self; Bob James, Keith Lewinger, Fallbrook PUD; Bill Phippard, Chevron Products Co.; Loren Chico, San Diego City Schools; Joe Naiman, Fallbrook/Bonsall Village News; Michael Chee, NASSCO; Craig Mann, Tri-County Drilling, Inc.; Bill Golightly, AMEC; Chuck Houser, So. Ca. Soil & Testing.

Item 2 – Public Forum

Marge Knothe, a homeowner in the City of Poway, expressed her concern about the potential flooding and erosion impacts in the Green Valley Creek tributary associated with a concrete brow ditch being constructed across the flood way by one of her neighbors.

Chairman Stephany asked Executive Officer Robertus and staff to look into Ms. Knothe's concerns.

Item 3 – Minutes of Board Meeting of November 13, 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. Wright moved approval of the November 13, 2002 minutes. The motion was seconded by Ms. Butcher and approved by unanimous vote.

Consent Items 5 and 6:

Item 5 – General Waste Discharge Requirements for the Disposal and/or Reuse of Petroleum Fuel Contaminated Soils (FCS) in the San Diego Region (tentative Order R9-2002-0342) (*Brian McDaniel*)

Item 6 – Administrative Assessment of Civil Liability containing a Mandatory Minimum Penalty against Rancho California Water District for violation of Order No. 2001-0096, NPDES Permit No. CAG919002, for Discharges of Groundwater Extraction Waste Discharges from Construction, Remediation and Permanent Groundwater Extraction Projects to Surface Waters within the San Diego Region, except for San Diego Bay. The Regional Board will consider comments received during the public review period and decide on an Order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2002-0378) (*Sherrie Komeylyan*)

Ms. Black moved approval of Consent Items 5 and 6. The motion was seconded by Mr. Wright and approved by unanimous vote.

Item 7 – NPDES Permit Reissuance: National Steel and Shipbuilding Co. Shipyard - San Diego Bay, San Diego County (tentative Order No. R9-2002-0175, NPDES Permit No. CA0109134) (*Paul Richter*)

Item 7 was postponed.

Item 9 - PUBLIC HEARING: Administrative Assessment of Civil Liability against City of San Diego, AMEC Environmental, and Tri-County Drilling, Inc., for failure to submit technical reports required pursuant to Water Code section 13267 (Tentative Order No. R9-2002-0381) (*Barry Pulver*).

Chairman Stephany explained the formal hearing procedures. The Public Hearing opened at 9:20 a.m.

Staff member Barry Pulver gave the presentation.

The City of San Diego, AMEC Environmental, Tri-County Drilling, and Chevron all waived their right to cross-examine Mr. Pulver.

Speakers for the City of San Diego:

Ted Bromfield
Chris Gonaver
Ted Olson
Grace Lowenberg

Senior staff member, Julie Chan, cross-examined speakers from the City.

AMEC, Tri-County and Chevron waived their right to cross-examine the City of San Diego.

Board Members made comments and asked questions of the City.

Speakers for AMEC Environmental:

John Dillard
William Golightly

Regional Board staff waived their right to cross-examine AMEC. The City of San Diego asked one question of AMEC. Tri-County and Chevron waived their right to cross-examine AMEC.

The hearing was recessed for lunch and Executive Session at 12:00 p.m.

Item 14 – *Executive Session* - Discussion of Ongoing Litigation

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

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.

Rakhra Groups, Inc., v. San Diego Regional Water Quality Control Board Superior Court of California, San Diego County; Case No. GIC 776251 and Case No. GIC 786516

The meeting reconvened at 1:00 p.m.

Chairman Stephany announced that the Board discussed the IBWC, Building Industry Association, Rakhra Groups and Surfrider Foundation lawsuits during the Executive Session.

Item 9 – (con’t.)

Speakers for Tri-County Drilling:
Craig Mann
Tim Duddie

Regional Board staff waived their right to cross-examine Tri-County Drilling. The City of San Diego and AMEC asked questions of Tri-County Drilling. Chevron waived it’s right to cross-examine Tri-County Drilling.

Additional evidence was accepted into the record with no objections from all parties.

Speakers for Chevron:
Bill Phippard

Tri-County Drilling waived its right to closing statements. AMEC, the City of San Diego and Regional Board staff made closing statements.

Ms. Black asked a question of the City of San Diego. Board Members asked questions of staff.

The Public Hearing was closed at 2:00 p.m.

Board Members moved to closed session to deliberate.

Upon return, Chairman Stephany announced that in closed session the Board found the responsible dischargers to be the City of San Diego and AMEC Environmental, removing Tri-County from the Order. Assessment of civil liability was to start on July 1, 2002, which would be 127 days of violations times \$400 per day equaling \$50,800.

Ms. Black made a motion to direct staff to make the changes to the Order and bring it back the Board for approval later in the meeting. The motion was seconded by Ms. Keller and approved by unanimous vote.

Item 10 - PUBLIC HEARING: Administrative Civil Liability with Mandatory Minimum Penalties against Kinder Morgan Energy Partners - SFPP, LP Mission Valley Terminal, Treatment System, San Diego, California, for Violations of Order No. 2001-96, NPDES Permit No. CAG919002. If the discharger elects to waive their right to a hearing, the matter will be removed from this agenda to allow for a 30-day public review period. (Tentative Order No. R9-2002-0385) (*Sherrie Komeylyan*)

The Public Hearing was opened at 2:45 p.m.

Mr. Robertus introduced the item. Staff member Sherrie Komeylyan gave the presentation.

Board Members asked questions of staff.

Other speakers included:

Scott Martin, Levine-Fricke, consulting firm for Kinder Morgan
Karrie Field, represented Kinder Morgan

Ms. Komeylyan made closing statements.

The Public Hearing was closed.

Chairman Stephany asked Mr. Richards if the Regional Board had to fine the discharger for every violation, if the violations were occurring while doing additional testing to find the source of the contamination. Mr. Richards replied yes.

Mr. Wright made a motion to approve Order No. R9-2002-0385. The motion was seconded by Ms. Keller and approved by unanimous vote.

Item 11 - PUBLIC HEARING: Administrative Assessment for Civil Liability containing a Mandatory Penalty against Fallbrook Public Utility District for Violation of Order No. R9-2000-0012, NPDES Permit No. CA0108031, Waste Discharge Requirements for the Fallbrook Public Utility District, Wastewater Treatment Plant No. 1, Discharges to the Pacific Ocean via the Oceanside Ocean Outfall. 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. 2002-0383) *(Frank Melbourn)*

The Public Hearing was opened at 3:20 p.m.

Mr. Robertus introduced the item then staff member Frank Melbourn gave the presentation.

Bob James, Fallbrook Public Utility District, asked that the hearing not be held until after the first of the year.

Mr. Robertus explained to the Board his reasons for not postponing the matter.

Chairman Stephany said he was going to continue with the Public Hearing.

Bob James, Fallbrook Public Utility District, continued his presentation.

Mr. Melbourn made closing statements.

The Public Hearing was closed at 4:15 p.m.

After Board Member discussion, Ms. Black made a motion to approve Order No. R9-2002-0012. The motion was seconded by Ms. Keller and approved by unanimous vote.

Item 9 – (con't.)

The Board discussed the revised Order. Ms. Keller asked that the last sentence in number 6 be left out. Mr. Stephany asked staff to rewrite number 6. Mr. Richards made a suggestion as to how it could be written then left the meeting with staff to rewrite it.

Item 12 - PUBLIC HEARING: Administrative Assessment for Civil Liability against Richmond American Homes for failure to pay storm water annual fees in violation of California Water Code section 13260 for the construction site located at Butterfield Stage and Nighthawk Pass, Temecula. 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. R9-2002-0382) (*Vicente Rodriguez*)

The discharger waived their right to a hearing therefor the Public Hearing was not held.

Item 13 - PUBLIC HEARING: Administrative Assessment for Civil Liability against SWC Rancho 35 LLC for failure to pay storm water annual fees in violation of California Water Code section 13260 for the construction site located at Del Dios Highway and Bing Crosby Way, Rancho Santa Fe. 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. R9-2002-0384) (*Vicente Rodriguez*)

Item 13 was removed from the agenda.

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

John Robertus talked about the City's Clean Water Task Force meeting he attended in December. He also said he would be attending the Industrial Environmental Association Conference.

Chairman Stephany said he would like Mr. Robertus to send a letter to the County of San Diego or the Dept. of Environmental Health about the poor water quality of Lake San Marcos and the possible threat to public health. He said the lake should be tested.

Mr. Wright talked about the sewage overflows workshop which he and Mr. Stephany were the panel of. They recommended no action by the Board to change Order No. 96-04. He noted that Mr. Robertus was going to look into enhancing the data on the reports.

Mr. Robertus talked about the status of fee collections and said that the San Diego Region was the only region without fees overdue for 2001. The Board commended staff for their effective work in collecting outstanding annual fees.

Mr. Wright said he attended a public meeting in Tijuana on their master plan for water and wastewater infrastructure.

Item 9 – (con't.)

Mr. Richards presented the suggested revision to finding number 6 in the tentative Order. The second sentence would read, "Tri-County's failure to take affirmative steps to ensure timely submission of the reports required by the Regional Board's investigative order is excusable due to this financial hardship and Tri-County's lack of culpability for causing or permitting the discharge." The third sentence would read, "Thus, Tri-County should not be assessed any civil liability for failing to submit the required technical reports."

Ms. Black made a motion to approve Order No. R9-2002-0381 with the revision suggested by Mr. Richards. The motion was seconded by Ms. Keller and approved by unanimous vote.

Item 15 – *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 16 – *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 17 – *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 18 - Arrangements for Next Meeting and Adjournment

Wednesday, February 5, 2003 - 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 4:50 p.m.

These minutes were prepared by:

Signature of Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus