

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

MINUTES OF MEETING
September 14, 2005

Chairman Minan called the regular meeting of the California Regional Water Quality Control Board, San Diego Region, to order 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: John Minan, Jennifer Kraus, Richard Wright, Eric Anderson, Susan Ritschel, Daniel Johnson and Alan Barrett.

Staff Present: John Robertus, Arthur Coe, Michael McCann, David Barker, Lori Costa, Mark Alpert, Bob Morris, Brian Kelley, Craig Carlisle, Dave Gibson, Bruce Posthumus, John Anderson, Pete Michael, Kristin Schwall, Frank Melbourn, Eric Becker, Phil Hammer, Chris Means, Mike Porter, Deborah Woodward, Bob Rossi, Charles Cheng, Alan Monji, Lesley Dobalian, Emma Palencia, Victor Vasquez, Megan Quigley, Tom Alo, Jeremy Haas and Christina Arias.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Jan White & Associates Reporting: Aimee Moore. Public Attendance: Wayne Rosenbaum – Foley & Lardner; Din Daneshfer – City of National City; Bob Stuart – The Julian News; Mark Rodriguez, Escondido resident; Dan Cannon, Robin Miller – City of Poway; Hani Anthony, Alan Langworthy – City of San Diego; Keith Till, Robert Zaino – City of Santee; Taylor Miller, Joan Herecha – Sempra Energy; Patrick Thomas – City of Escondido; John Lemmo – Foley & Lardner; Michael Thornton, Maggie Houlihan – SEJPA; John Stump – City Heights resident; Richard Runge – SCWD; Van Collinsworth – Preserve Wild Santee; Kathleen Flannery, Jon VanRhyn, Todd Snyder, Mayela Padilla, Barry Pulver, Michelle Stress, Kelly Barker, JoAnn Weber, Joseph De Stefano – County of San Diego; Lee Michlin – Abtech Industries; John Quenzer – D-Max Engineering; Malyk Tautui – City of La Mesa; Geoffrey Smith – Escondido Creek Conservancy; Erik Steenblock, Khosro Aminpour – City of Chula Vista; Chris Zircle, Drew Kleis – City of San Diego; Elaine Lukey – City of Carlsbad; Gabriel Solmer – San Diego BayKeeper; Andy Bullington- City of Encinitas, Shawn Atherton – self; Naden Spentis – Solar Turbines; Patti Krebs – IEA; Larry McKenney, Chris Crompton – County of Orange; Gordon Lutes –

Project Design Consultants; Danny King – City of Solana Beach; John Phillips – City of El Cajon; Lisa Kay, Art Barnett – Weston; Jim Linthium – SANDAG; Jason Uhley – RCFC; Susan Huntington – SD River Conservancy; Nancy Gardine, Dave Meyer – Brown & Caldwell; Mo. Lahsaie, Hawkeye Sheene – City of Oceanside; Rosanna Lacavra – City of Del Mar; Shane Landry – EDAW; Lisa Gomez, Fred Jacobsen – SDG&E; Karen Helyer, Michelle White – Port of San Diego; Roger Morrison, Dennis Beohter, Robin Miller, Dan Cannon – City of Poway; Melesh A., Kathy Wells – City of Encinitas; Mayor Randy Voepel – Santee; David Hogan – Center for Biological Diversity; Kelly Richardson – Latham & Watkins; Robert Jackson, Joan Heredia – Palomar Energy.

Item 2 – Public Forum

Mayor Randy Voepel, City of Santee, registered their objections to the Notice of Violations issued to Santee and 14 other cities in the region and requested that they be withdrawn.

Board Members, Mr. Robertus, Mr. Richards, staff members Bob Morris and Phil Hammer discussed Mayor Vopel's request. Chairman Minan requested that Mr. Robertus address the issue in his next Executive Officer's Report.

David Hogan, Center for Biological Diversity, talked about the Sky Ranch project, Greystone Homes, in the City of Santee and requested the Regional Board deny the 401 Water Quality Certification for the project due to several violations.

Bob Stuart, Julian News, talked about the Waste Discharge Requirements for Lake Cuyamaca and requested that staff respond to his questions about the project.

John Stump, City Heights resident, asked Regional Board staff to review the City of San Diego's mitigated Negative Declaration for Fox Park.

Van Collinworth, Preserve Wild Santee, requested that the Regional Board reject the application of Greystone Homes for a 401 permit due to inadequate avoidance of and mitigation for impacts to ephemeral streams on Rattlesnake Mountain.

Item 3 – Minutes of Board Meeting of August 10, 2005

This record of the minutes of the meeting on this date is not intended as 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 August 10, 2005 minutes. The motion was seconded by Ms. Ritschel and approved with abstention by Mr. Barrett.

Item 4 – Chairman's, Board Members', State Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

Chairman Minan announced that the State Senate confirmed Board Members Anderson, Kraus, Johnson, Ritschel and Barrett's appointments on September 8, 2005.

Chairman Minan also announced that Ms. Tam Doduc was elected Chair of the State Board. He also briefly spoke about the San Diego River Conservancy, a presentation he was going to make to the Association of California Water Agencies in Laguna Beach and the WQCC in Sacramento on September 19 & 20.

Mr. Robertus announced that Deborah Woodward of the Grants Unit was awarded a Certificate of Recognition for her ongoing commitment to customer service. Chairman Minan presented the certificate.

Mr. Robertus talked about the Grants Update and Supplemental Environmental Projects, two items in his report.

Chairman Minan referred to the Grants Update item and asked what role, if any, did the Regional Board have in the oversight responsibility for the expenditure of state monies. Mr. Robertus talked about the process of granting the funds. Senior staff member David Gibson said the Regional Board had the administrative role and the State Board had control over the grants/contracts.

Board Members discussed Supplemental Environmental Projects with Mr. Robertus.

Mr. Robertus talked about a few items that were not in his report that included: a presentation on San Diego Bay Sediment Management and Remediation he gave on September 7th at the State Board, a meeting he attended with the City and County Managers Association on September 8 regarding the NOV's that were

issued, and said the revised Regionalization of the State Board's Strategic Plan was finalized.

Consent Calendar: Items 5 through 10

Board Member Wright requested that Item 9 be removed from the consent calendar.

Item 5 – Revision of Waste Discharge Requirements (change in facility name and ownership): LB Twin Lakes Resort, Owner: Mr. Loc Nguyen, San Diego County (tentative Addendum No. 4 to Order No. 94-119) (*Krisitin Schwall*)

Item 6 – Revision of Waste Discharge Requirements (change in ownership): Anza Pines Mobile Home Park, Owner: Desert Center RV & Manufactured Homes, Inc., Riverside County (tentative Addendum No. 1 to Order No. 95-15) (*Eric Becker*)

Item 7 – Waste Discharge Requirements: Southern California Edison Company, San Dieguito Wetlands Restoration Project. New Waste Discharge Requirements for fill and dredging of San Dieguito Lagoon and River. (Tentative Order No. R9-2005-0213) (*Mike Porter*)

Item 8 – Metropolitan Transit System (MTS): Administrative Assessment of Civil Liability against the MTS (formerly known as the Metropolitan Transit Development Board) for Violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity at its Mission Valley East Light Rail Transit Project in San Diego. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0062. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0173) (*Vicente Rodriguez*)

Item 10 – City of San Diego, Point Loma Treatment Plant: Administrative Assessment of Civil Liability as a \$42,000 Mandatory Minimum Penalty against the City of San Diego, Point Loma Treatment Plant for violations of effluent limitations contained in the National Pollutant Discharge Elimination System Permit (NPDES) for the Point Loma Metropolitan Wastewater Treatment Plant Discharge to the Pacific Ocean through the Point Loma Ocean Outfall, San Diego County. The Regional Board will consider a proposal to fund a Supplemental Environmental Project (SEP) with a portion of the \$42,000 liability. If the

Regional Board rejects the proposal, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0229) (*Mark Alpert*)

Ms. Ritschel moved approval of Consent Items 5, 6, 7, 8 and 10. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Board Member Johnson recused himself from participating in Item 9 due to a potential conflict.

Item 9 – Settlement of Liability Against JRMC Real Estate, Inc. and the City of Escondido for Violations of Water Code Section 13376, SWRCB Order No. 99-08-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, Escondido Research & Technology Center, Escondido, San Diego County* (WDID No. 9 37S320081), and Order No. 2001-01, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District*. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability (ACL) Complaint Nos. R9-2005-0059 and 0097. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0237) (*Frank Melbourn*)

Mr. Robertus introduced the item and staff member Frank Melbourn gave a brief presentation.

Board Members asked questions of staff and made comments.

Other speakers included:

Geoffrey Smith, Escondido Creek Conservancy

Mark Rodriguez, Escondido resident

Mr. Robertus recommended accepting the settlement offer.

Ms. Ritschel moved approval of Consent Item 9. The motion was seconded by Mr. Anderson and approved with opposition by Mr. Wright. *Mr. Johnson did not participate.*

Remainder of the Agenda (Non-Consent Items):

Item 11 – New NPDES Permit: City of Escondido, Industrial Brine Collection System – Discharge to the Pacific Ocean via the San Elijo Ocean Outfall. Phase I of the IBCS will consist of a 12-inch diameter pressure pipeline that will serve the Palomar Energy Project (PEP). PEP is a 550-megawatt power plant currently being constructed by Palomar Energy LLC, owned by an entity of Sempra Energy. (Tentative Order No. R9-2005-0139, NPDES No. CA0109215) (*Paul Richter*)

Board Member Johnson said that the City of Escondido could be a client of his firm in the future on an unrelated project but felt that his judgment would not be biased.

Mr. Robertus introduced the item and staff member Paul Richter gave the presentation.

Other speakers included:

Patrick Thomas, City of Escondido

Kelly Richardson, Latham & Watkins

Wayne Rosenbaum, Foley & Lardner

Maggie Houlihan, City of Encinitas Councilmember

Gabriel Solmer, San Diego BayKeeper

Mr. Thomas made closing comments.

Mr. Richter made closing comments.

The meeting was recessed for lunch at 12:15 and reconvened at 1:05 p.m.

Mr. Robertus recommended adopting the amended order.

Board Members asked questions and made comments

Mr. Thomas requested an amendment to the language in the permit. Mr. Richardson suggested some additional language to the amendment. Mr. Rosenbaum said his client, Joint Powers Authority, opposed the suggested amendments. *The language was not amended.*

Mr. Barrett moved approval of Order No. R9-2005-0139. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Item 12 – PUBLIC WORKSHOP: The Regional Board will conduct a public workshop on the reissuance of the San Diego Municipal Storm Water Permit (Order No. 2001-01, CAS018758). A draft of the permit has not yet been released. The purpose of the workshop is to provide information to the Regional Board members on the San Diego County municipal storm water program in general, as well as the anticipated key topics of the permit reissuance. (*Bob Morris*)

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

Other speakers included:

Larry McKenney, County of Orange

Jon VanRhyn, County of San Diego

Chris Zirkle, City of San Diego

John Stump, City Heights resident

Art Barnett, Weston

Gabriel Solmer, San Diego BayKeeper

Board Members made comments and asked questions.

Item 13 – *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. City of San Diego, U.S. District Court, Southern District of California, Case No. 03CV1381-B(POR) (*David Hanson*); and the related case:

San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San Diego; U.S. District Court, Southern District of California; Case No. 01-CV-0550-B (POR) (*David Hanson*)

WILLIAM P. JOHNSON, an individual; and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD – SAN DIEGO, a State of California board and DOES 1-50. Superior Court of the State of California for the County of San Diego, Case No. GIC815227; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027 for

violations of the statewide Construction Storm Water Permit, Order No. 99-08-DWQ. (*Frank Melbourn*)

Building Industry Association of San Diego County, et al. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego; In the Court of Appeal of the State of California, Case No. GIC 780263 (*Phil Hammer*)

Divers' Environmental Conservation Organization v. State Water Resources Control Board, San Diego Superior Court, Case No. GIC819689. Petition for Writ of Mandate challenging waste discharge requirements for U.S. Navy, Naval Station San Diego based on absence of numeric effluent limits for toxic pollutants in discharges of storm water. (*Paul Richter*)

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 822750. Verified Petition for Writ of Mandate for Breach of Contract.

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 824706. Verified Petition for Writ of Mandate for Breach of Contract.

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 824707. Complaint for Breach of Contract, Specific Performance, Intentional Misrepresentation, Bad Faith Denial of Existence of Contract, Compensatory Damages, Exemplary Damages and for Declaratory Judgment, Request for Jury Trial.

San Diego Unified School District v. County of San Diego and San Diego Regional Water Quality Control Board. San Diego Superior Court, Case No. GIC 840390. Demurrer by San Diego Regional Water Quality Control Board to first amended complaint.

The Executive Session was not held.

Item 14 – *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 15 – *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 19 - Arrangements for Next Meeting and Adjournment

Wednesday, September 14, 2005 - 9:00 a.m.
Rancho California Water District
District Board Room
42135 Winchester Road
Temecula, California

With there being no further business, the meeting was adjourned at 3:20 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus