

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
BOARD MEETING MINUTES
March 9, 2022**

CALL TO ORDER

Chair Celeste Cantú called the meeting to order on March 9 at approximately 9:00 a.m. in the Mission Viejo City Council Chambers, 200 Civic Center, Mission Viejo, California 92691.

ATTENDANCE

Board Members present:

Celeste Cantú, Board Chair; Betty H. Olson, Ph.D., Vice Chair; Henry Abarbanel, Eric Anderson; Gary Strawn. Dr. Olson left the meeting at approximately 1:30 p.m.

Board Members absent:

Megan Blair; Stefanie Warren. Mses. Blair and Warren joined virtually for the closed session only and did not participate in the public session.

Staff present:

David Gibson, Jeremy Haas, Chris Blank, David Barker, Brandi Outwin-Beals, Keith Yaeger, Joann Lim; Abby Pashina.

Others present on behalf of the San Diego Water Board:

Vincent Vu, Office of Chief Counsel; Elise Hicks, California Reporting.

Public Attendance:

Jim Whalen <i>J. Whalen Associates</i>	Toni Nelson <i>Capo Cares</i>
Roger Butow <i>Clean Water Now</i>	Darcy Burke, Harvey Ryan, <i>Elsinore Valley MWD</i>
Karl Seckel, Charles Busslinger <i>Municipal Water District of Orange County (MWDOC)</i>	Warren Teitz <i>Metropolitan Water District of SoCal (MWDSC)</i>
Ernesto Medrano <i>LA-OC Building Trades</i>	Lisa Zawaski <i>City of Dana Point</i>
Doug Mangione <i>Brotherhood of Electrical Workers</i>	Rick Shintaku, Mark Serna, Kevin Thomas, Scott Goldman, Dan Ferons, Sandra Jacobs, Rick Erkeneff <i>South Coast Water District (SCWD)</i>
George Sutherland <i>Trout Unlimited</i>	Betty Burnett, Amber Baylor, Jim Burror <i>South Orange County Wastewater Authority (SOCWA)</i>
Katie Payne <i>Enthalpy Analytical</i>	Sara Boyer <i>Moulton Niguel Water District</i>
Grant Sharp, Cindy Rivers <i>Orange County Public Works</i>	Tyler Abercrombie <i>GHD</i>
Mary Vondrale <i>City of Laguna Beach</i>	Martin Wisckol <i>Orange County Register</i>

BOARD MEETING

Public comments on agenda items were limited to 3 minutes or otherwise at the discretion of the Board Chair

Mr. Abarbanel made a personal statement regarding Russian and Ukraine.

PUBLIC FORUM

Jim Whalen spoke about alternative compliance and asked for clarification on the multiple use multiple benefit policy.

Toni Nelson of Capo Cares and Roger Butow of Clean Water Now addressed the Board regarding the San Juan Creek Estuary restoration project.

BOARD BUSINESS

- Minutes of Board Meeting: February 9, 2022.**

Motion to adopt the February 9, 2022 minutes:

- Dr. Olson

Second:

- Mr. Strawn

MOTION CARRIED:

Aye:

- Mr. Abarbanel
- Mr. Anderson
- Dr. Olson
- Mr. Strawn
- Chair Cantú

Nay:

- None.

Absent:

- Ms. Blair
- Ms. Warren

Abstain:

- None

2. Chairman's, Board Members', State Water Board Liaison's, and Executive Officer's Reports. *These items were for Board discussion only. Public testimony was not allowed, and the Board took no formal action.*

Chair Cantú updated the Board Members regarding a hearing held by the Select Committee on Binational Affairs on March 2 in Sacramento to discuss the allocation of AB170 funds to address transboundary flows of pollution in the Tijuana River Valley.

Dorene D'Adamo, the State Board liaison for the San Diego Region, provided an update on State Board priorities for 2022 and recent actions and responded to Board Member questions.

Mr. Gibson introduced Alex Sauerwein, a new Office of Chief Counsel attorney assigned to the San Diego Region and wished Nicole Gergans the best in her new position with the California Department of Fish and Wildlife. He also congratulated Lark Starkey for being profiled in the Southern California Coastal Water Research Project (SCCWRP) Director's Report for her work in the Santa Margarita River Watershed. In addition, he provided an update on improvements to the South Bay International Wastewater Treatment Plant that will increase its capacity from 25 mgd to 60 mgd, and those improvements should be completed by the end of the year.

CONSENT CALENDAR

**Items on the consent calendar may be removed at the request of any Board member or person. If an item is removed from the uncontested items calendar, it will only be voted on at this meeting if the Board accepts the staff recommendation for the agenda item. Otherwise, the item will be continued to a subsequent board meeting to allow input by interested persons.*

3. Waste Discharge Requirement Rescission: Rescission of Order No. 94-29, Waste Discharge Requirement for Frank and Doris Kingsbury, Sunrise Highway Park (Tentative Order R9-2022-0010). (*Brandon Bushnell*)

4. Waste Discharge Requirement Rescission: Rescission of Order No. R9-2009-0147, Waste Discharge Requirements for Rite Time Pharmaceuticals, Inc., Anza Commercial Center (Tentative Order No. R9-2022-011). (*Brandon Bushnell*)
5. Waste Discharge Requirements Issuance: Waste Discharge Requirements for The Preserve at Torrey Highlands LLC, Torrey Highlands Office Project, San Diego County (Tentative Order No. R9-2022-0030). (*Alan Monji*)
6. NPDES Permit and Time Schedule Order Rescission: An Order Rescinding Order No. R9-2015-0026, NPDES No. CA0108944 Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility Intermittent Discharge to Escondido Creek, San Diego County and Time Schedule Order No. R9-2015-0027, Requiring the City of Escondido, Hale Avenue Resource Recovery Facility to Comply with Requirements Prescribed in Order No. R9-2015-0026, NPDES No. CA0108944 (Tentative Order No. R9-2022-0026). (*Joann Lim*)

Motion to approve the Consent Calendar:

- Mr. Strawn

Second:

- Mr. Anderson

MOTION CARRIED

Aye:

- Mr. Abarbanel
- Mr. Anderson
- Dr. Olson
- Mr. Strawn
- Chair Cantú

Nay:

- None.

Absent:

- Ms. Blair
- Ms. Warren

Abstain:

- None.

INFORMATIONAL ITEM

7. Update on Current Research by the Southern California Coastal Water Research Project (SCCWRP). *(David Barker)*

Mr. Gibson introduced the item, and Ken Schiff and Martha Sutula provided updates regarding SCCWRP's research projects and responded to Board Member questions.

ACTION ITEMS

8. NPDES Permit Reissuance: Waste Discharge Requirements for the South Orange County Wastewater Authority Discharge to the Pacific Ocean through the San Juan Creek Ocean Outfall (Tentative Order No. R9-2022-0005, NPDES No. CA0107417). *(Joann Lim, Keith Yaeger)*
9. NPDES Permit Reissuance: Waste Discharge Requirements for the South Orange County Wastewater Authority Discharge to the Pacific Ocean through the Aliso Creek Ocean Outfall (Tentative Order No. R9-2022-0006, NPDES No. CA0107611). *(Joann Lim, Keith Yaeger)*

The Board held one public hearing to receive testimony and comments for Item Nos. 8 and 9, then voted separately for each item. Chair Cantú gave an opening statement. Dr. Olson gave a statement regarding her conflict of interest in these items, recused herself, and left the room. Chair Cantú administered the oath to all persons expecting to provide testimony. Joann Lim and Keith Yaeger presented Items 8 and 9 together and responded to Board Member questions.

Chair Cantú recessed for lunch and closed session at approximately 12:25 p.m., and Vincent Vu stated that the Board would discuss Item Nos. 11 (i), (j), (k), and 15 during closed session. Chair Cantú reconvened the meeting at 1:35 p.m., and Mr. Vu stated that Mses. Blair and Warren joined the closed session virtually. Mses. Blair and Warren did not join the public meeting thereafter. Dr. Olson left the meeting after the closed session and did not join the public session.

Betty Burnett and Amber Baylor presented on behalf of the South Orange County Wastewater Authority.

Rick Shintaku presented on behalf of the South Coast Water District and responded to Board Member questions.

The following stakeholders commented on the item:

- Darcy Burke, President, Elsinore Valley Municipal Water District
- Karl Seckel, Director, Municipal Water District of Orange County
- Warren Teitz, Metropolitan Water District of Southern California
- Ernesto Medrano, Council Representative, Los Angeles Orange County Building Trades
- Charles Busslinger, District Engineer, Municipal Water District of Orange County

- Lisa Zawaski, Senior Water Quality Engineer, City of Dana Point/Doug Mangione, Brotherhood of Electrical Workers
- Harvey Ryan, Director, Elsinore Valley Municipal Water District
- George Sutherland, Trout Unlimited
- Roger Butow, Clean Water Now

Following the conclusion of the public comments, the Board considered each item separately. Mr. Yaeger, Brandi Outwin-Beals, Mr. Vu, and Mr. Gibson responded to Board Member follow up questions.

Motion to approve Order No. R9-2022-0005:

- Mr. Anderson

Second:

- Mr. Strawn

MOTION CARRIED

Aye:

- Mr. Abarbanel
- Mr. Anderson
- Mr. Strawn
- Chair Cantú

Nay:

- None.

Absent:

- Ms. Blair
- Ms. Warren
- Dr. Olson

Abstain:

- None.

Motion to approve Order No. R9-2022-0006:

- Mr. Anderson

Second:

- Mr. Strawn

MOTION CARRIED

Aye:

- Mr. Abarbanel
- Mr. Anderson
- Mr. Strawn
- Chair Cantú

Nay:

- None.

Absent:

- Ms. Blair
- Ms. Warren
- Dr. Olson

Abstain:

- None.

BOARD MEMBER REQUESTS

10. Future Agenda Items: Recommended Course of Action and Estimated Staff Hours to Address Actions from the February 2022 Board Meeting. In addition, Board Members may discuss items for possible inclusion on future agendas. *(Kelly Dorsey)*

Mr. Strawn and Mr. Abarbanel asked that the Board review SCCWRP's monitoring projects and forthcoming monitoring recommendations and consider whether Order Nos. R9-2022-0005 and R9-2022-006 should be reopened to revise their monitoring and reporting requirements based on SCCWRP's recommendations at the August or September Board Meeting.

CLOSED SESSIONS

Closed Sessions are not open to the public

11. Discussion of Ongoing Litigation [Authorized under Government Code §11126, subd. (e)]. The San Diego Water Board may meet in closed session to discuss ongoing litigation for the following cases:

Civil Actions (Judicial and Administrative, other than Petitions for Review filed with the State Water Board)

- a. *In re: Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES No. CAS0108758) 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, the San Diego Unified Port District, and the San Diego County Regional Airport Authority adopted on January 24, 2007. Test Claim filed by San Diego County, et al., with Commission on State Mandates, No. 07-TC-09 (filed June 2008). (Catherine George Hagan)*
- b. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010). (Catherine George Hagan)*
- c. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, (NPDES No. CAS0108740) Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the*

Watersheds of the County of Orange, the Incorporated Cities of the County of Orange, and the Orange County Flood Control District adopted on December 16, 2009. Test Claim filed by County of Orange, et al., with Commission on State Mandates, No. 10-TC-11 (filed June 2011). (Catherine George Hagan)

- d. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (NPDES No. CAS0108766) adopted November 10, 2010, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula, and Wildomar, Co-Claimants, filed with Commission on State Mandates, No. 11-TC-03 (filed November 2011). (Catherine George Hagan)*
- e. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001 (Regional MS4 Permit) filed with Commission on State Mandates by County of San Diego. (San Diego Region Water Permit – County of San Diego, Test Claim No. 14-TC-03 (filed June 2015). (Catherine George Hagan)*
- f. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100 (Regional MS4 Permit) filed with the Commission on State Mandates by Orange County Copermittees, Test Claim No. 15-TC-02 (filed June 2016). (Catherine George Hagan)*
- g. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2015-0100, Provisions A.4, B.2, B.3.a, B.3.b, B.4, B.6, D.1.c(6), D.2.a(2), D.3, D.4, E.3.c(2), E.3.c(3), E.3.d, E.5.a, E.5.c(1)(a), E.5.c(2)(a), E.5.c(3), E.5.e, E.6, F.1.a, F.2.a, F.2.b, F.2.c, F.3.b(3), and F.3.c. 16-TC-05, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula, and Wildomar, Co-Claimants, filed with Commission on State Mandates, (June 2017). (Catherine George Hagan)*
- h. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2017-0077, Sections A.1, A.3, and A.5, 17-TC-05, City of San Juan Capistrano and County of San Diego, Claimants, filed with the Commission on State Mandates, (June 2017). (Catherine George Hagan)*
- i. *People of the State of California, Ex. Rel. the Regional Water Quality Control Board, San Diego Region v. International Boundary and Water Commission, United States Section; Jayne Harkins, in her capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section. Complaint for Declaratory and Injunctive Relief (Clean Water Act 33 U.S.C. §1251 et seq.), United States District Court for the Southern District of California, Case No. 3:18-cv-02050-JM-LL, filed September 4, 2018. (David Gibson)*

- j. *United States of America v. California Regional Water Quality Control Board, San Diego Region; David W. Gibson, in his official capacity as Executive Officer of the Regional Water Quality Control Board, San Diego Region; State of California Water Resources Control Board; and E. Joaquin Esquivel, in his official capacity as State Water Resources Control Board Chair, Complaint for Declaratory and Injunctive Relief, United States District Court for the Southern District of California, Case No. 3:21-cv-01749-GPC-AGS, filed October 8, 2021. (Vincent Vu)*
- k. *United States of America v. California Regional Water Quality Control Board, San Diego Region, David W. Gibson, in his official capacity as Executive Officer of the “Regional” Water Quality Control Board, San Diego Region, State of California Water Resources Control Board, and E. Joaquin Esquivel, in his official capacity as State Water Resources Control Board Chair, Petition for Writ of Mandate, San Diego County Superior Court, Case No. 37-2021-00043908-CU-WM-CTL, filed October 8, 2010. (Vincent Vu)*

Petitions for Review Pending Before the State Water Board:¹

- I. Petitions of San Diego Coastkeeper and Coastal Environmental Rights Foundation; City of Rancho Santa Margarita; City of Laguna Hills; County of Orange & Orange County Flood Control District; City of Dana Point; City of Laguna Beach; City of Mission Viejo; City of Laguna Niguel; Riverside County Flood Control & Water Conservation District et al.; City of San Clemente; City of San Juan Capistrano; and City of Aliso Viejo (Order No. R9-2015-0100, amending Order No. R9-2013-0001 [NPDES No. CAS 0109266] for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region), SWRCB/OCC FILE A-2456 (a thru I). *(Laurie Walsh)*
- 12. Consideration of Initiation of Litigation or Discussion of Significant Exposure to Litigation. The San Diego Water Board may meet in closed session to initiate or consider initiating litigation concerning matters within its jurisdiction or to discuss significant exposure to litigation [Authorized under Government Code §11126(e)]. *(David Gibson)*
- 13. Administrative Civil Liability Complaint No. R9-2020-0006 (ACLC). ACLC against Baldwin & Sons, Inc. et al., Portola Center South Construction Site. The San Diego Water Board may meet in closed session to deliberate on a decision to be reached in this matter [Authorized under Government Code §11126(c)(3)]. *(Lori Okun)*
- 14. Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing. The San Diego Water Board may meet in closed session to consider

¹ Petitions for review of San Diego Water Board actions or inactions filed with the State Water Board being held in abeyance by the State Water Board are generally not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Vincent Vu at Vincent.Vu@waterboards.ca.gov or 916-323-5669 for more information.

evidence received in an adjudicative hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code §11126(c)(3)].

15. Personnel. The San Diego Water Board may meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing [Authorized under Government Code §11126(a)].

ADJOURNMENT

There being no further business, Chair Cantú adjourned the meeting at 3:54 p.m.

These Minutes were prepared by:

Signed by:

Christina A. Blank
Executive Assistant

David W. Gibson
Executive Officer