

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

MINUTES OF MEETING
APRIL 9, 2008

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

Item 1 – Roll Call and Introductions: Board Members Present: Richard Wright, Susan Ritschel, Kris Weber, Wayne Rayfield, David King, and Elizabeth Pearson Schneider.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, John Anderson, Brian Kelley, Deborah Jayne, David Gibson, Chiara Clemente, John Odermatt, James Smith, Wayne Chiu, Tom Alo, Frank Melbourn, Cheryl Prowell, Ben Neill, Mike Porter, Jody Ebsen, Beatrice Griffey, Deborah Woodward, Ben James, Chad Loflen, and Amy Mecklenborg. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine George. Kennedy Court Reporters: Gidgette Nieves.

Public Attendance: Scott Jenkins – Scripps Institute of Oceanography; David Mayer – Tenera, Inc.; Chris Nordby – Nordby Biological Consulting; Christopher Garrett – Latham & Watkins; Mayor Bud Lewis, Councilwoman Ann Kulchin, Councilwoman Julie Nygaard – City of Carlsbad; Councilmember Jerome Kern – City of Oceanside; Chairman Mitch Beauchum – Sweetwater Authority; Gail Newton – State Lands Commission; Rachel Solorzano – represented Assemblymember Mary Salas; Cameron Durckel – San Diego Office of the Governor; Ken Weinberg – San Diego County Water Authority; Marcela Escobar-Eck – Atlantis Group; Eric Munoz - Agua Hedionda Lagoon Foundation; Dennis Bostad – Sweetwater Authority; Rua Petty – San Diego County Water Authority; Gary Arant – Valley Center Municipal Water District; William Rucker – Vallecitos Water District; Robert Simmons – retired attorney; Douglas Metz – Member Infrastructure Committee; Jim Schmidt – retired banker and attorney; Chuck Badger – San Diego County Farm Bureau; Mike Madigan – Madigan Consulting, Inc.; Gary Knight – San Diego North Economic Development; Angelika Villagrana – San Diego Chamber of Commerce; Lani Lutar – San Diego County Taxpayers Association; Gina McBride – Carlsbad Chamber of Commerce; Kevin Sharrar – Carlsbad citizen; Evelyn Peterson – Industrial Environmental Association; Gabriel Solmer, Livia Borak – San Diego Coastkeeper; Joe Geever – Surfrider Foundation.

Item 2 – Public Forum

Jim Peugh, San Diego Audubon Society, thanked the Regional Board for releasing the tentative Cleanup and Abatement Order for sediment cleanup in the San Diego shipyard site. Mr. Peugh urged the Board discourage any further delays in the process.

Ms. Krejca, San Diego Coastkeeper, spoke about their concern with the Lane Field Hotel project in Downtown San Diego. Ms. Krejca asked the Board to investigate the soil and ground water contamination at the site.

Ben McCue, Wildcoast, requested that the Board assign a higher priority to the development of TMDLs for the Tijuana River.

Mr. Robertus responded to Mr. McCue's comments and said he would provide more information and the TMDL schedule in his next EO Report.

Item 3 – Minutes of Board Meeting of March 12, 2008

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. King moved approval of the March 12, 2008 minutes. The motion was seconded by Mr. Rayfield and approved with abstention by Ms. Schneider.

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 Wright reported on topics that were discussed at the Chairs' conference call that he participated in with the State Board and spoke about the April 21 and 22 Water Education Foundation workshop for Board Members.

Mr. Anderson arrived at 9:15 a.m.

Ms. Ritschel spoke about testimony given at the Little Hoover Commission by the Santa Ana Regional Board Executive Officer, Gerald Thibeault. She said his focus was on the facilitated public process that his region utilized with higher profile policy development decisions such as Basin Plan amendments, etc. Ms. Ritschel said she would like Mr. Robertus and Chairman Wright (or herself) to meet with Mr. Thibeault and his Regional Board Chair to learn about their facilitated process. Mr. Robertus said he would schedule the meeting.

Mr. Anderson complemented the City of Oceanside on an informative agricultural waivers workshop that was held on March 27.

Mr. King reported on the status of the San Diego Bay Sediment Cleanup process. He reported on April 4 that the digital copy of the entire administrative record was released. Mr. King also announced that a pre-hearing conference would be held on April 25.

Mr. Robertus reported on the four party lawsuit between Camp Pendleton, Fallbrook, and Eastern Municipal Water Districts, and the Rancho California Water District. He also reported on the Federal court lawsuit against the International Boundary and Water Commission.

Consent Item:

Item 5 – Resolution to Request Funding from the Clean up and Abatement Account: Sediment contamination and eutrophication in coastal wetlands in the San Diego region. (Tentative Resolution No. R9-2008-0029) (*Lilian Busse*)

Mr. King made a motion to approve Resolution No. R9-2008-0029. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 6 – PUBLIC HEARING: Total Maximum Daily Loads (TMDLs) for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay. The San Diego Water Board will hear testimony and comments on the proposed TMDLs. The San Diego Water Board will deliberate on and consider adoption of an amendment incorporating the TMDLS into the Basin Plan at a subsequent meeting. (Tentative Resolution No. R9-2008-0027) (*Wayne Chiu*)

Staff member Wayne Chiu gave the presentation.

Board Members asked questions of Mr. Chiu. Senior staff members David Barker and Deborah Jayne also responded.

Other speakers included:

Dr. Cindy Lin – US EPA

Amanda Carr – County of Orange

Lisa Zawaski – City of Dana Point

Livia Borak – San Diego Coastkeeper

Gabriel Solmer – San Diego Coastkeeper

Mr. Chiu made closing comments. Ms. Jayne also commented.

Mr. Robertus noted that the Public Hearing was held to hear public comments and that action would be taken at a subsequent meeting.

Board Members made comments and recommendations.

Chairman Wright closed the Public Hearing.

The meeting was recessed for lunch at 11:55 a.m. and reconvened at 12:45 p.m.

Item 7 – Poseidon Resources Corporation, Proposed Carlsbad Desalination Project - The Regional Board will consider approval of a Technical Report for Revised Flow, Entrainment, and Impingement Minimization Plan (a Special Study), dated March 6, 2008, which was submitted as required by Order No. R9-2006-0065, NPDES No. CA0109223. *(Brian Kelley)*

Senior staff member Brian Kelley gave the presentation.

Other speakers included:

Peter MacLaggan – Poseidon Resources Corporation
Scott Jenkins – Scripps Institute of Oceanography
David Mayer – Tenera, Inc.
Chris Nordby – Nordby Biological Consulting
Christopher Garrett – Latham & Watkins
Mayor Bud Lewis – City of Carlsbad
Councilwoman Ann Kulchin – City of Carlsbad
Councilwoman Julie Nygaard – City of Carlsbad
Councilmember Jerome Kern – City of Oceanside
Chairman Mitch Beauchum – Sweetwater Authority
Gail Newton – State Lands Commission
Rachel Solorzano – represented Assembly Member Mary Salas
Cameron Durckel – San Diego Office of the Governor
Ken Weinberg – San Diego County Water Authority
Marcela Escobar-Eck – Atlantis Group
Eric Munoz - Agua Hedionda Lagoon Foundation
Dennis Bostad – Sweetwater Authority
Rua Petty – San Diego County Water Authority
Gary Arant – Valley Center Municipal Water District
William Rucker – Vallecitos Water District
Robert Simmons – retired attorney
Douglas Metz – Member Infrastructure Committee
Jim Schmidt – retired banker and attorney
Chuck Badger – San Diego County Farm Bureau
Mike Madigan – Madigan Consulting, Inc.
Gary Knight – San Diego North Economic Development
Angelika Villagrana – San Diego Chamber of Commerce
Lani Lutar – San Diego County Taxpayers Association
Gina McBride – Carlsbad Chamber of Commerce
Kevin Sharrar – Carlsbad citizen
Evelyn Peterson – Industrial Environmental Association
Gabriel Solmer – San Diego Coastkeeper
Joe Geever – Surfrider Foundation
Livia Borak – San Diego Coastkeeper
Ed Kimura – Sierra Club

Board Members asked questions of Ms. Solmer, Ms. Borak, and Mr. Geever.

Mr. Garrett and Mr. MacLaggan made closing comments.

Mr. Kelley made closing comments. Board Members asked questions of Mr. Kelley.

Mr. Robertus recommended that the Board approve the Resolution.

Ms. Catherine George made legal clarifications.

An errata was prepared by staff and distributed to the Board. Mr. Anderson recommended a change to the errata that would address a concern made by Mr. Garrett.

After Board Member discussion, Mr. King made a motion to approve the errata, with the word "Consensus" being changed to "Coordination" and adding the language "...as required by Section 13225 of the California Water Code" in 3.c. The word "Appropriateness" was changed to "Adequacy" in 3.d. The motion was seconded by Ms. Schneider and approved by unanimous vote.

Ms. Schneider made a motion to conditionally adopt Resolution No. R9-2008-0039 with the amended errata. The motion was seconded by Mr. Anderson. The motion carried 5-2, with opposition by Mr. Wright and Mr. Rayfield.

Item 8 – Closed Session - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]. The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

Litigation Filed against the Regional Water Board

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region, Verified Petition for Writ of Mandate for Breach of Contract. San Diego County Superior Court, Case No. GIC 822750 (filed December 2003). (John Anderson)

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region, Verified Petition for Writ of Mandate for Breach of Contract. San Diego County Superior Court, Case No. GIC 824706 (filed January 2004). (John Anderson)

Bajagua, LLC v. California State Water Resources Control Board, California Water Quality Control Board, San Diego Region, et al., Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00067722-CU-WM-CTL (filed June 2007). (John Robertus)

Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region and California State Water Resources Control Board; (Cabrillo)

Power I, LLC, Real Party-in-Interest), Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37 2007-00069621-CU-PT-CTL (filed July 2007). (John Odermatt)

William G. Dickerson and Heidi Dickerson, Husband and Wife; Larry Gunning and Penelope L. Gunning, Husband and Wife; and Perry & Papenhausen, Inc., a California Corporation v. San Diego Regional Water Quality Control Board, a Public Entity, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00075846-CU-WM-CTL (filed September 2007). (Frank Melbourn)

Litigation filed by the Regional Water Board against other parties

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., Complaint for Violations of the Clean Water Act and Related State Law Claims. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (John Robertus)

The Closed Session was not held.

Item 9 – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to 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 or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)] (John Robertus)

The Closed Session was not held.

Item 10 – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing. The Regional Board may meet in closed session to consider evidence received in an adjudicatory hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]

On May 9, 2007, a panel of the Regional Board conducted a panel hearing pursuant to Water Code section 13228.14 to consider whether to affirm the issuance of Investigative Order R9-2006-044, as amended by Addendum No. 3, concerning the Bradley Park/Old Linda Vista Landfill, San Diego County. The panel will meet in closed session to finalize its proposed decision and order for consideration by a quorum of the Regional Board at a subsequent meeting. This closed session is authorized by Government Code section 11126(c)(3).

The Closed Session was not held.

Item 11 – *Closed 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 Closed Session was not held,

Item 12 – Arrangements for Next Meeting and Adjournment

Wednesday, May 14, 2008 - 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

With there being no further business, the meeting was adjourned at 4:15 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer