

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
BOARD MEETING MINUTES
June 8, 2022**

CALL TO ORDER

Chair Celeste Cantú called the meeting to order on June 8, 2022 at 9:00 a.m. in the San Diego Regional Water Quality Control Board Hearing Room, 2375 Northside Drive, Suite 108, San Diego, California 92108.

ATTENDANCE

Board Members present:

Celeste Cantú, Board Chair; Betty H. Olson, Ph.D., Vice Chair; Eric Anderson; Gary Strawn; Stefanie Warren. Megan Blair arrived at 9:05 a.m.

Board Members absent:

Henry Abarbanel.

Staff present:

David Gibson, Chris Blank, Laurie Walsh, Frank Melbourn, Ben Neill, Keith Yaeger, Wayne Chiu, Christopher Means, Christina Arias, Chiara Clemente, Jeremy Haas.

Remote attendance:

Kelly Dorsey, Mike Porter, Brandi Outwin-Beals, Roger Mitchell, Eric Becker, Florentino Gamboa, Regan Morey; Alan Monji, Debbie Woodward, Erica Ryan, Carey Nagoda, Cynthia Gorham, Dulce Romero, Sarah Mearon, Jody Ebsen, Vicente Rodriguez, Whitney Ghoram, Abby Pashina, Mireille Garcia, Sean McClain, Rebecca Rosaler.

Others present on behalf of the San Diego Water Board:

Vincent Vu, Alex Sauerwein, Jennifer Fordyce (remote), Office of Chief Counsel; Julie Macedo, Naomi Rubin (remote), David Boyers (remote), Office of Enforcement; Nichole Morgan (remote), State Water Resources Control Board; Elise Hicks, California Reporting.

Public Attendance:

Stephen Tee (remote), Kendall Teal (remote) <i>Gatzke Dillon Ballance LLP</i>	Gerri Bone (remote) <i>InnovaCounsel</i>
Stephen Jepsen (remote) <i>Southern California Alliance of Publicly Owned Treatment Works (SCAP)</i>	Rosemarie Chora (remote) Cari Dale (remote) <i>City of Oceanside</i>
Michael R. Welch <i>Michael Welch Consultants</i>	

BOARD MEETING

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

PUBLIC FORUM

There were no speakers for the Public Forum.

BOARD BUSINESS

1. **Minutes of Board Meeting: May 11, 2022.**

Motion to adopt the May 11, 2022 minutes:

- Mr. Anderson

Second:

- Mr. Strawn

MOTION CARRIED:

Aye:

- Mr. Anderson
- Dr. Olson
- Mr. Strawn
- Ms. Warren
- Chair Cantú

Nay:

- None

Absent:

- Mr. Abarbanel
- Ms. Blair

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.*

Nichole Morgan, the State Board liaison for the San Diego Region, provided an update on State Board recent actions and stated that she is looking forward to her visit to the San Diego Region on July 21.

Mr. Strawn reported on the groundbreaking ceremony for the East County Advanced Water Purification Project on June 1; their goal is to provide 30% of the water in East San Diego County, and the facility is scheduled to be completed in 2026.

Chair Cantú provided a report on the annual Board Chairs' meeting in Sacramento, which took place on May 20, 2022.

Mr. Gibson congratulated Sasha Smirensky on her move to the Site Cleanup program and welcomed new Water Resource Control Engineer, Mahsa Izadmehr, to the Groundwater Sustainability and Protection unit. He also provided a report on the Environmental Industrial Association conference last week, where he and Regan Morey presented on storm water management and on the Tijuana River Valley Recovery Team activities. In addition, Mr. Gibson met with Commission Maria Elena Giner of the International Boundary and Water Commission to discuss Minute 320 and participated in a town hall meeting with local elected officials and representatives. He also responded to Board Member questions and comments.

Christina Arias, WRCE, introduced and provided background information on the new artwork in the Board Hearing Room.

ACTION ITEMS

3. Consideration of the Plume Tracking Monitoring Program Work Plan for the Oceanside Ocean Outfall pursuant to Order No. R9-2019-0166, R9-2019-0167, and R9-2019-0169. *(Keith Yaeger)* Keith Yaeger presented an introduction and overview of the program, and Michael Welch described the program in detail and responded to Board Member questions and comments.

Motion to adopt the Plume Tracking Monitoring Program:

- Dr. Olson

Second:

- Ms. Warren

MOTION CARRIED:

Aye:

- Mr. Anderson
- Ms. Blair
- Dr. Olson
- Mr. Strawn
- Ms. Warren
- Chair Cantú

Nay:

- None.

Absent:

- Mr. Abarbanel

Abstain:

- None

Chair Cantú called a brief recess at 10:15 a.m. and reconvened the meeting at 10:22 a.m.

4. Administrative Civil Liability Hearing: Administrative Civil Liability Complaint (ACLC) against Baldwin & Sons, Inc., et al. Portola Center South Construction Site, Complaint No. R9-2020-0006 (Tentative Order No. R9-2022-0094). (*Lori Okun, Vincent Vu*) [*The Board allowed written submissions on this item as stated in the Hearing Procedure (December 1, 2021), available at [Active Administrative Civil Liability \(ACL\) Complaints | San Diego Regional Water Quality Control Board \(ca.gov\)](#). No additional written comments will be accepted.*]

Chair Cantú gave an opening statement and administered the oath. The board received oral comments on Tentative Order No. R9-2022-0094 from Julie Macedo, for the Prosecution Team, and Stephen Tee, for the Dischargers. Mr. Vu asked several clarifying questions regarding Mr. Tee's comments. Board member Olson stated that she did not have any ex parte communications with the Prosecution Team. Mr. Gibson stated that the hearing transcripts and recordings were made available to the Board members for their review, including to Board Members Abarbanel and Warren. Board Member Warren stated that she reviewed the hearing transcripts. Mr. Vu stated that some of the evidence in this matter was made available to the Board Members for their review prior to the hearing. Mr. Vu stated that the parties had an opportunity to comment on the proposed hearing procedures before the final hearing procedures were issued.

Chair Cantú called a recess at 10:59 a.m. to allow the Advisory Team to review typos in Tentative Order No. R9-2022-0094 and its attachments, and she reconvened the meeting at 11:06 a.m.

Mr. Vu described the typos and their proposed corrections in Tentative Order No. R9-2022-0094 and Attachment 1 and recommended that the Board, if it were to adopt the order, adopt with the corrections to Tentative Order No. R9-2022-0094 and Attachment 1.

Motion to adopt Order No. R9-2022-0094, as corrected:

- Mr. Strawn

Second:

- Mr. Anderson

MOTION CARRIED:

Aye:

- Mr. Anderson
- Ms. Blair

- Dr. Olson
- Mr. Strawn
- Ms. Warren
- Chair Cantú

Nay:

- None

Absent:

- Mr. Abarbanel

Abstain:

- None

BOARD MEMBER REQUESTS

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

Board Members did not request any future agenda items.

Chair Cantú adjourned for closed session at 11:10 a.m. Mr. Sauerwein stated that the Board Members would discuss Items 6 (j) and (k) during closed session. Chair Cantú reconvened the public meeting at 11:55 a.m.

CLOSED SESSION

Closed Sessions are not open to the public

6. 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 l). (*Laurie Walsh*)
- 7. 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*)
- 8. 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

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.

decision to be reached in this matter [Authorized under Government Code §11126(c)(3)]. *(Lori Okun)*

9. 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 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)].
10. 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 11:56 a.m.

These Minutes were prepared by:

Signed by:

Christina A. Blank
Executive Assistant

David W. Gibson
Executive Officer