

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

MINUTES OF MEETING
MAY 13, 2009

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: Chairman Richard Wright, David King, Eric Anderson, Kris Weber, Wayne Rayfield, Grant Destache, Gary Thompson, George Loveland, and Marc Luker.

Staff Present: John Robertus, Michael McCann, Lori Costa, David Barker, Julie Chan, Brian Kelley, John Odermatt, Jeremy Haas, Chiara Clemente, Deborah Jayne, David Gibson, Eric Becker, John Anderson, Deborah Woodward, Michelle Mata, Laurie Walsh, Chris Means, Alan Monji, Amy Mecklenborg, Wayne Chiu, Joann Cofrancesco, Lynn Berlad, Melissa Valdovinos, Frank Melbourn, Rebecca Stewart, Lisa Honma, Brian McDaniel. Others Present on behalf of the Regional Board: State Water Resources Control, Board – Catherine Hagan and Mayumi Okamoto.

Public Attendance: Chris Garrett- Latham & Watkins; Scott Jenkins- Scripps Institute of Oceanography; Chris Nordby- Nordby Biological Consulting; Dave Mayer- Tenera Environmental; Bill Paznokas- California Department of Fish and Game; Gary Arant- Valley Center Water District; Eric Wood- San Diego citizen; Cameron Durckel- Governor's Office; Marco Gonzalez- Coast Law Group; Livia Borak- San Diego Coastkeeper; Sara Honadle- Surfrider Foundation; Tom Rosales, Brennon Flahive- South Orange County Wastewater Authority; Patricia Chen- Attorney for South Coast Water District; Michael Dunbar- South Coast Water District; - Julianne Nygaard, Michael Welch- self; John Grady- Mountain Water Ice; Ed Kimura- Sierra Club; Deanna Spehn- Senator Kehoe's Office; Con Kontaxis, May Alsheikh- CalTrans; Laura Hunter- Environmental Health Coalition; Dawn Guendert- Carollo.

Item 2 – Public Forum

There were no requests to speak during the Public Forum.

Item 3 – Minutes of Board Meetings of April 8, 2009

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. Rayfield moved approval of the April 8, 2009 minutes. The motion was seconded by Mr. King and approved by unanimous vote.

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.

Mr. Weber reported that he attended the National American Planning Association meeting in April in Minneapolis and said that many of the seminars focused on water quality, and they were looking to Southern California for the *cutting edge* things we're doing.

Chairman Wright said he would like to continue their discussions of water recycling and suggested scheduling a follow up workshop on water recycling that involved public health and other agencies in a more intensive way than the last workshop. He said the Board needed to provide leadership in that arena. Mr. Destache said it was a mission the Board should undertake to upgrade the recycling that takes place in our region to replace imported water. Mr. Rayfield agreed and said the Board needed to encourage and enable greater water recycling and to focus on the reuse of storm water. Mr. Thompson said there were initiatives underway in South Orange County concerning water quality and recycling. Mr. Robertus reported on meetings that were held on water reuse. Chairman Wright suggested putting an item on a future agenda to discuss the issue further.

Chairman Wright reported that he served on the county's Regional Advisory Committee and said they were looking for someone to serve as an alternate on the committee. Mr. Thompson volunteered.

Consent Calendar:

Item 5 – Revision of Waste Discharge Requirements, Oakzanita Springs Park, Ownership Change, San Diego County (Tentative Addendum No. 1 to Order No. 94-014) (*Fisayo Osibodu*)

Item 6 – Revision of Waste Discharge Requirements, Thousand Trails Pio Pico, Name Change, San Diego County (Tentative Addendum No. 1 to Order No. 84-06) (*Fisayo Osibodu*)

Item 7 – Rescission of Waste Discharge Requirements, Rescission of Order No. 94-75 for Northrop Grumman Space Technology and Mission Systems Corporation in San Clemente, Orange County and Rescission of Order No. 96-58

for Oak Grove Fish Farm in Descanso, San Diego County (Tentative Order No. R9-2009-0046) (*Cathryn Henning*)

Item 8 – Revision of Waste Discharge Requirements, California Department of Transportation, Tecate Truck Inspection Station, San Diego County (Tentative Addendum No. 1 to Order No. R9-2007-0148) (*Cathryn Henning*)

Item 9 – Administrative Assessment of Civil Liability, Mountain Water Ice Company, Oceanside Ice Plant. The Regional Board will consider adoption of a tentative Order that would impose a \$243,000 mandatory minimum penalty recommended in Amended Complaint R9-2008-0161 for violations of effluent limitations prescribed in Waste Discharge Requirements Order No. R9-2005-0015, NPDES No. CA0108391. The Regional Board may approve, modify, or reject assessment of the recommended penalty. If the Regional Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order R9-2009-0075) (*Rebecca Stewart*)

Item 10 – Time Schedule Order with Interim Effluent Limitations: Mountain Water Ice Company, Oceanside Ice Plant, Waste Discharge Requirements Order No. R9-2005-0015, NPDES No. CA0108391. (Tentative Order No. R9-2009-0047) (*Rebecca Stewart*)

A motion was made by Mr. Anderson to approve the Consent Calendar. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 11 NPDES Permit Revision and Approval of Flow, Entrainment and Impingement Minimization Plan: Poseidon Resources Corporation, Proposed Carlsbad Desalination Project (Order No. R9-2006-0065, NPDES No. CA0109223). The Regional Board will consider approval of a March 9, 2009 Flow, Entrainment and Impingement Minimization Plan, including a Marine Life Mitigation Plan, as revised March 27, 2009 (Minimization Plan), required by section VI.C.2.e. of Order No. R9-2006-0065 and will consider related amendments to Order No. R9-2006-0065 to require the Discharger to implement and comply with the Minimization Plan under specified conditions of operation. Order No. R9-2006-0065 is not being reopened for any other purposes. At its meeting on April 8, 2009, the Regional Board closed the public hearing in this matter and will not accept new evidence or testimony. The Regional Board will only accept written and oral comments on staff's proposed revisions made to the Tentative Order following the April 8, 2009 meeting. Any such written comments must be submitted by May 6, 2009 at 5:00 p.m. The Regional Board will also consider staff's responses to the comments that were previously submitted throughout the proceeding. (Tentative Order No. R9-2009-0038) (*Michelle Mata*)

Chairman Wright explained the hearing procedures. Senior staff member Chiara Clemente gave the presentation. Staff counsel, Catherine Hagan, provided additional background information.

Chris Garrett – Latham & Watkins recommended adoption of the Order with errata as recommended by staff.

Other speakers included:

Bill Paznokas – CA Department of Fish and Game

Gary Arant – Valley Center Water District

Eric Wood – citizen of San Diego

Marco Gonzalez – Coast Law Group

Cameron Durckel – Governor Schwarzenegger's Office

Ms. Hagan responded to Mr. Gonzalez' comment on ex-parte communications.

Mr. King asked why Dr. Peter Raimondi, consultant, and Mr. Peter Douglas, Executive Director of the California Coastal Commission, didn't attend any of the hearings. Ms. Clemente and Mr. Garrett responded, as well as Mr. Gonzalez.

Ms. Clemente made closing comments. Ms. Hagan made additional comments.

Mr. Robertus made a clarifying statement on a comment made by Mr. Gonzalez.

Board Members made comments and thanked the staff and public for all their hard work on the permit.

Mr. Robertus recommended approval of the Order with errata.

Mr. Thompson made a motion to approve Order No. R9-2009-0038 with errata. The motion was seconded by Mr. Destache and approved by unanimous vote.

Item 12 – Administrative Assessment of Civil Liability, South Orange County Wastewater Authority, the South Coast Water District Groundwater Recovery Facility. The Regional Board will consider adoption of a tentative Order that would impose a \$204,000 mandatory minimum penalty recommended in Complaint No. R9-2009-0028 for violations of Order No. R9-2006-0054, NPDES No. CA0107417, Waste Discharge Requirements for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County. The Regional Board may approve, modify, or reject assessment of the recommended penalty. The deadline for the submission of evidence and legal argument pertaining to the Complaint was Monday, April 27, 2009. (Tentative Order R9-2009-0048 (*Jeremy Haas*))

Mr. Rayfield disclosed that he served on the South Orange County Wastewater Authority Board of Directors and recused himself from the hearing.

Chairman Wright explained the hearing procedures.

Senior staff member Jeremy Haas gave the presentation for the prosecution staff.

Other speakers included:

Tom Rosales – General Manager, South Orange County Wastewater Authority

Patricia Chen – attorney for South Coast Water District

Michael Dunbar – General Manager, South Coast Water District

Mayumi Okamoto – Office of Enforcement, State Water Resources Control Board

Brennon Flahive – South Orange County Wastewater Authority

Board Members asked questions of Ms. Chen and Ms. Okamoto.

Mr. Robertus made comments. Mr. Haas made additional comments and answered questions asked by the Board.

Chairman Wright closed the public hearing.

Board Members made comments on the mandatory minimum penalties policy.

Mr. King made a motion to continue the hearing to a future meeting. The motion was seconded by Mr. Destache. After Board Member discussion the motion failed due to a tie vote.

Mr. Loveland made a motion to approve Order R9-2009-0048. The motion was seconded by Mr. Weber. The motion failed due to a tie vote.

The meeting recessed for lunch and Closed Session at 1:15.

Item 14 – *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 held.

The meeting reconvened at 2:00 p.m.

Item 12 – Continued

Ms. Hagan informed the Board of their options for action.

Mr. King made a motion to direct Regional Board staff and the South Orange County Wastewater Authority to submit legal briefs, ten pages maximum, not introducing any new exhibits, within 30 days (no supplemental briefs after that). The motion was seconded by Mr. Luker and approved by unanimous vote.

Item 13 – *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

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Carlos Marin, an individual in his capacity as 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*)
- b. *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). (*Brian Kelley*)
- c. *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 Melbourne*)
- d. *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*)

e. *Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region, (Poseidon Resources, Real Party-in-Interest)*, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2008-00091983-CU-WM-CTL (filed September 2008). (*Michelle Mata*)

The Closed Session was not held.

Item 15 – *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)]

The Closed Session was not held.

Item 16 – *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 17 – Arrangements for Next Meeting and Adjournment

Wednesday, June 10, 2009 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

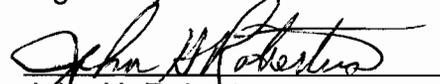
With there being no further business, the meeting was adjourned at 2:10 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer