

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

MINUTES OF MEETING  
February 9, 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:** Chairman John Minan, Richard Wright, Eric Anderson, Alan Barrett, Daniel Johnson, Jennifer Kraus, Linda LeGerrette and Susan Ritschel.

**Staff Present:** John Robertus, Arthur Coe, Michael McCann, David Barker, Lori Costa, John Phillips, Craig Carlisle, Bob Morris, Pete Michael, Stacey Baczkowski, Julie Chan, Brian Kelley, Alan Monji, Ben Tobler, Christina Arias, Lesley Dobalian, Jeremy Haas, Paul Richter, Frank Melbourn, Ben Neill, Mike Porter, Sabine Knedlik, Charles Cheng, Chiara Clemente, Jimmy Smith and Tony Felix.

**Others Present on behalf of the Regional Board:** State Water Resources Control Board – John Richards. **Sylvia Becker Reporting:** Nealy Kendrick. **Public Attendance:** Richard Dietmeier, Gary Stephany, Vickie Butcher, Michael Welch – self; Richard Runge – South Coast Water District; Cindy Lin – U.S. EPA; Sue Fewster, Vince Krivanek – Gold Coast Anchorage; Michael Gutierrez, Mike MacDavid – Hines Nurseries; Saul Ramirez – Bay Club Marina; Dave Seymour – SMWD; Jon Van Rhyn, Tom Deak, Paul Davy – County of San Diego; Bruce Reznik, Gabriel Solmer – San Diego BayKeeper; Deborah Pennell – Shelter Island Marina; Richard Watson – RW Associates; Mike Ardelt – Bay Club Hotel & Marina; Barry Pulver – Dept. of Public Works; Richard Opper, Opper & Varco; Rusty Rutherford – Interlux; Karen Henry, Drew Kleis, Christine Rothman, Tim Stebbins – City of San Diego; Andrew Martin – Weston Solutions; Rob Chichester – U.S. Navy; Nancy Gardner, Kristina Schneider – Brown & Caldwell; Chris Stranshy – Nautilus Environmental; Paul Brown – SDUPD; Dan O’Malley – Kona Kai Marina; Jayne Joy – Eastern Municipal WD; Shani Schlhorst – SeaWorld; Laura Larsen – RBF; Dave Rive – West Tech Marine; John Brandt – Mactec; Laura Hunter – Environmental Health Coalition; John Lormon – Procopio, Corey,

Hargreaves & Savitch; Bill Kraus – Ceran-Kote; Bill Raschick – Alpha One Diving; Jan Driscoll, Vikki McMillan – Shelter Island Yacht Basin; Jim Sell – NPCA; Nick Buttbe – AMEC Environmental; Leigh Johnson – U.C. Sea Grant Extension; Dennis Dickerson – California Avocado Commission; Patti Krebs – Industrial Environmental Association; Bill Rocco, Marlan Hoffman – CPDA; Terry Rodgers – Union Tribune; David Lancaster – Silver Gate Yacht Club; Valerie Mellano – UC Coop. Extension; Alice Benson – Ramona MUD; Suzanne Lawrence, Tom Collins – Scripps Institution of Oceanography; Larry Oberti – UCSD; David Merk – Port of San Diego; Marco Gonzalez – Surfrider Foundation; James David – RBOC; Tom Nelsen – Tonga Landing.

**Item 2** – Public Forum

Richard Opper, Opper & Varco, talked about a petition they filed asking to submit information to the Board on copper in San Diego Bay. Mr. Robertus said the information was related to agenda Item 10 and was submitted after the public comment deadline therefore it was rejected.

Jan Driscoll, Allen, Matkins, Gamble & Mallory, talked about a letter she submitted to the Regional Board that was also rejected. She also requested to give a presentation to the Board during Item 10. Mr. Robertus said the letter was submitted after the deadline. Chairman Minan said the public comment period for Item 10 was closed therefore a presentation could not be given.

Rob Chichester, U.S. Navy, talked about a five day Navy beach cleanup. Mr. Chichester also requested a future Regional Board meeting item to present the status of their four-year study on an alternative toxicity limitation for San Diego Bay.

David Merk, Port of San Diego, briefly spoke about copper in the bay from boat hull paints and said they were going to be petitioning the Dept. of Pesticide Regulation to review its licensing of the use of copper and boat hull paints in the State of California.

Bruce Reznik, San Diego BayKeeper, asked for a one-month extension of the comment period to consider the renewal of the San Onofre Nuclear Generation Station NPDES renewal permits.

Marco Gonzales, Surfrider Foundation, again requested that the Board initiate a Cease and Desist Order for Duke Energy while they were appealing the recently adopted permit renewal.

Richard Runge, President of South Coast Water District, introduced himself to the Board.

Karen Henry, City of San Diego, talked about their Annual Report and Executive Summary for 2004.

Cindy Lin, U.S. EPA, said they supported the adoption of the TMDLs before the Board for action.

Laura Hunter, Environmental Health Coalition, talked about HR 418 and expressed their opposition to the project. Ms. Hunter requested that the Regional Board comment on and follow the pending action in the U.S. Congress.

**Item 3** – Minutes of Board Meeting of December 8, 2004

*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.*

Ms. Ritschel moved approval of the December 8, 2004 minutes. The motion was seconded by Mr. Johnson and approved by unanimous vote.

**Item 4** – Recognition: Resolution of Appreciation for Gary Stephany and Vickie Butcher (tentative Resolution Nos. R9-2005-0012 and R9-2005-0014) (*John Robertus*)

Chairman Minan read the resolutions of appreciation to Ms. Butcher and Mr. Stephany. Board Members expressed their thanks for their service on the Board.

*Consent Items 5 through 8*

**Item 5** – NPDES Permit Renewal: Culligan Water Conditioning of La Jolla, Inc., San Diego County (tentative Order No. R9-2005-0007, NPDES Permit No. CA0107450) (*Tony Felix*)

**Item 6** – Revision of Waste Discharge Requirements: Eastern Municipal Water District, Temecula Valley Regional Water Reclamation Facility, Riverside County (tentative Addendum No. 1 to Order No. 2000-165) (*Charles Cheng*)

**Item 7** – Rescission of Waste Discharge Requirements: Order No. 97-12, Pima Gro Systems Inc., Riverside County (tentative Order No. R9-2005-0004 (*Robert Morris*))

**Item 8** – Rescission of Waste Discharge Requirements:  
a) Order No. 99-14, Southwest Marine Inc., San Diego County  
b) Order No. 2001-190, Port of San Diego, San Diego County  
(tentative Order No. R9-2005-0028) (*Dat Quach*)

Mr. Wright moved approval of Consent Items 5 through 8. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

***Remainder of the Agenda (Non-Consent Items):***

**Item 9** – Basin Plan Amendment: Consider adoption of a Tentative Resolution to amend the Water Quality Control Plan for Total Nitrogen and Total Phosphorus Total Maximum Daily Loads for Rainbow Creek, San Diego County. The Board previously received public testimony and comments on the Tentative Resolution and this item is scheduled for Board deliberation and adoption only. (Tentative Order No. R9-2005-0036) (*Alan Monji*)

Board Member Johnson disclosed that the County of San Diego was a client of his firm but felt it would not affect his judgment. Board Member Anderson disclosed that he had a brief discussion with the Farm Bureau to make sure the individual land owners were notified.

Mr. Robertus introduced the item and staff member Alan Monji gave the presentation.

Senior staff member Craig Carlisle summarized the comments by the County of San Diego.

Board Members made comments and asked questions of staff.

Mr. Richards recommended making a change to page 3 of the Resolution, deleting the first three words in number 12 and add “Strategies that the regional board can

take” and delete all the sentences in number 12 following the sentence in italics, which would read:

**“IMPLEMENTATION ACTIONS:** Strategies that the Regional Board could take to implement the TMDL are described in the Basin Plan Amendment and Technical Report for *Total Nitrogen and Total Phosphorus Total Maximum Daily Loads For Rainbow Creek*, dated February 9, 2005.”

Mr. Anderson made a motion to approve Order No. R9-2005-0036 with errata and the recommendation made by Mr. Richards. The motion was seconded by Mr. Wright and approved by unanimous vote.

**Item 10** – Basin Plan Amendment: Consider adoption of a Tentative Resolution to amend the Water Quality Control Plan for the San Diego Region to incorporate a Total Maximum Daily Load for Dissolved Copper in Shelter Island Yacht Basin, San Diego Bay. The Board previously received public testimony and comments on the Tentative Resolution and this item is scheduled for Board deliberation and adoption only. (Tentative Order No. R9-2005-0019) (*Lesley Dobalian and Christina Arias*)

Mr. Robertus introduced the item and staff member Lesley Dobalian gave the presentation. Ms. Dobalian and Ms. Christina Arias answered questions asked by the Board.

Board Members discussed the item and asked questions of Mr. Robertus.

Staff members Julie Chan and James Smith also answered questions asked by the Board.

After Board Member discussion, Ms. Ritschel made a motion to change the implementation language to read the same as Item 9, which would read:

**“IMPLEMENTATION ACTIONS:** Strategies that the Regional Board could take to implement the TMDL are described in the Basin Plan Amendment and Technical Report for *Total Maximum Daily Load for Dissolved Copper in Shelter Island Yacht Basin, San Diego Bay*, dated February 9, 2005.”

The motion was seconded by Mr. Anderson and approved by unanimous vote.

Mr. Johnson made a motion to add a new number 14 (*everything else to be renumbered*), which would read:

**“SAMPLING PROTOCOL:** Future sampling should be done in accordance with the best current protocols to reduce sample bias regarding low concentrations of metals in marine waters.”

The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Ms. Dobalian recommended the following changes:

In Response to Comments Report, Comment No. 53, paragraph 6, strike the last two sentences:

*“They were included in the Technical Report solely to illustrate the concentration gradient across the longitudinal direction of SIYB. The measurement techniques were significantly different from that used by SPAWAR, and therefore the data was not included in the calculations.”*

In Response to Comments Report, Comment No. 57, last paragraph, strike the last three sentences:

*“The measurements taken by the Regional Board were likewise not used for any calculations. They were included in the draft Technical Report solely to illustrate the concentration gradient across the longitudinal direction of SIYB. The measurement techniques were significantly different from that used by SPAWAR, and therefore the data were not included in the calculations.”*

Mr. Wright made a motion to approve Order No. R9-2005-0019 with errata, amendments and recommendations made by staff. The motion was second by Mr. Johnson and approved by unanimous vote.

*The meeting was recessed for lunch and Executive Session at 1:00 p.m.*

**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.

During the Executive Session, the City of San Diego, Building Industry Association and Divers' Environmental lawsuits were discussed.

*The meeting reconvened at 1:55 p.m.*

**Item 11** – NPDES Permit Renewal: University of California, Scripps Institution of Oceanography, San Diego County (tentative Order No. R9-2005-0008, NPDES Permit No. CA0107239) (*Paul Richter*)

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

Other speakers included:

Tom Collins, Scripps Institution of Oceanography

John Lormon, Procopio, Corey, Hargreaves & Savitch

Marco Gonzalez, Surfrider Foundation

Mr. Richter addressed concerns expressed by Mr. Lormon and answered questions asked by Board Members.

Mr. Richter recommended changes to finding 13, page 3 of the tentative order, which would read:

“Consequently, prior to considering an enforcement action for violations of effluent limitations, this Regional Board will consider the source of the constituents in the effluent and ambient water quality conditions that might have contributed to the elevated concentrations.”

Mr. Richter also recommended a change to Prohibition 5-c, page 17 after the words “fire fighting,” add the words “or other catastrophic events.”

Ms. Ritschel made a motion to approve Order No. R9-2005-0008 with changes recommended by staff. The motion was seconded by Ms. Kraus and approved by unanimous vote.



**Item 12** – 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. Wright asked for information on and the status of the sedimentation ponds in the border area. Mr. Robertus replied.

Chairman Minan presented staff member Jeremy Haas with a sustained superior performance award and thanked him for his outstanding work.

Mr. Robertus asked the new Board Members to select a date that they could meet with Chief Counsel Craig Wilson for a new member orientation. March 8, 2005 was the date selected.

Chairman Minan reminded the Board to turn in their Form 700's by the filing deadline.

Mr. Robertus said he was revising the Regionalization of the SWRCB Strategic Plan and would give a copy to the Board once finalized.

Ms. Kraus asked for information on the Regional Harbor Monitoring Plan. Mr. Robertus said he would provide information to the Board in the March 9 Executive Officer's Report.

Mr. Robertus said he would arrange a boat tour of San Diego Bay with the U.S. Navy for interested Board Members.

Chairman Minan noted that he and Board Members Ritschel, Wright and Kraus attended the Areas of Special Biological Significance meeting that was written about in the report. He also talked about the Urban Water Management Planning workshop he attended.

**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 17** – Election of Chair and Vice Chair. Porter-Cologne Water Quality Control Act, Chapter 4, Article 2, paragraph 13220(b), Each regional board shall select one of its members as chairman at the first regular meeting held each year.

Mr. Johnson made a motion to nominate Mr. Minan as Chair. Mr. Barrett seconded the motion. Ms. Ritschel made a motion to close nominations. Mr. Minan was elected Chair by unanimous vote.

Mr. Anderson nominated Mr. Wright as Vice Chair. Mr. Wright respectfully declined and nominated Ms. Kraus as Vice Chair. Mr. Barrett seconded the motion. Ms. LeGerrette made a motion to close nominations. Ms. Kraus was elected Vice Chair by unanimous vote.

**Item 18** - Arrangements for Next Meeting and Adjournment

Wednesday, March 9, 2005 - 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 4:00 p.m.

These minutes were prepared by:

Executive Officer:

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Lori Costa  
Executive Assistant

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John H. Robertus