

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

MINUTES OF MEETING
OCTOBER 12, 2011

At 9:00 a.m. Chairman Destache called to order the meeting of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) at the Rancho California Water District, District Board Room, 42135 Winchester Road, Temecula, California.

Item 1 – Roll Call and Introductions

Board Members Present: Grant Destache, Eric Anderson, George Loveland, Gary Strawn, and Don Higginson.

Staff Present: David Gibson, James Smith, David Barker, Julie Chan, Bruce Posthumus, Bob Morris, Brian Kelley, Jeremy Haas, Fisayo Osibodu, Joann Cofrancesco, Rebecca Stewart, Tony Felix, Christina Arias, Dat Quach, and Darea Jun.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, David Boyers, Gerald Horner, and Frances Spivy-Weber. Kennedy Court Reporters – Heidi Proulx.

Public Attendance:

Michael Welch – Consultant; Marsi Steirer – City of San Diego; Paul Bogseth, Nicole Gilmore – Bear Creek Master Association; Dan Stephenson – Europa Village Winery; Brian Powell, Alfred Javier – Eastern MWD; Ryan Waterman – Latham & Watkins; Brooke Ellison – NASSCO; Amber Dodge – BAE Systems; Rich Williamson, Warren Back, James Stewart – Rancho California Water District; Jim Carter – South Coast Winery; Bradley Hay – Hunsaker & Associates; Nicole Murphy – Kennedy/Jenks; Paul Cliff – Lobb & Cliff; Bill Green – RBF; Terilee Hemnet – self; Frank Igo – Rancon; Jayne Joy – EMWD; Doug Kerner – BIR; Larry Markham – MNMG; Joe Kusraer – FMWD; Patricia Lin, Matt Lin – Callaway; Kris May – M4 Pal/ Winery; Steve Converse – Ponte Winery; Chandra Thomas, Teresa Jakeway– Riverside County; Claudio Ponte –self; and Amanda Gray – Brown & Winters.

Fran Spivy-Weber, State Board Member Liaison, reported on the September 2011 Water Quality Coordinating Committee meeting at which groundwater, storm water, and Tom Howard's "one organization" concept were discussed.

Ms. Spivy-Weber also said that the Governor would be asking a lot of questions of the water boards/agencies in the next month and a half as he may do some reshaping if he feels it's needed.

Item 2 – Public Forum

Ryan Waterman, Latham & Watkins, reported that NASSCO intended to file comments on the San Diego Water Board Advisory Team's Notice of Public Hearing, then addressed four issues raised by the Hearing Notice.

Amber Dodge, BAE Systems, also spoke about the November hearing procedures.

Item 3 – Minutes of Board Meeting: September 14, 2011

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 San Diego Water Board office for assistance.

Mr. Anderson moved approval of the September 14, 2011 minutes. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Item 4 – Chairman's, Board Members', State Water 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 Destache reported on the Water Quality Coordinating Committee meeting and said they needed to be more efficient, with more communication with the State Board.

Mr. Gibson concurred with Mr. Destache and said he would invite State Board Executive Director, Tom Howard, to come down to San Diego to talk to the Board and staff.

Mr. Loveland reported on the meeting he attended with the Integrated Regional Water Quality Management Board and said the reception from all was very positive.

Mr. Gibson reported that staff was working on a strategic plan that would guide the work of the San Diego Water Board for the next five years. He also gave an update on Lake San Marcos, the Tijuana River Valley Recovery Team, and storm water permits.

Chairman Destache made a few comments about the Tijuana River Valley Recovery Team.

Ms. Julie Chan, San Diego Water Board Branch Chief, reported on the Teledyn Ryan site per Chairman Destache's request.

Mr. Gibson reported on the Ag Waiver's fee schedule, monitoring, and stakeholder process.

Item 5 – Recognition: Resolution of Appreciation for former Board Members Marc Luker (Tentative Resolution No. R9-2011-0058) and Bill Green (Tentative Resolution No. R9-2011-0071) (*David Gibson*)

Chairman Destache acknowledged Mr. Luker's service on the Board and hoped to present the Resolution to him at a later date as he was not able to attend the meeting.

Chairman Destache read the Resolution and thanked Mr. Green for his service on the Board. Mr. Green accepted the Resolution and thanked the Board and staff.

Item 6 – Information Item: Temecula Valley Wine Country Expansion General Plan Update (*Fisayo Osibodu*)

Staff member, Fisayo Osibodu, gave the presentation.

Warren Back, Rancho California Water District, gave a brief update on their progress with water quality issues.

Brian Powell, Eastern Municipal Water District, gave a project update on the sewerage options they had been studying over the past year. Flow projections, facility requirements, and cost estimates were addressed.

Board Members asked questions of Mr. Powell and Mr. Michael Welch, consultant for Rancho Water.

Steve Converse, Ponte Winery, asked that staff continue to process permits. He reported that they installed an advanced treatment system in their winery. He wanted the Board to know that there was only thirty-two wineries currently and all the wine made would be sold in their tasting rooms.

James Carter, South Coast Winery, said he wanted to work with all parties. He talked about their on-going projects to support water quality.

Mr. Osibodu made concluding remarks.

Chairman Destache said staff needed to move forward on the project, focusing on the current permitting process. He added that working with the stakeholders was critical.

Item 7 – Status Report: City of San Diego, San Vicente Reservoir Augmentation Project: After hearing a status report from the City of San Diego regarding its efforts to assess the viability of using recycled water to augment the imported water supply in the San Vicente Reservoir, the San Diego Water Board may consider adoption of a Resolution supporting the project. (Tentative Resolution No. R9-2011-0069) (*Joann Cofrancesco*)

Staff member, Joann Cofrancesco, gave the presentation.

Marsi Steirer, City of San Diego, also gave a presentation.

Mr. Loveland and Chairman Destache made comments about recycled waste water and supported the use of it.

Ms. Cofrancesco made concluding remarks and recommended adoption of the Resolution.

Mr. Gibson commented and also recommended adoption of the Resolution.

Mr. Strawn moved approval of Order No. R9-2011-0069. The motion was seconded by Mr. Loveland and approved by unanimous vote.

The meeting recessed for lunch and Closed Session at 11:30 a.m.

Item 10 - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

Civil Actions

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, 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). (David Gibson)*

- b. *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)*
- c. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate [re: San Diego Water Board's adoption of Order No. R9-2009-0038 amending Order No. R9-2006-0065 for Poseidon Resources (Channelside), LLC, NPDES Permit No. CA0109223, approval of a Flow, Entrainment and Impingement Minimization Plan under the California Water Code]. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*
- d. *South Orange County Wastewater Authority and South Coast Water District v. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate. Los Angeles County Superior Court, Case No. BS133238 (Mandatory Minimum Penalties) (filed April 2010) (Joann Cofrancesco)*
- e. *California Regional Water Quality Control Board, San Diego Region v. Bill and Heidi Dickerson, Larry and Penelope Gunning and Perry & Papenhausen, Inc. Complaint for Damages for Breach of Contract and for Specific Performance. San Diego County Superior Court, Case No. 37-2010-00096011-CU-CO-CTL (filed July 2010) (Jeremy Haas)*
- f. *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)*
- g. *South Orange County Wastewater Authority and South Coast Water District v. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate. Orange County Superior Court Case No. 30-2011-00501106 (Refusal to Modify NPDES Permit) (filed August 2011) (Kristin Schwall)*

Petitions for Review Pending Before State Water Resources Control Board

- h.* Petitions of the National Fireworks Association and Fireworks & Stage FX America Inc., Coastal Environmental Rights Foundation, and San Diego Coastkeeper (General National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2011-0022 (NPDES No. CAG999002) for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks), SWRCB/OCC Files A-2164(a)-(c), filed June and July 2011. (*Michelle Mata*)

The Closed Session was held and items a – h were discussed.

Item 11 – *Closed Session* - 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 against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]

The Closed Session was not held.

Item 12 – *Closed Session* - 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 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 13 – *Closed Session* - 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 Section 11126(a)]

The Closed Session was not held.

The meeting reconvened at 12:30 p.m.

Item 8 – Administrative Assessment of Civil Liability, Mr. Jack Eitzen. Administrative Civil Liability for violations of Order No. 99-08-DWQ and the Water Quality Control Plan for the San Diego Basin. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$381,450 penalty recommended in Complaint No. R9-2010-0084 issued to Mr. Eitzen for the following items: 1) violations of Basin Plan Prohibitions 1 and 14 by discharging construction debris into waters of the state, 2) violations of State Water Resources Control Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity*, by discharging sediment to a municipal separate storm sewer system tributary to waters of the United States, and 3) failing to develop and implement an adequate Storm Water Pollution Prevention Plan, as required by Order No. 99-08-DWQ. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order No. R9-2011-0048) *(Christina Arias)*

Chairman Destache read the hearing procedures.

Staff member, Christina Arias, introduced the item. Staff member, Rebecca Stewart, gave the presentation.

Paul Cliff, Lobb & Cliff, represented and took testimony from Mr. Jack Eitzen.

Chairman Destache asked questions of Ms. Chandra Thomas, Riverside County, regarding the property.

Mr. Cliff cross-examined Ms. Thomas.

Mr. David Boyers, State Board Staff Counsel, cross-examined Mr. Eitzen.

Mr. Cliff cross-examined Ms. Stewart.

Mr. Cliff asked questions of staff member, Mr. Tony Felix.

Mr. Boyers cross-examined Mr. Felix.

Paul Bogseth, consultant for the Bear Creek Master Association, spoke.

Mr. Cliff made closing statements.

Mr. Boyers also made closing statements.

Chairman Destache closed the Public Hearing.

Mr. Gibson recommended adoption of Order No. R9-2011-0048 with errata.

Board Members began their deliberation.

Mr. Loveland moved approval of Order No. R9-2011-0048 with errata. The motion was seconded by Mr. Higginson and approved by unanimous vote.

Item 9 – Administrative Assessment of Civil Liability, Mr. Jack Eitzen.
Administrative Civil Liability for violations of Order No. 99-08-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$301,950 penalty recommended in Complaint No. R9-2010-0104 issued to Mr. Eitzen for failing to develop and implement an adequate Storm Water Pollution Prevention Plan, as required by State Water Resources Control Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity*. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order No. R9-2011-0049) (*Christina Aria*)

Chairman Destache read the hearing procedures,

Staff member, Christina Arias, introduced the item. Staff member, Rebecca Stewart, gave the presentation.

Mr. Cliff asked to have the previous testimony (*from Item 8*) incorporated in to Item 9.

Mr. Cliff took testimony from Mr. Eitzen.

Mr. Boyers cross-examined Mr. Eitzen.

Mr. Cliff made closing statements.

Mr. Boyers also made closing statements.

Chairman Destache closed the Public Hearing.

Board Members began their deliberation.

Chairman Destache re-opened the Public Hearing.

Mr. Anderson asked a question of Mr. Gerald Horner, State Board, Office of Research, Planning & Performance.

Chairman Destache closed the Public Hearing.

Board Members continued their deliberation.

Mr. Loveland moved approval of Order No. R9-2011-0049.

Mr. Gibson recommended adoption of Order No. R9-2011-0049 with errata.

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

Item 14 – Arrangements for Next Meeting and Adjournment

November 9, 14, 15 (16), 2011 - 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 3:00 p.m.

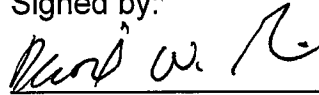
These minutes were prepared by:



Lori Costa

Executive Assistant

Signed by:



David Gibson

Executive Officer