

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

MINUTES OF MEETING
SEPTEMBER 14, 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 Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call and Introductions

Board Members Present: Grant Destache, Eric Anderson, George Loveland, William Green, and Gary Strawn.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Bob Morris, Ben Neill, Chiara Clemente, Laurie Walsh, Jeremy Haas, John Odermatt, Craig Carlisle, Sean McClain, Barry Pulver, Brian Kelley, Alan Monji, Joann Cofrancesco, Chad Loflen, Jody Ebsen, Frank Melbourn, Cynthia Gorham, Michelle Mata, Bruce Posthumus, Debra Woodward, Charles Cheng, Cathryn Henning, Christina Arias, Mike Porter, Lori Costa, and Kristine Rodda.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan and Jessica Newman. Kennedy Court Reporters – Sophia Washington and Erin Winn.

Public Attendance: Dan Ferons – SMWD; Pete DeSimone – Audubon CA Starr Ranch; Scott Martin – KMEP; Eric Nichols, Marcelo Garbier – ARCADIS; Richard Opper, Grace Lowenberg, Marsi Steirer, Dan Bamberg, Jon Taylor, Bill Harris, Fritz Ortlieb, Kris McFadden, Ruth Kolb – City of San Diego; Con Kontaxis, Glenn Mueller – Caltrans; Mike Hastings – Los Peñasquitos Lagoon Foundation; Rob Hutsel – SDRC; Ken Lounsbery, Eli Whitney – Lake San Marcos Community Association; Cheryl Filar – City of Escondido; Darrel Hale, Lee Herzog – Lake San Marcos residents; Harry Bigham – Pacific West; Warren Lydecker – Panorama HOA; Michael Welch – self; Bob Hilber, Matt DiNohic, Tweet Edmonds – Citizens Development Corporation; Sara Honadle- Coast Law Group; Jim Dodson – Vallecitos WD; Todd Snyder, Tom Deak – County of San Diego; John Lormon – Procopio Cory; Erica Ryan – City of San Marcos; Andre Monette – Best Best & Krieger; Marianne Plank – Lake San Marcos Task Force; Keith Plank – Lake San Marcos Sportsmen; Wayne Rosenbaum, Matt Riopelle – Foley & Lardner; Gabriel Solmer, Travis Pritchard, Jill Witkowski – San Diego Coastkeeper.

Item 2 – Public Forum

Gabriel Solmer, San Diego Coastkeeper, expressed their concern about the sewage spill into the Los Peñasquitos Creek and Lagoon. The San Diego Coastkeeper found that the San Diego Water Board missed some impacts on the creek and lagoon.

Travis Pritchard, the Lab Coordinator at San Diego Coastkeeper, announced that his measurements indicated there was hardly any dissolved oxygen, as well as E.Coli and Ammonium Phosphorus were “off the charts” in the Los Peñasquitos Creek and Lagoon.

Jill Witkowski, San Diego Coastkeeper, commented on the power outage spill and believes the San Diego Water Board needs to assess the spill quickly. Ms. Witkowski also commented on her concern with a quote Executive Officer David Gibson had made about how two, out of the thousands of pump stations, were not affected by the blackout is still “pretty good.”

Chairman Destache asked Mr. Gibson to speak on the matter.

Mr. Gibson said the quote was accurate, but the San Diego Water Board was concerned about the effected stations. He said the spills show the weaknesses. Mr. Jeremy Haas and other staff were out on site, soon after the spills. Mr. Gibson claimed that the work the San Diego Water Board has done, has paid off at two stations that were not affected by the power outage.

Ms. Catherine Hagan, San Diego Water Board counsel, offered advice on the nature of the comments presented at the Public Forum.

Staff member Jeremy Haas commented on the spill from the collections system, and how the investigation will be conducted under his unit. Mr. Haas also stated that the City of San Diego did give proper notification that pump 64 had a spill of over 1 million gallons of sewage. He is collecting information and working with Coastkeeper and other interested parties.

Mr. Strawn asked for Board Member comments. Also, Mr. Strawn commented on the San Diego River Conservancy meeting held on September 1, and how the Conservancy had been very successful in the past few years.

Chairman Destache announced that he would like to finish the Public Forum, but will look into this closely. Chairman Destache stated that it is the intent of the San Diego Water Board to make sure backup systems are in place.

Mr. Gibson had no further comment, but expected news to be worse than the blackout pumps showed.

Mike Hastings, Executive Director for the Los Peñasquitos Lagoon Foundation, commented on the sewage spill, the failure of pump 64 and lack of back up options.

Chairman Destache said he appreciates help from NGOs and backup systems.

Mr. Strawn expressed concern on the Cedar Creek Falls area to improve erosions, and for removing trash in that area. Mr. Strawn offered to communicate with forest services to resolve the issue.

Item 3 – Minutes of Board Meeting: June 8, 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 June 8, 2011 minutes. The motion was seconded by Mr. Strawn 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.

Mr. Gibson reported on the San Diego Watershed Monitoring Group, Tier 4 performance measures, expedited 401 issues in Temecula, POTWs, SOWCA permit renewal, cleanup and abatement account request, withhold action on TMDL, wrapping up Leadership Academy, opening steps of drafting around Tier 4 and stated that they need to refine their monitoring approach. Also, Mr. Gibson reported on the shipyards, and said they are on schedule to release the final impact report. Mr. Gibson also stated that he met with the US EPA and they are concurrent with the storm water approach.

Board Members asked questions of Mr. Gibson regarding items in his report.

Mr. Anderson gave thanks to staff for the AG Waiver.

Mr. Gibson said they have received 1800 replies, and mentioned revising the AG Waiver for next year.

Mr. Green spoke on the emergency issue for the pipeline that was exposed. Chairman Destache asked Mr. Gibson to look at the procedure to effectively raise permit issues.

Mr. Strawn was impressed with action taken by the San Diego River Watershed Monitoring Group. He stated that it was a positive and fruitful series of meetings.

Item 5 – Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order, Roripaugh Valley Restoration, LLC, Roripaugh Ranch Residential Subdivision, Temecula, Riverside County. Settlement of outstanding administrative civil liability for Order No. R9-2007-0221 and chronic violations of Clean Water Act section 401 Water Quality Certification No. 01C-091 and the General NPDES Permit for Discharges of Storm Water Associated with Construction Activity (Order Nos. 99-08-DWQ and 2009-0009-DWQ). As proposed, Roripaugh Valley Restoration, LLC would submit full payment of the balance outstanding from ACL Order No. R9-2007-0221 (\$388,150), implement corrective actions, and pay staff costs incurred since adoption of ACL Order No. R9-2007-0221. (Tentative Order No. R9-2011-0056) (*Bruce Posthumus*)

Item 6 – Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, Santa Margarita Water District, Plano Force Main Sanitary Sewer Overflow. Settlement to resolve, by consent, violations of Order Nos. 2006-0003-DWQ and R9-2007-0005, Section 301 of the Clean Water Act, and California Water Code (Water Code) section 13376, set forth in Complaint No. R9-2011-0023. The Settlement proposes liability of \$890,000, of which \$445,000 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account, \$140,000 in liability would be suspended to fund a Supplemental Environmental Project, and \$305,000 in liability would be suspended to fund an Enhanced Compliance Action. (Tentative Order No. R9-2011-0057) (*Bruce Posthumus*)

Mr. Loveland moved approval of Consent Calendar Items 5 and 6. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 7 – Time Schedule Order: Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge Project: The San Diego Water Board will consider adoption of a Time Schedule Order for Kinder Morgan Energy Partners to ensure that the discharge from the dewatering project does not cause, have a reasonable potential to cause, or contribute to an in-stream excursion above the water quality objective for Total Dissolved Solids as required by Discharge Prohibition No. IV.c of Order No. R9-2008-0002 (NPDES Permit No. CAG919002). (Tentative Order No. R9-2011-0052) (*Ben Neill*)

Chairman Destache read the hearing procedures.

Staff member, Ben Neill, gave the presentation. He requested that the file be entered in the record for this hearing.

Mr. Green made comments.

Chairman Destache asked questions of Mr. Neill.

The discharger, national technical manager and technical consultant to Kinder Morgan, Eric Nichols, stated that he stands in support of the Tentative Order.

Marsi Steirer from the City of San Diego commented that the Board should oversee development and distribution. Ms. Steirer also commented on Kinder Morgan not meeting contamination standards. City requests that Kinder Morgan provide replacement water they have been using.

Mr. Loveland asked why the City does not have the right to bill Kinder Morgan?

Richard Opper from the City of San Diego, answered by saying there is no regulatory framework and price schedule. He said there is no basis for it.

Mr. Loveland commented that the City should adopt a schedule.

Chairman Destache stated that the City has a right to charge them.

Kris McFadden, from the City of San Diego Transportation and Storm Water Department, commented and gave a presentation. He asked that Kinder Morgan immediately install an updated treatment system. Mr. McFadden asked for consent of the Board.

Mr. Green concurred with the treatment system.

Rob Hutsel, Chair of City Coalition, commented on the mitigation plan and development of the plan. Mr. Hutsel would like to be included in the monitoring program.

Gabriel Solmer, advocacy director at Coastkeeper commented.

Board Members asked questions of staff.

Mr. Neill commented on written comments.

Chairman Destache said he has some concerns about the length of the time schedule order for Kinder Morgan.

Assistant Executive Officer, Jimmy Smith, said the Board has the option to reassess the time schedule.

Mr. Gibson also agreed that the Board can change the schedule, reject, redirect, or offer more time for Kinder Morgan.

Ms. Hagan commented.

Eric Nichols said the time schedule has time in it for seasonal variations.

Chairman Destache closed the Public Hearing.

Chairman Destache made a motion for the approval of tentative Order R9-2011-0052. The motion was approved by Mr. Green and seconded by Mr. Anderson and approved by unanimous vote.

Meeting recessed at 11:30 for 15 min break.

Item 8 – Investigative Order: Citizens Development Corporation, Lake San Marcos: The San Diego Water Board will consider adoption of an Investigative Order pursuant to Water Code section 13267 that would require Citizens Development Corporation to submit technical reports pertaining to investigation of the water quality impairments in Lake San Marcos from nutrient discharges to the Lake. (Tentative Order R9-2011-0033) (*Laurie Walsh*)

After a short discussion, at 11:50 am the meeting recessed for lunch and to discuss Closed Session items a and c-f.

Item 9 - *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, Petition for Writ of Mandate. Orange County Superior Court, Case No. 30-2010-00364016-CU-WM-CXC (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)*

Petitions for Review Pending Before State Water Resources Control Board

- g. *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 meeting reconvened at 12:45 p.m.

Item 8 - Continued

Senior staff member, Chiara Clemente, gave the presentation.

Ms. Clemente was cross examined by Wayne Rosenbaum, Foley & Lardner LLP, counsel for Citizens Development Corporation (CDC).

Speakers that spoke in opposition of the order:
Wayne Rosenbaum from Foley & Lardner.

Matt Riopelle, the CDC's bankruptcy attorney commented that the CDC was there under protest.

Ms. Hagan commented by stating the San Diego Water Board did not need to notify bankruptcy court.

Chairman Destache asked about the initial 2009 order/action by the Board.

Ms. Clemente said that former Executive Officer, Mr. John Robertus, asked for a voluntary effort before the bankruptcy claim was filed.

Matt Riopelle stated that they did file proof of claim.

Mr. Rosenbaum made further comments and went in depth why it is not reasonable to pick out one entity when there are other public/private entities that are also responsible for polluting the lake. CDC also stated that there was not due process because the 30 day window for all actions with permits was shorter than 30 days for the CDC.

Bob Hilber – Citizens Development Corporation
Matt Riopelle – Foley & Lardner
Matt DiNohic – Citizens Development Corporation

Speakers that spoke in support of the order:
Erica Ryan – City of San Marcos
Todd Snyder – County of San Diego
John Lormon – Procopio, Cory, Hargreaves, & Savitch
Jim Dodson – Vallecitos Water District
Warren Lydecker – San Marcos HOA
Lee Herzog – resident of Sun Park
Mariann Plank – resident of Lake San Marcos
Keith Plank – Lake San Marcos Sportsman Club
Eli Whitney – Lake San Marcos Community Association
Ken Lounsberry – Lake San Marcos Community Association
Sara Honadle – Coast Law Group

Additional Speakers:

Tweet Edmunds – Citizens Development Corporation

Harry Bigham – Pacific West

Closing statements were made by Mr. Rosenbaum.

Closing statements were also made by Ms. Clemente.

Chairman Destache closed the Public Hearing.

Board Members made comments.

Mr. Green moved approval of tentative Order R9-2011-0033 with errata. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Item 10 – *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 11 – *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 12 – *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.

Item 13 – Arrangements for Next Meeting and Adjournment

Wednesday, October 12, 2011 - 9:00 a.m.
Rancho California Water District
District Board Room
42135 Winchester Road
Temecula, California

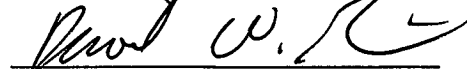
With there being no further business, the meeting was adjourned at 3:35 p.m.

These minutes were prepared by:



Kristine Rodda
Acting Executive Assistant

Signed by:



David Gibson
Executive Officer