

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

MINUTES OF MEETING
JANUARY 12, 2011

At 9:00 a.m. Acting 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, Gary Strawn, and Don Higginson.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Lori Costa, Chiara Clemente, Jeremy Haas, Bob Morris, Brian Kelley, Bruce Posthumus, John Odermatt, Eric Becker, Deborah Jayne, Craig Carlisle, Frank Melbourn, Robert Pierce, Laurie Walsh, Chris Means, Fisayo Osibodu, Vicente Rodriguez, Cathryn Henning, Amy Grove, Tony Felix, Amy Mecklenborg, Chad Loflen, Ben Neill, Alan Monji, Kristin Schwall, Rebecca Stewart, Tom Alo, Wayne Chiu, Joann Cofrancesco, Fernanda Morales, and Paige Boyd.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, Frances Spivy-Weber, David Boyers, and Cris Carrigan. Kennedy Court Reporters – Hope Goldsmith.

Public Attendance: Dan Ferons – SMWD; Paloma Aguirre – Wildcoast; Randall Salatino – self; Joe Naiman – Fallbrook, Bonsal & Village News; Kellyn Lupfer – Nautilus Environmental; Patricia Chen – South Coast Water District; Brennon Flahive – SOCWA; Michael Welch – Consultant; Shay Lawrey, James Kino, John Jannone, Robert Naranjo, Jayne Joy, Gerald Shoaf, Al Javior – Eastern Municipal Water District; Mo. Lahsaie, Mark Hammond – City of Oceanside; Ryan Anson – US Navy; Maria Morisal, Toby Roy – San Diego County Water Authority; Luis Ledesma – Camp Pendleton; Jesus Sandoval – San Diego Truck Body & Equipment Inc.; Eileen Maher – Port of San Diego; Gabriel Solmer, Jill Witkowski – San Diego Coastkeeper.

Item 5 – Recognition: Resolution of Appreciation for former Chairman David King (Tentative Resolution No. R9-2011-0008) and Wayne Rayfield (Tentative Resolution No. R9-2011-0009) (*David Gibson*)

Chairman Destache read the Resolution and thanked Mr. King for his service on the Board. Mr. King accepted the Resolution and thanked the Board and staff. Chairman Destache then read the Resolution for Mr. Rayfield, who was not able to attend the meeting.

Item 2 – Public Forum

State Board Liaison, Fran Spivy-Weber, spoke about the budget and appointments. She also reported that the State Board would be focusing its energy on storm water.

Mr. Randall Salatino, who at the November meeting requested that a Cleanup and Abatement Order be issued to Crosby Home Owners' Association to remove sediment from an unnamed tributary to Lusardi Creek that flows through his residential property, said most of the sediment still remained on his property.

Staff member Frank Melbourn had been assigned to investigate the above complaint. He reported on the actions he had taken, his observations, and recommended no further action be taken as he felt the impacts to water quality were minimal and the case was not a Class I (high priority) violation.

Executive Officer Gibson said Mr. Melbourn's report was complete and thorough and said he concurred with Mr. Melbourn's recommendation. He said that the already limited resources needed to be directed toward items causing a greater threat to water quality and public health.

Chairman Destache said that the Board was not going to direct staff to take any further action.

Paloma Aguirre, Wildcoast, talked about their concern with the increased flow of the Tijuana River main channel. She asked the Regional Board to clarify its policy regarding when it's acceptable to have flow in the Tijuana River into the United States.

Chairman Destache asked staff to look into Wildcoast's concern and include a report in the next EO Report.

Jull Witkowski, San Diego Coastkeeper, spoke regarding the Shipyard Sediment Site cleanup project and asked questions about the CEQA process.

Gabriel Solmer, San Diego Coastkeeper, talked about all the hours that had been spent on the shipyard sediment cleanup and encouraged the Board to keep the process moving forward and on schedule.

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. Destache reported that during the Chair's conference call with the State Board, they discussed the September 2011 WQCC meeting.

Mr. Gibson reported on the shipyard sediment cleanup, CEQA, and EIRs and said there would be an information item at the February Board meeting on the shipyard sediment cleanup status. He said there would also be an information item on expedited payment letters. Mr. Gibson also reported on activity from rain events, a participation agreement letter for Lake San Marcos, TMDLs, the Tijuana River Valley Recovery team workshops, the budget shortfalls, and the Leadership Academy.

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

Chairman Destache introduced and welcomed the newest member of the Board, Mr. Don Higginson.

Item 3 – Minutes of Board Meeting: November 10, 2010

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. Green moved approval of the November 10, 2010 minutes. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Consent Calendar: Items 6 through 9 are considered non-controversial issues. (NOTE: If there is public interest, concern or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed.)

Item 6 – A Administrative Assessment of Civil Liability, Sea World, Inc, Mandatory Minimum Penalty for violations of Order No. R9-2005-0091. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$6,000 mandatory minimum penalty recommended in Complaint R9-2010-0138 for violations of effluent limitations prescribed in Waste Discharge Requirements Order No. R9-2005-0091. The San Diego Water Board may approve or reject assessment of the recommended penalty. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will consider assessment of civil liability. (Tentative Order R9-2011-0011) *(Rebecca Stewart)*

Item 7 – Administrative Assessment of Civil Liability, Fallbrook Public Utility District, Mandatory Minimum Penalty for violations of Order No. R9-2006-0002. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$3,000 mandatory minimum penalty recommended in Complaint R9-2010-0140 for violations of effluent limitations prescribed in Waste Discharge Requirements Order No. R9-2006-0002. The San Diego Water Board may approve or reject assessment of the recommended penalty. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will consider assessment of civil liability. (Tentative Order R9-2011-0012) *(Frank Melbourn)*

Item 8 – Administrative Assessment of Civil Liability, Russo Tile and Marble, Inc., Mandatory Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$1,700 mandatory minimum penalty recommended in Complaint R9-2010-0128 for failing to submit the Fiscal Year 2009 Annual Report required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for this alleged violation. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2011-0013) *(Pete Peuron)*

Item 9 – Waste Discharge Requirements Revision: Cowboy Country RV Park & Resort, Riverside County (Ownership change) (Tentative Addendum No. 2 to Order No. 94-002) *(Fisayo Osibodu)*

Mr. Loveland moved approval of Consent Calendar Items 6-9. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 10 – Informational Item: San Diego Unified Port District A-8 Anchorage Marine Debris Removal Project (*Eric Becker*)

Senior staff member Eric Becker introduced the item.

Eileen Maher, San Diego Unified Port District, gave the presentation.

Board Members thanked the Port for their cleanup effort.

Item 11 – Administrative Assessment of Civil Liability, Eastern Municipal Water District, Temecula Regional Water Reclamation Facility (TVRWRF): The San Diego Board will consider adoption of a Tentative Order that would impose \$524,800 in civil liability for violations of Order No. R9-2000-0165 identified in Complaint No. R9-2010-0085 resulting from the discharge of untreated sewage from the TVRWRF on December 25-26, 2009. The San Diego Water Board may approve, modify, or reject assessment of the recommended liability. The deadline for the submission of rebuttal evidence and legal argument pertaining to the Complaint was September 22, 2010. (Tentative Order No. R9-2011-0010) (*Robert Pierce*)

State Board staff counsel, Ms. Jessica Newman, asked questions of Board Member Green regarding his company's relationship with Eastern Municipal Water District. After doing so, Mr. Green closed by stating that his decisions on the item would not be biased.

Chairman Destache read the hearing procedures.

Staff members Robert Pierce, Jeremy Haas, and Christopher Means gave the presentation.

The meeting recessed for lunch and Closed Session at 11:50 a.m.

Item 15 - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

The Closed Session was held and items a, c, and f were discussed.

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)

- c. *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)*

- f. *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)

The meeting reconvened at 12:50 p.m.

Item 11 – Continued

Additional speakers:

Gerald Shoaf – Counsel for EMWD

Jayne Joy – Eastern Municipal Water District

Chris Carrigan, State Board Staff Counsel, made closing comments.

Chairman Destache closed the public comment period. Board Members asked questions of staff and made comments.

Mr. Strawn made a motion to amend Step 1: Harm/Potential Harm to Beneficial Uses from 3 to 2; and amend Step 1: Total Potential for Harm from 6 to 5 in the worksheet. The motion was seconded by Mr. Higginson and approved by unanimous vote.

Mr. Green made a motion to move from "moderate" to "minor" in Step 2 of the worksheet. The motion was seconded by Mr. Anderson. The motion failed by a 3-3 vote.

Mr. Strawn made a motion to keep "moderate" in Step 2 of the worksheet. The motion was seconded by Mr. Loveland and approved with opposition by Mr. Green.

Mr. Loveland made a motion to keep *Culpability* at 1.3. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Mr. Loveland made a motion to keep *History of Violations* at 1.1. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Staff Counsel Jessica Newman calculated the above numbers and reported that in Step 10 of the resolution, the final liability amount would be \$353,200. She also said that finding 13 would need to be amended to state, "The penalty calculation methodology within section VI of the Water Quality Enforcement Policy (set forth in Exhibit 1) supports...include amended Exhibit 1 of the penalty of methodology decision for the complaint."

Mr. Loveland moved approval of Order No. R9-2011-0010 with errata and amendments. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Item 12 – Administrative Assessment of Civil Liability, San Diego Truck Body and Equipment, Inc., Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$4,916 penalty recommended in Complaint R9-2010-0129 for failing to submit the Fiscal Year 2007-08 and 2008-09 Annual Reports and failing to pay the Fiscal Year 2008-09 annual fee required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for each annual report violation. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2011-0014) (*Laurie Walsh*)

Chairman Destache read the hearing procedures.

Staff member Rebecca Stewart gave the presentation for the prosecution team.

Additional speaker:

Jesus Sandoval – President of San Diego Truck Body & Equipment

Chairman Destache closed the public hearing. Board Members asked questions of staff and made comments.

Mr. Loveland moved approval of Order No. R9-2011-0014. The motion was seconded by Mr. Green and approved by unanimous vote.

Item 13 – Administrative Assessment of Civil Liability, Lite Stone Concrete, Inc., Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$3,766 penalty recommended in Complaint R9-2010-0127 for failing to submit the Fiscal Year 2008-09 Annual Report and failing to pay the Fiscal Year 2009-10 annual fee required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for the annual report violation. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2011-0015) (*Laurie Walsh*)

Item 13 was postponed.

Item 14 – a) NPDES Permit Reissuance: Waste Discharge Requirements for the City of Oceanside, San Luis Rey Water Reclamation Facility, La Salina Wastewater Treatment Plant, and Mission Basin Desalting Facility Discharge to the Pacific Ocean via the Oceanside Ocean Outfall (Tentative Order No. R9-2011-0016, NPDES No. CA0107433) (*Joann Cofrancesco*)

b) Time Schedule Order: An Order Requiring the City of Oceanside, Mission Basin Desalting Facility Discharge to the Pacific Ocean via the Oceanside Ocean Outfall to Comply With Requirements Prescribed in Order No. R9-2011-0016, NPDES No. CA0107433 (Tentative Order No. R9-2011-0017) (*Joann Cofrancesco*)

Chairman Destache read the hearing procedures.

Staff member Joann Cofrancesco gave the presentation.

Additional speakers:

Mark Hammond – City of Oceanside

Michael Welch – Consultant

Toby Roy – San Diego County Water Authority

Luis Ladesma – US Marine Corps Base, Camp Pendleton

Brennon Flahive – South Orange County Wastewater Authority

Patricia Chin – attorney for South Coast Water District

Mr. Welch made closing comments.

Ms. Cofrancesco made closing comments.

Mr. Gibson recommended adoption of both orders.

Chairman Destache closed the public comment period.

Senior staff members Brian Kelley and David Barker answered questions asked by the Board.

Mr. Gibson made comments and answered questions asked by the Board.

Mr. Loveland moved approval of Order No. R9-2011-0016 with errata and supplemental errata. The motion was seconded by Mr. Green and approved by unanimous vote.

Mr. Loveland moved approval of Order No. R9-2011-0017 with direction to staff to prepare a letter to State Board and EPA asking for consideration of alternative ways to work with copermittees to assure water quality. The motion was seconded by Mr. Green and approved by unanimous vote.

Item 16 – *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 held.

Item 17 – *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 18 – *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 19 – The Board will consider designating the Chair, who may in turn designate the responsibility from time to time, to conduct prehearing conferences pursuant to Water Code section 13228.15 to address any of the matters described in Government Code section 11511.5, subdivision (b). (*Catherine Hagan*)

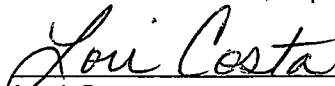
Motion by Mr. Loveland to designate Acting Chair Destache to conduct prehearing conferences. The motion was seconded by Mr. Green and approved by unanimous vote.

Item 20 – Arrangements for Next Meeting and Adjournment

Wednesday, February 9, 2011 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

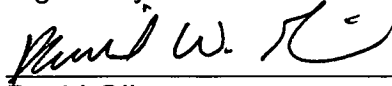
With there being no further business, the meeting was adjourned at 5:50 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



David Gibson
Executive Officer