

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

MINUTES OF MEETING
OCTOBER 11, 2006

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

Item 1 – Roll Call and Introductions: Board Members Present: John Minan, Jennifer Kraus, Richard Wright and Susan Ritschel.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Julie Chan, Mark Alpert, Bob Morris, James Smith, Jeremy Haas, Rebecca Stewart, Joann Cofrancesco, and Cynthia Gorham-Test.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Jan White & Associates Reporting: Mary Anne Young. Public Attendance: Larry McKenney – County of Orange; Larry Dees, Todd Novacek – Moulton Niguel Water District; Mary Ann Mann, John Burcham, Cheryl Filar, Jim Dragna – City of Escondido; Lisa Austin – Geosyntec Consultants; May Alsheikh, Ivan Karnezis, Richard Watson – Caltrans; Scott Thomas – Stetson Engineers; Doug McPherson – USBR; Gerre Bedeu – Santa Margarita Water District; Everett Delano – San Diego Coastkeeper; Jerome Janus – Vallecitos Water District; Ed Filudelfia, Jayne Joy – Eastern Municipal Water District; Richard Dietmeier – Dana Point; Jason Uhley, Linda Garcia – Riverside County Flood Control District; Mo. Lahsaie – City of Oceanside; Jon Van Rhyn, Jo Ann Weber, Kelly Barker – County of San Diego; Bob Wheeler – EMA/RCD; Don Wasko, Mark Biskup – Carlsbad Public Works; Nancy Gardiner – Brown and Caldwell; Aldo Licitra – City of Temecula; Farida Naceem – City of Murrieta; Martha Sutula – SCCWRP; Ken St. Clair – City of San Marcos; M. Ashford – Ashford Engineers; Kathy Weldon – City of Vista; Jayne Strommer – City of Vista; Laura Coley Eisenberg – Rancho Mission Viejo; and Gil Lackritz – Excellent Coatings.

Item 2 – Public Forum

Everett DeLano, Law Offices of Everett DeLano, requested Regional Board action on the Chollas Creek TMDL as originally scheduled for the November 8 Board Meeting.

Staff member Julie Chan addressed Mr. DeLano's concern and reported that the TMDL package would be recirculated for a third public review and comment period resulting in a tentative Board meeting of February 14, 2007.

Board Member Johnson arrived at 9:05 a.m.

Item 3 – Minutes of Board Meeting of September 13, 2006

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.

Chairman Minan announced that Item 4, paragraph 8 should have read:

“Chairman Minan appointed Mr. Wright as the Regional Board’s representative on the Board of Governors of the Southern California Wetlands Recovery Project. He also noted that when his term on the Board concluded, another member would need to serve as the Regional Board’s representative on the San Diego River Conservancy Board. Chairman Minan said the policy of the Board was that the Chair would be the representative to the Conservancy and if the Chair was unable to attend, the Vice Chair would attend. If the Vice Chair was unable to attend, Mr. Robertus would ask another Board member or a staff member to attend.”

Mr. Wright moved approval of the September 13, 2006 minutes with corrections and errata. The motion was seconded by Ms. Kraus and approved with abstention by Mr. Johnson.

Chairman Minan announced that Items 11 and 12 were postponed.

Board Member Barrett arrived at 9:10 a.m.

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. Johnson reported that he attended a soil reuse working group meeting. He noted that the group works with senior staff members David Barker and John Anderson.

Chairman Minan announced that his term on the Board had expired and was serving in the sixty-day grace period. He asked that an interim Chair be selected in the event that the Vice Chair was not available to chair a meeting. Mr. Wright nominated Ms. Ritschel as the interim Chair. Ms. Ritschel accepted.

Chairman Minan reported on the upcoming Water Quality Coordinating Committee meeting, San Diego River Conservancy and an American Bar Association Conference he spoke at.

Mr. Robertus reported on a few items in his report including the Grants Update, the City of San Diego Water Reuse Meeting, and landfills. Mr. Robertus also spoke about World Monitoring Day and the State Board meeting on the 303(d) listing,

Chairman Minan asked for an update on Pulte Homes in the next EO Report. He also asked Mr. Robertus questions regarding the distribution of recycled water. Mr. Robertus said the State Board was looking at the issue of recycled water and said he believed it would be discussed at the WQCC meeting.

Consent Item

Item 5 – Revision of Waste Discharge Requirements: Eastern Municipal Water District, Temecula Valley WRTF, Riverside County (tentative Addendum No. 3 to Order No. R9-2000-0165) (*Charles Cheng*)

Mr. Wright made a motion to approve Addendum No. 3 to Order No. R9-2000-0165. The motion was seconded by Mr. Johnson and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 6 – The Regional Board will consider adoption of an Order concerning sewage collection agencies currently enrolled under Regional Board Order No. 96-04 and the transition to the recently adopted statewide general Order No. 2006-0003-DWQ (*Joann Cofrancesco*)

Mr. Robertus introduced the item, and staff member Joann Cofrancesco gave the presentation. Senior staff member Bob Morris answered questions asked by the Board.

Chairman Minan talked about prohibition of discharges to land, reporting requirements, and monitoring management plans.

Mr. Robertus reported on annual fees.

Chairman Minan also raised the issue of private laterals/spills.

Item 7 – Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Standards Certification for Rancho Mission Viejo, LLC, Rancho Mission Viejo Ranch Plan Planning Area 1, Orange County (tentative Order No. R9-2006-0104) (*Jeremy Haas*)

Mr. Robertus introduced the item and staff member Jeremy Haas gave the presentation.

Board Members asked questions of staff. Mr. Johnson expressed concerns regarding surface waters, ground water, the detention basins. He also had questions concerning the Water Quality Standards and Mitigation Measures section of the tentative order. He asked staff to look at the hydrogeology issues.

To address Mr. Johnson's concerns, Mr. Haas stated the tentative order could be amended by the Board if needed in the future. He also stated that the Executive Officer could issue an investigative order to obtain monitoring information.

Laura Coley Eisenberg, Rancho Mission Viejo, commented on the tentative order and suggested a change regarding the ownership of the open space.

Chairman Minan addressed points made by Ms. Eisenberg. Mr. Haas and Mr. Robertus also commented.

Larry McKenney, County of Orange, said they supported the order in general.

Mr. Robertus recommended that the Board approve the order with errata and changes to the errata.

Chairman Minan said if there were any amendments to the order, staff would bring them back to the Board for approval.

Mr. Ritschel made a motion to approve Order No. R9-2006-0104 with the errata and the amendment suggested by Rancho Mission Viejo, LLC. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Item 8 – CONTINUATION OF CONSIDERATION OF SETTLEMENT OFFER: City of Escondido, Hale Avenue Resource Recovery Facility: Administrative Assessment of Civil Liability against the City of Escondido for Violations of Order No. 99-72, NPDES No. CA0107981, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resources Recovery Facility, Discharge to the Pacific Ocean Via the Escondido Land Outfall and the San Elijo Ocean Outfall. The Regional Board will continue its consideration of a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0265. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2006-0095) (*Rebecca Stewart*)

Mr. Johnson recused himself from participating in the item due to the fact that he was not present at the previous meeting when the item was first heard. Mr. Robertus also recused himself from participating and said Mr. Art Coe would be the lead staff person for the item.

Staff member Rebecca Stewart gave the presentation.

Other speakers included:

- Jim Dragna – attorney for the City of Escondido
- John Burcham – City of Escondido
- Mary Ann Mann – City of Escondido
- Everett DeLano – Law Offices of Everett DeLano

Mr. Dragna made closing comments.

Mr. Coe recommended the Board approve the settlement offer.

After Board Member discussion, Ms. Ritschel made a motion to adopt Order No. R9-2006-0095. The motion was seconded by Mr. Barrett and approved by unanimous vote.

The meeting was recessed for lunch and Executive Session at 11:55 a.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:

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.

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.

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.

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section, et al. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61

San Diego Unified School District, a public school district, Plaintiff v. County of San Diego, a public entity, San Diego Regional Water Quality Control Board, a public entity and DOES 1 through 25, inclusive, Defendants. Superior Court of the State of California for the County of San Diego, Case No. GIC840390; First Amended Complaint for: 1) Breach of Contract-Lease Agreement, 2) Breach of Contract-Sharing Agreement, 3) Quantum Meruit; 4) Express Indemnity; 5) Implied Indemnity and Contribution; 6) Equitable Indemnity Contribution; 7) Nuisance; 8) Trespass; 9) Inverse Condemnation; 10) Preliminary and Permanent Injunction; 11) Declaration of Relief Against the County of San Diego; and 12) Declaration of Relief Against the Regional Water Board and County.

The Executive Session was held.

The meeting reconvened at 12:40 p.m.

Item 9 – PUBLIC HEARING: Request for Modification of Investigation Order No. R9-2006-076, *Owners and Operators of Municipal Separate Storm Sewer Systems, California Department of Transportation, Hale Avenue Resource Recovery Facility, and North County Transit District Responsible for the Discharge of Bacteria, Nutrients, Sediment, and Total Dissolved Solids into Impaired Lagoons, Adjacent Beaches, and Agua Hedionda Creek.* The Regional Board will receive evidence and testimony relevant to determining whether Investigation Order No. R9-2006-076 should be amended to change the scheduled due dates, remove a directive, and provide a process to ensure the adequacy of the Order's directives to meet the overall goal of the Investigation Order. *(Wayne Chiu)*

Mr. Johnson said the interested parties of San Diego County and the City of Escondido were clients of his firm but felt it would not represent a conflict of interest. Mr. Richards concurred with Mr. Johnson's decision.

Mr. Robertus introduced the item and staff member Wayne Chiu gave the presentation.

Other speakers included:

Jason Uhley, Riverside County Flood Control District

Jo Ann Weber, County of San Diego

Jon Van Rhyn, County of San Diego

Martha Sutula, Southern California Coastal Water Research Project

Mr. Chiu made closing comments. Mr. Robertus also made comments and recommended approval of staff's recommendations.

Mr. Van Rhyn made closing comments.

Board Members asked questions of staff. Staff member Cynthia Gorham-Test answered questions asked by the Board.

Ms. Ritschel made a motion to direct the Executive Officer to amend Investigation Order No. R9-2006-0076 to change the due date for the Monitoring Program Workplans from August 1, 2007, to September 1, 2007 and encouraged the dischargers to work with the Regional Board and each other to ensure goals of the Order are met. The motion was seconded by Mr. Johnson and approved by unanimous vote.

Board Member Wright left the meeting at 2:30 p.m.

Item 10 – PUBLIC HEARING: Excellent Coatings, Inc., 1285 Distribution Way, Vista: Administrative Assessment for Civil Liability for failure to submit the Fiscal Year 2004-05 annual storm water monitoring report required by Order No. 99-07-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (General Permit). If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2006-0099) (*Rebecca Stewart*)

Mr. Robertus introduced the item and staff member Rebecca Stewart gave the presentation.

Gil Lackritz, Excellent Coatings, said to the best of his knowledge, he was in full compliance with the Regional Board's requirements. He also said he was financially unable to pay the civil liability.

Board Members asked questions of Mr. Lackritz.

Ms. Kraus was concerned about Mr. Lackritz going out of business, and, therefore, wanted to waive the liability.

Chairman Minan made a motion to reduce the penalty to \$1,000 and directed the Executive Officer to review the statutory authority to see if penalty could be reduced to \$500 due to extraordinary circumstances. The motion was seconded by Ms. Ritschel and approved with opposition by Ms. Kraus.

Item 11 – PUBLIC HEARING: A public hearing will be held regarding the issuance of Cleanup and Abatement Order No. No.R9-2006-0101 to Bill and Heidi Dickerson and Perry and Papenhausen Construction for the unauthorized discharge of fill to San Diego Bay in violation of Section 401 Water Quality Certification (File No. 05C-041). 501 First Street, Coronado, San Diego County. (*Christopher Means*)

This item was postponed.

Item 12 – PUBLIC HEARING: A public hearing will be held regarding the issuance of Cleanup and Abatement Order No. R9-2006-0102 to Larry and Penny Gunning and Perry & Papenhausen Construction, for the unauthorized discharge of fill to San Diego Bay. 505 First Street, Coronado, San Diego County. (*Christopher Means*)

This item was postponed.

Item 14 – *Executive Session* - Consideration of Initiation of Litigation (*John Robertus*)
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.

Item 15 – *Executive Session* - Discussion of Pending Litigation
The Regional Board may meet in closed session to discuss pending litigation:

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 Sessions, Items 14-16, were not held.

Item 17 - Arrangements for Next Meeting and Adjournment
Wednesday, November 8, 2006 - 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:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus