

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

MINUTES OF MEETING  
MARCH 12, 2008

At 9:00 a.m. Chairman Wright called to order the meeting of the California Regional Water Quality Control Board, San Diego Region at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

**Item 1** – Roll Call and Introductions: Board Members Present: Richard Wright, Eric Anderson, Susan Ritschel, Kris Weber, and Wayne Rayfield.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, John Anderson, Mark Alpert, Bob Morris, John Odermatt, Chiara Clemente, Brian Kelley, David Gibson, James Smith, Eric Becker, Frank Melbourn, Vicente Rodriguez, Cynthia Gorham-Test, Mike Porter, Ben Neill, Jody Ebsen, Chad Loflen, Wayne Chiu, Christina Arias, Kelly Dorsey, Amy Grove, Lilian Busse, Chris Means, Ben James, Kristin Schwall, Deborah Woodward. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine George, and Jorge Leon.

Public Attendance: Ron Kemp, Glenn Pruiim – City of Carlsbad; Brian Shu – USMC Camp Pendleton; Cora Long – City of Lemon Grove; Shaun Taylor – US Fish & Wildlife Service; Nancy Palmer – City of Laguna Niguel; Dave Renfrew – Weston Solutions; Ted von Bitner – County of Orange; Jeff Parks – Fallbrook Public Utility District; Bob Jordan – Santa Margarita Water District; Beverly Morisako – City of San Diego; Larry Pierce, Darold Pieper – City of Vista; Todd Snyder, Barry Pulver, James O'Day, Doug Simpson – County of San Diego; Gabriel Solmer – San Diego Coastkeeper; Mo Lahsaie – City of Oceanside, Silvester Evertorich – City of Chula Vista; Lewis Moeller – Department of Water Resources; Marco Gonzalez – Coast Law Group; Robin Reardon, Lynn Baker – Lakeside River Park Conservancy; Doug Gibson – San Elijo Lagoon Conservancy.

Chairman Wright announced that there was a public request to remove Item 6 from the Consent Calendar.

**Item 2** – Public Forum

There were no requests to speak during the public forum.

**Item 3** – Minutes of Board Meeting of February 13, 2008

*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.*

Mr. Anderson moved approval of the February 13, 2008 minutes. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

**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. Anderson expressed his concern with constraints on the use of recycled water when it escaped into the storm drain system. He would like to reexamine the recycled water policy to see if there was a way to make it more flexible for users and to resolve the concerns of the stakeholders so they would make the investment to use recycled water.

Mr. Robertus responded to Mr. Anderson's concerns. Mr. Rayfield asked, as a follow up to Mr. Anderson's concern, about the Regional Board's regulation of recycled water and any possible disincentives there might be in the use of recycled water in terms of the Regional Board's regulation. He asked for a report from staff.

*Mr. King arrived at 9:10 a.m.*

Ms. Ritschel asked for an update on the continuing delay of the release of the San Diego Bay Shipyard Sediment Cleanup record. As the Hearing Officer, Mr. King gave an update on the status of the record and said April 4, 2008 was the estimated completion date for the indexing and digitization of the record. Mr. Robertus talked about past pre-hearing conferences and the Order of Proceedings that were being followed.

Chairman Wright reported that he participated in the March 3<sup>rd</sup> Chair's meeting. He said the main item for discussion was Ms. Doduc's draft for a meeting with the Little Hoover Commission.

Mr. Robertus read a Certificate of Appreciation that was awarded to the Regional Board by the US Army Corps of Engineers for participation in the San Luis Rey River Flood Risk Management Project.

Mr. Robertus reported that the State and Regional Board Members would be attending a water education workshop conducted by the Water Education Foundation on April 21 & 22, 2008.

Staff Council Catherine George referred to item B-4 (Status of Compliance from North County Transit District Sprinter Rail Site) and item B-5 (State Route-125) in the Executive Officer's Report and said both items stated that there had been non-compliance but noted that both should have stated "alleged" non-compliance as neither item had been before the Board.

Mr. Anderson referred to item B-2 (Enforcement Actions for February 2008) and asked if the technical report that was due on March 7 was received from the City of Santee. Senior staff member David Gibson responded that yes, it had.

Mr. Anderson referred to item B-9 (Status of Bacteria in Urban Runoff at Poche Beach in San Clemente) and asked a question about the upstream low flow dry weather diversion structure. Staff member Chad Loflen addressed Mr. Anderson's question.

Chairman Wright referred to item B-7 (Biological Criteria and SWAMP Program Review) asked Mr. Gibson to report on the index.

Chairman Wright referred to item B-10 (Status Update for Mission Valley Terminal) and asked Mr. Robertus to comment on how long it would take to get the site cleaned up. Mr. Robertus responded. Staff member Kelly Dorsey also spoke.

*Consent Calendar: Items 5 through 7 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 was removed from the Consent Calendar.

**Item 5** – NPDES Permit Reissuance: General Waste Discharge Requirements for Discharges of Groundwater Extraction Waste to Surface Waters Within the San Diego Region Except for San Diego Bay. (NPDES No. CAG919002, Tentative Order No. R9-2008-0002) (*Vicente Rodriguez*)

**Item 7** – Proposed settlement of Administrative Civil Liability Complaint against Fallbrook Public Utility District, for the discharge of 146,000 gallons of untreated sewage to Fallbrook Creek, San Diego County. The Regional Board will consider a proposed settlement of violations alleged in Complaint 2007-0101. The settlement includes: (1) a payment of \$20,000 to the State Water Resources Control Board; and (2) suspension of \$9,300 in liability when the District completes specified actions to the satisfaction of the Regional Board. If the Regional Water Board rejects the proposed settlement, the matter will be scheduled for a public hearing during a subsequent Regional Board meeting. (Tentative Order No. R9-2008-0020) (*Joann Cofrancesco*)

Mr. Anderson made a motion to approve Items 5 and 7. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

**Item 6** – Proposed settlement of Administrative Civil Liability Complaint against the Cities of Vista and Carlsbad for the discharge of 7.3 million gallons of untreated sewage from March 31 to April 3, 2007 from a 24-inch diameter sewer main at the Buena Vista Pump Station to Buena Vista Lagoon, San Diego County. The Regional Board will consider a proposed settlement of violations alleged in Complaint No. R9-2007-0099. The settlement includes: (1) payment of \$200,000 to the State Water Resources Control

Board; (2) payment of \$500,000 to fund a Supplemental Environmental Project; and (3) the suspension of \$395,000 in liability when the Cities complete specified actions to the satisfaction of the Regional Board. If the Regional Water Board rejects the proposed settlement, the matter will be scheduled for a public hearing at a subsequent Regional Board meeting (Tentative Order No. R9-2008-0004) (*Eric Becker*)

Mr. Robertus explained that he was not involved in the process that brought about the settlement due to the split functions of staff on enforcement actions.

Ms. George said the matter was not noticed as an evidentiary hearing so the Board would not be making conclusions about the facts that were alleged in the complaint.

Staff member Eric Becker gave the presentation. Board Members asked questions of staff.

Mr. Jorge Leon, State Board Office of Enforcement, addressed the Board and provided additional information.

Glenn Pruiim, City of Carlsbad, addressed questions asked by the Board.

Darold Pieper, City Attorney, spoke on behalf on the City of Vista.

Marco Gonzalez, Coast Law Group, spoke on behalf of the Surfrider Foundation and San Diego Coastkeeper.

Mr. Robertus made comments.

After Board Member discussion, Mr. King made a motion to reject the settlement offer and bring the item back for an evidentiary hearing at a later date. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

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

**Item 8** – Watershed Reports: Staff will present an overview of the Watershed Reports recently completed for each of our 11 major watersheds. By documenting the status of water quality and ecological health in our watersheds, these reports provide an indication of the effectiveness of our programs, and a baseline from which we can chart future trends in water quality and beneficial use attainment. (*Cynthia Gorham-Test*)

Mr. Robertus introduced the item. Senior staff member David Gibson gave a presentation.

Board Members asked questions of Mr. Gibson.

Staff member Cynthia Gorham-Test also gave a presentation.

*Ms. Ritschel departed the meeting during the presentation.*

Board Members asked questions of staff.

**Item 9** – State Grant Projects: Report on the following four completed grant projects funded through Proposition 13:

- a. Upper Sulphur Creek Restoration, City of Laguna Niguel
- b. Restoration and Recharge Projects, Lakeside River Park Conservancy
- c. Restoration of Riparian / Wetlands Habitat in the Carlsbad Hydrologic Unit, San Elijo Lagoon Conservancy
- d. Famosa Slough Wetland Restoration/Fill Removal, Friends of Famosa Slough

Representatives for each project will provide a summary of the projects, accomplishments, and future work. (*David Gibson*)

Mr. Robertus introduced the item. Senior staff member David Gibson gave the presentation.

Other presenters included:

Nancy Palmer, City of Laguna Niguel

Robin Reardon and Lynn Baker, Lakeside River Park Conservancy

Doug Gibson, San Elijo Lagoon Conservancy – *due to time constraints, Mr. Gibson, of the conservancy, said he would give his presentation at a later date.*

*The meeting was recessed for Closed Session and lunch at 12:55 p.m.*

**Item 11** – *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]. The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

Litigation Filed against the Regional Water Board

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region, Verified Petition for Writ of Mandate for Breach of Contract. San Diego County Superior Court, Case No. GIC 822750 (filed December 2003). (John Anderson)*

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region, Verified Petition for Writ of Mandate for Breach of Contract. San Diego County Superior Court, Case No. GIC 824706 (filed January 2004). (John Anderson)*

*Bajagua, LLC v. California State Water Resources Control Board, California Water Quality Control Board, San Diego Region, et al., Petition for Writ of*

Mandate. San Diego County Superior Court, Case No. 37-2007-00067722-CU-WM-CTL (filed June 2007). (*John Robertus*)

*Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region and California State Water Resources Control Board; (Cabrillo Power I, LLC, Real Party-in-Interest)*, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37 2007-00069621-CU-PT-CTL (filed July 2007). (*John Odermatt*)

*William G. Dickerson and Heidi Dickerson, Husband and Wife; Larry Gunning and Penelope L. Gunning, Husband and Wife; and Perry & Papenhausen, Inc., a California Corporation v. San Diego Regional Water Quality Control Board, a Public Entity*, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00075846-CU-WM-CTL (filed September 2007). (*Frank Melbourn*)

Litigation filed by the Regional Water Board against other parties

*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.*, 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). (*John Robertus*)

This Closed Session was held.

**Item 13** – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing. The Regional 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)]

On May 9, 2007, a panel of the Regional Board conducted a panel hearing pursuant to Water Code section 13228.14 to consider whether to affirm the issuance of Investigative Order R9-2006-044, as amended by Addendum No. 3, concerning the Bradley Park/Old Linda Vista Landfill, San Diego County. The panel will meet in closed session to finalize its proposed decision and order for consideration by a quorum of the Regional Board at a subsequent meeting. This closed session is authorized by Government Code section 11126(c)(3).

The Closed Session was held.

**Item 12** – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to 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 or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]  
(John Robertus)

The Closed Session was not held.

**Item 14** – *Closed 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 Closed Session was held,

*The meeting reconvened at 2:25 p.m.*

**Item 10** – Report: California Water Plan Update 2009—a major element in the plan update will be the protection of water quality. The California Department of Water Resources, in developing this plan this year, will provide to the Regional Board an overview of the process to integrate water quality information in the plan update. Additional information on the 2009 Update can be accessed at the website [www.waterplan.water.ca.gov/](http://www.waterplan.water.ca.gov/) (Michael McCann)

Mr. McCann introduced the item. Lewis Moeller, Department of Water Resources, gave the Regional Board an overview of the process to update the plan and the importance of obtaining water quality data/information for the update.

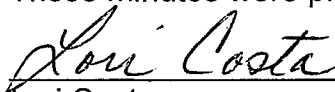
Mr. Robertus made comments.

**Item 15** – Arrangements for Next Meeting and Adjournment

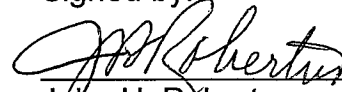
Wednesday, April 9, 2008 - 9:00 a.m.  
Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

With there being no further business, the meeting was adjourned at 3:05 p.m.

These minutes were prepared by:

  
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Lori Costa  
Executive Assistant

Signed by:

  
\_\_\_\_\_  
John H. Robertus  
Executive Officer