

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

MINUTES OF MEETING
FEBRUARY 11, 2009

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, Kris Weber, Wayne Rayfield, Grant Destache, Gary Thompson, George Loveland, and Marc Luker.

Chairman Wright welcomed Mr. Marc Luker, the newest member on the Board.

Staff Present: John Robertus, Michael McCann, Lori Costa, David Barker, Julie Chan, John Anderson, Craig Carlisle, Chiara Clemente, Brian Kelley, Eric Becker, David Gibson, Jeremy Haas, Frank Melbourn, Rebecca Stewart, Joann Cofrancesco, Laurie Walsh, Michelle Mata, Mike Porter, Melissa Valdovinos, Chad Loflen, Deborah Woodward, Bob Rossi, Chris Means, Peter Peuron, Barry Pulver, Elizabeth Dorantes, Robert Pierce, Lisa Honma, Amy Cooper, and Sean McClain. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine Hagan, Philip Wyles, Jorge León, and Fran Spivy-Weber. Kennedy Court Reporters: Marianne Segalla.

Public Attendance: Deanna Spehn – Senator Christine Kehoe's Office; Christine Rubin – Senator Mark Wyland's Office; Robert Dean – San Diego Yacht Club; Craig Elliott – Agua Hedionda Lagoon Foundation; Carla Scheidlinger – AMEC; Jim Peugh – SD Audubon Society; Gregory Cross – SD Water Depot; John Balletto – Arcadis, Inc.; Kelly Doyle – Rick Engineering; Alice Tang – Yes We Can Community Solutions; Don Christiansen – Self; Victor Occiano – BC; Willard Childs – Vari-Ro, Inc.; Bill Paznokas – Dept. of Fish and Game; Michael Welch – Self; Jim Barrett – City of San Diego; S. Griffin – PBS&S; Connor Everts – Desal Response Group; Rachel Solorzano – Assemblywoman Mary Salas' Office; John Lormon – Procopio; Bill Mortiz – Self; Lori Mortiz – Self; Doug Simpson – The Simpson Law Firm; Assemblyman Martin Garrick – Self; Mayor Bud Lewis, Councilwoman Ann Kulchin, Julianne Nygaard, Jim Elliott – City of Carlsbad; Ron Ball – Attorney for the City of Carlsbad; Don Christiansen – Carlsbad resident; Chairman Bud Pocklington – Sweetwater Authority Board; Greg Quist – Rincon del Diablo Municipal Water District; Peter MacLaggan – Poseidon Resources; David Mayer – Tenera Environmental; Chris Nordby – Nordby Biological Consulting; Paul Singarella, Chris Garrett – Latham & Watkins; Marco Gonzalez – Coast Law Group; Cameron Durdle – Governor's Office; David Vidoric – Assemblyman Nathan Fletcher's Office; Tom Lemmon – San Diego Construction & Building Trades; William

Rucker – Vallecitos Water District; Mike Howes – Self; Angelika Villagrana – San Diego Regional Chamber of Commerce; Ted Owen – Carlsbad Chamber of Commerce; Gary Arant – Valley Center Municipal Water District; Alonso Gonzalez – Councilman Ben Hueso's Office; Christine Gueren – Congressman Brian Billbray's Office; Robert Simmons – Retired Attorney; Ken Weinberg – San Diego County Water Authority; Casey Anderson – San Diego County Farm Bureau; Mo Lahsaie – City of Oceanside; Gary Knight – San Diego North Economic Development Council; Kimberly Thorner – Olivenhain Municipal Water District; Jan Driscoll – Alan Matkins Law Firm; Patti Krebs – Industrial Environmental Association; Ed Kimura – Sierra Club; Elizabeth Taylor – Brown & Winters; Lori Vereker – City of Escondido; Kevin Barnard, June Rady – The Escondido Creek Conservancy; Gabriel Solmer, Karen Franz – San Diego Coastkeeper; Everett DeLano – Law Offices of Everett DeLano; Simona Valanciute – The San Diego Foundation.

Item 2 – Public Forum

There were no requests to speak during the Public Forum.

Item 3 – Minutes of Board Meetings of January 21, 2009

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. Thompson moved approval of the January 21, 2009 minutes. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Chairman Wright announced that Item 4 would be heard later in the meeting. He also announced that Item 10 would be heard after Item 5 and that Items 8, 11, and 12 were postponed.

Consent Item:

Item 5 – Administrative Assessment of Civil Liability, Studio 15 Housing Partners, Studio 15 Construction Dewatering. The Regional Board will consider adoption of a tentative Order that would impose a \$42,000 mandatory minimum penalty recommended in Amended Complaint R9-2008-0121 for violations of effluent limitations prescribed in Order 2000-90, NPDES No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. The Regional Board may approve, modify, or reject assessment of the recommended penalty. If the Regional Board rejects the tentative Order, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order R9-2009-0022) *(Frank Melbourne)*

A motion was made by Mr. Rayfield to approve Order R9-2009-0022. The motion was seconded by Mr. Destache and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 10 – Administrative Assessment of Civil Liability, America Plaza Owners Association, One America Plaza Dewatering. The Regional Board will consider adoption of a tentative Order that would impose \$12,000 in civil liability recommended in Complaint R9-2008-0127 for violations of effluent limitations prescribed in Order 2000-90, NPDES No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. The Regional Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2009-0019) *(Rebecca Stewart)*

Staff member Rebecca Stewart gave a brief presentation.

A motion was made by Mr. Rayfield to approve Order R9-2009-0019. The motion was seconded by Mr. Weber and approved by unanimous vote.

Item 6 – Poseidon Resources Corporation, Proposed Carlsbad Desalination Project (Order No. R9-2006-0065, NPDES No. CA0109223). The Regional Board will consider whether the Marine Life Mitigation Plan (MLMP) dated November 14, 2008, satisfies the conditions established in Resolution No. R9-2008-0039, Conditional Approval of Revised Flow, Entrainment, and Impingement Minimization Plan for Poseidon Resources Corporation Carlsbad Desalination Project (Resolution), or whether failure to satisfy the conditions has rendered the Resolution inoperative by its own terms. The Regional Board may also provide direction to staff concerning future actions related to this Project. *(Michelle Mata)*

Chairman Wright made a brief statement about the Board Members receiving information at their home address or place of business. The public should send information to Board Members via the Regional Board. The Regional Board staff would then forward it to the Board Members.

Mr. Robertus recommended that the Board not take final action at this meeting but to hear public testimony, then continue the item to the April 8th for final action.

Other speakers:

Assemblyman Martin Garrick

Mayor Bud Lewis – City of Carlsbad

Councilwoman Ann Kulchin – City of Carlsbad

Julianne Nygaard – City of Carlsbad

Chairman Bud Pocklington – Sweetwater Authority Board

Greg Quist – Rincon del Diablo Municipal Water District

Peter MacLaggan – Poseidon Resources

David Mayer – Tenera Environmental

Chris Nordby – Nordby Biological Consulting

John Balletto – Arcadis, Inc.
Paul Singarella – Latham & Watkins, LLP
Chris Garrett – Latham & Watkins, LLP
Marco Gonzalez – Coast Law Group
Cameron Durkle – Governor's Office
Deanna Spehn – Senator Christine Kehoe's Office
Christine Rubin – Senator Mark Wyland's Office
Craig Elliot – Agua Hedionda Lagoon Foundation
David Vidoric – Assemblyman Nathan Fletcher's Office
Tom Lemmon – San Diego Construction & Building Trades
William Ruker – Vallecitos Water District
Mike Howes – self
Angelika Villagrana – San Diego Regional Chamber of Commerce
Ted Owen – Carlsbad Chamber of Commerce
Gary Arant – Valley Center Municipal Water District
Jim Elliott – City of Carlsbad
Ron Ball – attorney for the City of Carlsbad
Alonso Gonzalez – Councilman Ben Hueso's office
Rachel Solorzano – Assemblywoman Mary Salas' Office
Jim Barrett – City of San Diego
Christine Gueren – Congressman Brian Billbray's Office
Robert Simmons – retired attorney
Ken Weinberg – San Diego County Water Authority
Casey Anderson – San Diego County Farm Bureau
Mo Lahsaie – City of Oceanside
Gary Knight – San Diego North Economic Development Council
Kimberly Thorner – Olivenhain Municipal Water District
Jan Driscoll – Alan Matkins
Don Christiansen – Carlsbad resident
Patti Krebs – Industrial Environmental Association
William Paznokas – Dept. of Fish and Game
Conner Everts – Desal Response Group
Ed Kimura – Sierra Club
Jim Peugh – San Diego Audubon Society

Board Members asked questions and made comments.

Chris Garrett – Poseidon Resources, answered questions asked by the Board. Staff also answered questions asked by the Board.

After Board Member discussion, Mr. Rayfield made a motion to continue the meeting until the April 8, 2009 Board Meeting.

Mr. Wyels read the key issues.

Board Members made additional comments.

Ms. Hagan made the following recommendation:

“Regional Board continues this matter to its April 8, 2009 meeting. The Regional Board directs staff to work with Poseidon to expeditiously address the list of outstanding issues identified by Mr. Robertus and further directs staff to prepare for Board consideration a resolution or order approving the Flow, Entrainment, and Impingement Minimization Plan required by the NPDES Permit issued to Poseidon in 2006. Finally, the Board directs that the public notice for this item make clear that it is not necessary to resubmit written comments that are already in the record or to repeat oral statements already made and included in the record at that time.”

Mr. Rayfield amended his motion to accept the recommendation made by Ms. Hagan. The motion was seconded by Mr. Loveland and approved by unanimous vote.

The meeting was recessed for Closed Session and lunch at 1:10 p.m.

Item 13 – *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

- a. *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). (Brian Kelley)*
- b. *Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region, (Poseidon Resources, Real Party-in-Interest), Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2008-00091983-CU-WM-CTL (filed September 2008). (Michelle Mata)*
- c. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Carlos Marin, 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). (John Robertus)*
- d. *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)

- e. *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)*

The Closed Session was held and item C was discussed. No action was taken by the Board.

Item 7 – CONSIDERATION OF SETTLEMENT: 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 and Order No. R9-2003-0394, NPDES No. CA0108944, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resource Recovery Facility, Intermittent Wet Weather Discharge to Escondido Creek, San Diego County. The Regional Board will consider 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. R9-2009-0003) *(Rebecca Stewart)*

Mr. Anderson recused himself from participating in the item.

Staff member Rebecca Stewart gave the presentation. Mr. Jorge León, State Board Council, also spoke.

Other speakers included:

Lori Barrigar – City of Escondido
Kevin Bernard – Escondido Creek Conservancy
Gabriel Solmer – San Diego Coastkeeper
Everett Delano – Law Offices of Everett DeLano
Simona Valanciute – The San Diego Foundation
Karen Franz – San Diego Coastkeeper
June Rady – The Escondido Creek Conservancy
Alice Tang – Yes We Can Community Solutions

Mr. León made closing comments and answered questions asked by the Board. Ms. Stewart also answered questions.

Elizabeth Taylor, City of Escondido, answered a question asked by the Board.

Mr. Robertus and Ms. Hagan made comments.

Mr. Delano, Mr. Bernard, and Ms. Solmer answered questions asked by the Board.

Mr. León recommended that the Board consider adopting the Order.

After Board Member discussion, a motion was made by Mr. Loveland to approve R9-2009-000. The motion was seconded by Mr. Thompson and approved by a 4-3 vote. Mr. Wright, Mr. Destache, and Mr. Rayfield were in opposition.

Item 8 – NPDES Permit Revision: Dynegey South Bay, LLC, South Bay Power Plant wastewater discharge to the San Diego Bay, San Diego County, Order No. R9-2004-0154, NPDES No. CA0001368 (Order). The Regional Board will consider revising the effluent limitations for copper using a new translator and revising monitoring requirements contained in the Order. Today's action is limited to the portions of Order No. R9-2004-0154 specified in the proposed revisions. No other portions of the Order are being considered for revision at this time. (Tentative Resolution No. R9-2009-0006) (*Vicente Rodriguez*)

Item 8 was postponed.

Item 9 – A public hearing will be held to consider the issuance of Tentative Cleanup and Abatement Order (CAO) No. R9-2008-0152. The proposed CAO would be issued to Dr. William & Lori Moritz for the alleged unauthorized discharge of fill to an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek in violation of Sections 13260(a) and 13264(a) of the California Water Code, and waste discharge prohibitions 1, 3, and 14 contained in the in the Water Quality Control Plan for the San Diego Basin. (*Christopher Means*)

Chairman Wright read the hearing procedures. Mr. Jorge León gave an opening statement. Staff member Christopher Means gave the presentation.

Mr. Douglas Simpson, The Simpson Law Firm, cross-examined Mr. Means.

Mr. León gave a brief presentation.

Mr. Simpson also gave a presentation. Mr. Simpson then called Mrs. Lori Moritz and Mr. William Moritz to the podium for questioning.

Mr. Simpson made closing statements.

Mr. León made closing statements.

Mr. Robertus recommended adoption of the Cleanup and Abatement Order.

Board Members made comments.

Board Member Destache made a motion to adopt Order No. R9-2008-0152. The motion was seconded by Mr. Weber and approved by unanimous vote.

Item 11 – Master Reclamation Permit with Waste Discharge Requirements for the United States Marine Corps: Discharges of Reclaimed Water for Landscape Irrigation at Marine Corps Base Camp Pendleton, California (Tentative Order No. R9-2009-0021)
(Robert Pierce)

Item 11 was postponed.

Item 12 – Administrative Assessment of Civil Liability, Ametek Inc., Former Ametek/Ketema Aerospace Manufacturing Facility, 790 Greenfield Drive, El Cajon, California. The Regional Board will consider adoption of a tentative Order that would impose a \$2,269,000 penalty recommended in Complaint No. R9-2008-0033 for the alleged violations of Cleanup and Abatement Order No. R9-2002-0201. The Regional Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order No. R9-2009-0024) (Laurie Walsh/John Anderson)

Item 12 was postponed.

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. Robertus reminded the Board Members about the Water Quality Coordinating Committee meeting being held in Chino Hills on February 23 & 24, 2009.

Ms. Hagan talked about a section in the Water Code that says a hearing panel of three or more Board Members could hear certain types of matters that came before the Board, receive evidence, and then the panel would then make a proposed decision that they would recommend to the full Board. The full Board would then make a final decision on the action. She said the Advisory Team was considering this process for an administrative civil liability case with Ametek, Inc. and gave detailed information on the process. Chairman Wright said he thought it was a good idea. The Board Members agreed that the full Board should be involved in selecting the hearing panel. Ms. Hagan said an item could be scheduled for the March 11 agenda to allow for Board discussion on the process and possible panel selection. Mr. John Lormon – Procopio, Cory, Hargreaves, & Savitch – represented Ametek and said he wanted the full Board hearing to be held no later than April 8, 2009.

Item 14 – 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 15 – 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)]

The Closed Session was not held.

Item 16 – 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 not held

Item 16a – Election of Chair and Vice Chair. Porter-Cologne Water Quality Control Act, Chapter 4, Article 2, paragraph 13220(b), Each regional board shall select one of its members as chairman at the first regular meeting held each year. Following the election of the Chair, the Board will elect a Vice Chair.


Mr. Anderson made a motion to re-elect Mr. Wright as Chair and Mr. King as Vice Chair. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 17 – Arrangements for Next Meeting and Adjournment

Wednesday, March 11, 2009 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

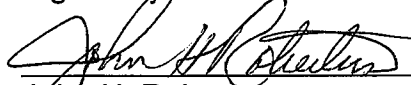
With there being no further business, the meeting was adjourned at 6:45 p.m.

These minutes were prepared by:



Lofi Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer