

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

MINUTES OF MEETING
JULY 14, 2010

At 9:00 a.m. Chairman King 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: David King, Wayne Rayfield, and Grant Destache.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, John Odermatt, Craig Carlisle, Cynthia Gorham, Chiara Clemente, John Anderson, Bob Morris, Deborah Jayne, Jeremy Hass, Debbie Woodward, Cathryn Henning, Wayne Chiu, Chad Loflen, Mike Porter, Amy Grove, Cheryl Prowell, Lisa Honma, Vicente Rodriguez, Jody Ebsen, Charles Cheng, Barry Pulver, Chris Means, Tom Alo, Laurie Walsh, Alan Monji, Ali Ernst, and Lucas Salazar.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, and David Boyers.

Kennedy Court Reporters – Kimberly Anton.

Public Attendance: Kris McFadden, Ruth Kolb, Brian Ledger – City of San Diego; Nate Cushman, James Craft, Len Sinfield – US Navy; Cheryl Filar, Vasana Vipatapat, Nicke Brown, Lori Vereker, C. Dennis Sperino, John Burcham – City of Escondido; Lisa O’Neal – Brown & Winters; Gabriel Solmer, Jill Witkowski, Livia Borak, Jennifer Kovecses – SD Coastkeeper; Ed Kimura – Sierra Club; Jill Tracy – SDG&E; James Handmacher – Campbell Industries; Amy Nefouse, Michael Tracy, Ray Parra, Shaun Halvax, Steven Goldberg, Robert Kilpatrick – BAE Systems; Sarah Douglas, Katie Flocken – Nautilus Environmental; Rob McGann – Landscape Contractors Association; Amy Conte – Caltrop Corp ; Mike Chee - NASSCO; Bill Brown, Sandi Nichols – Port of San Diego; Mark McPherson – San Diego County; Sam Williams – Geosyntec; Marwan Younis – May Group Inc.; Craig Kolodge – Total Erosion Control Inc.; Dean Charles, Nicole Bradley – de maximis; John Royal – GES; Ellen Gross – SDUPD; Wayne Rosenbaum – Foley; Cora Long – City of Lemon Grove; Dennis Bowling – APWA; David Hauser – City of Carlsbad; Roger Lichtendecker – LSMRG; Billy Walker, Scott Smith – City of Oceanside; Warren Lydecker – Lake San Marcos R.G.; Tom Deak, Sara Agahi – County of San Diego; Jim Dodson - VWD; Tory Walker, Steve Maciej – BIA SD; Mikhaic Ogawa – City of Del Mar; Arsalam

Dadkhah, John Quenzer – D-Max Engineering; Malik Tamimi – City of Poway; Khosro Aminpour – City of Chula Vista; Paul Hartman – City of Vista; Eric Mosolgo, Lisa Skuteck – Brown & Caldwell; John Lormon – Procopio Cory; Helen Perry, Pedro Orso Delgado, Julie Procopio – City of Santee; Con Kontaxis - Caltrans; Erik Steenbeck – City of Encinitas; Kelly Richardson – Latham & Watkins; Tom Stahl – Assistant US Attorney; Noah Garrison – NRDC; Margaret Denny - self; Ken Lounsbery – Lake San Marcos Community Association; Fran Geneald – Lake San Marcos Remediation Group.

Item 2 – Public Forum

Kris McFadden, Deputy Director for the City of San Diego Storm Water Department, addressed the Board regarding the Stormwater System Master Maintenance Permit being proposed by the City. He welcomed the Board's questions and input.

Item 2 to continue after 11:00 a.m.

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. David Gibson discussed the Basin Plan and recommended an update which could take 2 to 4 years to complete. He also discussed holding workshops (beginning August 5th), inviting staff and other parties.

Mr. Gibson also commented on item 6 in his report.

Board Member Luker arrived at this time.

Chairman King asked Mr. Gibson about the state budget. Mr. Gibson reported on budget changes and the anticipation of being paid minimum wage.

Item 9a – Prehearing Conference to Consider San Diego Water Board Cleanup Team Motion to Extend Discovery Schedule. The San Diego Water Board will consider ruling on the San Diego Water Board Cleanup Team Motion to Extend the Discovery Schedule in Tentative Cleanup and Abatement Order No. R9-2010-0002, San Diego Bay Shipyard Sediment Site. Responses to the Motion were due on or before June 24, 2010. *(Frank Melbourne)*

Chairman King addressed the public, staff, and Board.

Mr. Anderson and Mr. Loveland arrived at this time.

Chairman King (*the Presiding Officer for this item*) explained the hearing procedures.

Senior staff member Julie Chan gave the presentation.

Mr. Gibson asked the Board to consider the motion to extend the deadline for cleanup and liability issues for 120 days. He said there were more cleanups to be done throughout San Diego (San Diego Bay).

Mr. David Boyers, attorney for the State Water Board's Enforcement Office summarized a written memo, discussing cease and desist orders. He said, in that case, the cleanup process was different and significant negative environmental impacts could occur. Mr. Boyers suggested that the EIR process begin early.

Ms. Chan commented on the Cleanup and Abatement Order.

Mr. Gibson gave a report for the Cleanup Team.

Presiding Officer King asked questions of Mr. Boyers and Mr. Gibson.

Designated Parties spoke in support of and in opposition to the Motion:

Michael Tracy – Attorney for BAE Systems

Len Sinfield – U.S. Navy

Amy Nefouse – Attorney for BAE Systems

Tom Stahl – Assistant U.S. Attorney

Kelly Richardson – Latham & Watkins, Counsel for NASSCO

Brian Ledger – Attorney representing the City of San Diego

Marco Gonzales – Coast Law Group

Presiding Officer King made comments and asked questions of staff and the copermitees.

After considering the Motion, responses to the Motion, and comments from the Designated Parties, Presiding Officer King denied the Motion. The Motion also included an alternative request for reconsideration by the full Board. All other Board Members present during the prehearing conference expressed support for the ruling, and therefore declined to overrule Presiding Officer King's ruling to deny the Motion. Therefore, according to the Final Discovery Plan, the discovery period would end August 23, 2010. However, the Designated Parties would have until July 19, 2010 to disclose their expert and non-expert witnesses.

In addition, Presiding Officer King directed Mr. Gibson to immediately submit a request to the State Board for an emergency sole source allocation to authorize the hiring of a consultant to complete an Environmental Impact Report (EIR) for

the cleanup project in the event the Designated Parties failed to timely agree to a cost sharing arrangement to fully compensate the consultant.

Finally, Presiding Officer King terminated the Board sanctioned mediation.

Item 2 – Continued

Jill Witkowski, with San Diego Coastkeeper, spoke regarding the City of San Diego's Master Stormwater Maintenance program and urged the Board to solicit public comments on the program before it came to the Board for approval.

Item 3 – Minutes of Board Meeting: May 12, 2010 and June 9, 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. Rayfield moved approval of the minutes of May 12, 2010 and June 9, 2010. The motion was seconded by Mr. Anderson and approved with abstention by Mr. Destache.

Consent Calendar:

Item 5 – Update of Waste Discharge Requirements: City of Escondido, Hale Avenue Resource Recovery Facility (Master Reclamation Permit with Waste Discharge Requirements for the production and purveyance of recycled water) (Tentative Order No. R9-2010-0032) (*Robert Pierce*)

Item 6 – Resolution Requesting Funding from the Cleanup and Abatement Account for Lake San Marcos (Tentative Resolution No. R9-2010-0079) (*Chiara Clemente*)

Mrs. Margaret Denny, Lake San Marcos, said she was in support of the funding but didn't think the City of San Marcos should be the lead, it needed a third party fair analysis.

Chairman King noted the comment for the record. Item 6 remained on the Consent Calendar.

Item 7 – Resolution Requesting Funding from the Cleanup and Abatement Account for County of San Diego, Beach Water Quality Monitoring (Tentative Resolution No. R9-2010-0091) (*Eric Becker*)

Item 8 – NPDES Permit Revision: Order No. R9-2009-0080, NPDES No. CA0109151, Waste Discharge Requirements for BAE Systems San Diego Ship Repair, Inc. Discharge to San Diego Bay (Tentative Order No. R9-2010-0090) (*Brian Kelley*)

Mr. Rayfield moved approval of Consent Calendar Items 5-8. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 9 – Hydromodification Management Plan adoption consideration. The San Diego Water Board will consider adoption of a Hydromodification Management Plan (HMP) for San Diego County. The HMP was developed as a requirement of Order No. R9-2007-0001, the San Diego County Municipal Storm Water Permit (Tentative Order No. R9-2010-0066) (*Christina Arias*)

Staff member Christina Arias gave the presentation.

Chairman King announced that the presentation by the Copermittees would follow the lunch break.

The meeting was recessed for lunch and Closed Session at 12:00 p.m.

Item 10 - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

The San Diego Water Board may meet in closed session to discuss ongoing litigation for the following cases:

Civil Actions

- a. *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). (David Gibson)*
- b. *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)*

- d. *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)*
- e. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*
- f. *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)*

Petitions for Review Pending Before State Water Resources Control Board

- g. *Petition of NRDC, Inc. (Waste Discharge Requirements Order No. R9-2007-001 [NPDES No. CAS0108758] for Urban Runoff Discharges from the Municipal Storm Systems in the Incorporated Cities of San Diego, San Diego Unified Port District, and San Diego Regional Airport Authority, SWRCB/OCC File A-1830(c), filed February, 2007 (in abeyance).*
- h. *Petition of Natural Resources Defense Council and San Diego Coastkeeper (Executive Officer Approval of Countywide Model Standard Urban Stormwater Mitigation Plan for Development Applications), SWRCB/OCC File A-2010, filed April 2009 (in abeyance). (Eric Becker)*
- i. *Petition of Department of the Navy (Waste Discharge Requirements Order No. R9-2009-0081 [NPDES No. CA0109185] for the United States Department of the Navy, Naval Base Coronado, San Diego County), SWRCB/OCC File A-2032, filed July 2009. (Vicente Rodriguez)*
- j. *Petition of La Costa Town Square, LLC (Denial of Clean Water Act section 401 Water Quality Certification, La Costa Town Square*

Project, Application 09C-043, San Diego County), SWRCB/OCC File A-2039, filed August 2009 (in abeyance). (*Chiara Clemente*)

- k. Petition of South Coast Water District and South Orange County Wastewater Authority (Failure to Act to Modify NPDES Permit for Brine Discharge and Groundwater Recovery Facility, San Diego County), SWRCB/OCC File A-2072, filed January 2010. (*Brian Kelley*)
- l. Petitions of the City of Laguna Hills, the City of Laguna Niguel, the City of San Juan Capistrano, the City of Mission Viejo, the City of San Clemente, the City of Dana Point, the City of Laguna Woods, the County of Orange and Orange County Flood Control District, the City of Aliso Viejo, the City of Lake Forest, and the City of Rancho Santa Margarita (Waste Discharge Requirements Order No. R9-2009-0002 (NPDES No. CAS0108740), Orange County Municipal Separate Storm Sewer System (MS4) Permit), SWRCB/OCC Files A-2073(a)-(j), filed January 2010 (requests to hold in abeyance). (*Ben Neill*)
- m. Petition of Chevron (Revised Cleanup and Abatement Order No. R9-2009-0124 for Chevron USA, Inc. at Chevron Service Station No. 9-3417, 32009 Camino Capistrano, San Juan Capistrano, Orange County), SWRCB/OCC File A-2074, filed January 2010. (*Barry Pulver*)
- n. Petitions of American Salvage Inc., and Consolidated Electrical Distributors (CED) and Northbrook Properties, Inc. (NPI) (Cleanup and Abatement Order No. R9-2010-007), SWRCB/OCC Files A-2084 and 2084(a), filed February 2010 (requests to hold in abeyance). (*Lynn Berlad*)
- n. Petition of Vulcan Materials Company (Reconsideration of Clean Water Act Section 401 Water Quality Certification No. 08C-051 for Poway Mining Site, Vulcan Materials, San Diego County) SWRCB/OCC File A-2088, filed March 2010 (request to hold in abeyance). (*Mike Porter*)
- o. Petition of California Independent System Operator Corporation (Order No. R9-2010-0062 Determining No Changes Are Warranted to Order No. R9-2004-0154 (Dynergy South Bay, LLC, South Bay Power Plant, NPDES Permit No. CA0001368) SWRCB/OCC File A-2103, filed June 2010. (*Kristin Schwall*)

The Closed Session was held and items e. and o. were discussed.

Item 11 – *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 12 – *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 13 – *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.

The meeting reconvened at 12:45 p.m.

Item 9 (continued)

Additional speakers:

Sara Agahi – County of San Diego
Eric Mosolgo – Brown and Caldwell
Tory Walker – San Diego County BIA
Pedro Orso-Delgado – City of Santee
Steve Maciej – San Diego County BIA
Scott Smith – City of Oceanside
Jennifer Kovecses – San Diego Coastkeeper
Livia Borak – San Diego Coastkeeper
Noah Garrison – NRDC
Gabriel Solmer – San Diego Coastkeeper
David Hauser – City of Carlsbad
Kris McFadden – City of San Diego Storm Water Department

Dennis Bowling – APWA
Cheryl Filar – City of Escondido
Mikhail Ogawa – City of Del Mar

Board Members asked questions of the speakers.

Board Members made comments about the need for better coordination of monitoring, adding an additional monitoring point, and urban infill. They also asked questions of staff.

Ms. Arias made closing comments.

Board Members thanked staff for the clear presentation and hard work and also thanked the stakeholders for their participation.

Mr. Gibson recommended that the Board adopt the Hydromodification Management Plan.

Mr. Rayfield moved to adopt Order No. R9-2010-0066 with amendment. The motion was seconded by Mr. Destache and approved by unanimous vote.

Item 14 – Arrangements for Next Meeting and Adjournment
Wednesday, August 11, 2010 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

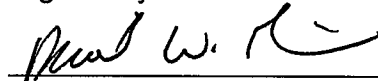
With there being no further business, the meeting was adjourned at 3:00 p.m.

These minutes were prepared by:



Lori Costa (with input by Ali Ernst)
Executive Assistant

Signed by:



David Gibson
Executive Officer