

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

MINUTES OF MEETING  
JUNE 8, 2011

At 9:00 a.m. 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: Chairman Destache, Eric Anderson, George Loveland, Gary Strawn, Don Higginson, and Bill Green.

Staff Present: David Gibson, James Smith, David Barker, Julie Chan, Susan Pease, Bob Morris, John Anderson, Cathryn Henning, Barry Pulver, Chris Means, Fisayo Osibodu, Brian Kelley, Eric Becker, Sean McClain, Cynthia Gorham, Alan Monji, Kristin Schwall, Michelle Mata, John Odermatt, Deborah Woodward, Lisa Honma, Deborah Jayne, Chiara Clemente, Chad Loflen, Jeremy Haas, Christina Arias, Ben Neil, Craig Carlisle, Frank Melbourn, Tom Alo, Laurie Walsh, Wayne Chiu, Vicente Rodriguez, and Jody Ebsen.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Cris Carrigan, and Jessica Newman.  
Kennedy Court Reporters – Katrina Dzwonkowski.

Public Attendance: Kenneth Johansson – Caltrans; Tim Seeno, Phil Rosenberg – Brown and Caldwell; Laura Hunter – Environmental Health Coalition; John Lormon – Procopio, Cory, Hargreaves and Savitch; Ruth Kolb – City of San Diego; Toby Roy, Todd Synder – San Diego County Water Authority; Kelly Richardson – Latham & Watkins; Tim Stebbins – City of San Diego Public Utilities; Scott Patterson – Brown and Winters; Mary Jane Foley, Dawn Guendert – Municipal Water District of Orange County; Jim Peugh – San Diego Audubon Society; Jay Shrake – AMEC; Matt Dart – BAE Systems; Steve Macie – Building Industry Association; Leslie Fitzgerald – San Diego Port District; Gabriel Solmer, Jill Witkowski – San Diego Coastkeeper; Patti Krebs – Industrial Environmental Association; Helen Perry – City of Santee; Buddy Burton – Seaworld San Diego.

**Item 2** – Public Forum

Ms. Gabriel Solmer, San Diego Coastkeeper, reported that at World Oceans Day, a Rancho Bernardo resident was concerned about Webb Lake's grey surface scum, and the possibility of depleted oxygen for fish & wildlife. Mr. David Gibson stated that staff would follow up.

**Item 3** – Minutes of Board Meeting: May 11, 2011

*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. Loveland moved approval of the May 11, 2011 minutes. The motion was seconded by Mr. Higginson and approved by unanimous vote.

**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.

Ms. Fran Spivy Weber, State Board Member Liaison, spoke about there being no word on the budget, and it would probably be voted on June 9<sup>th</sup>. Sacramento may get something by the deadline (June 15<sup>th</sup>). Not having a budget is influencing new appointments to the Water Board and this is unlikely to change until a budget is passed. Travel is awaiting approval for the WQCC meeting in September, this could be done by a webinar meeting, but it is important to do face to face meetings. Ms. Spivy also said the Phase 2 State storm water permit for small communities would be out this week. It is going through an approval process, then a commenting period. There is a U.S. Forest Service waiver. Ms. Spivy stated there would be a meeting with some Regional Boards that were concerned about it before it is publicly released.

Mr. Gibson stated there would be a discussion at 1 p.m. today about the U.S. Forest Service waiver.

Ms. Spivy discussed TMDLs. Region 6 brought the South Lake Tahoe TMDL to the State Board. The Region provided staffing, took leadership and cut off nine months from the adoption process. The second one was from Region 5 (mercury), and the staff was taking leadership to move the TMDL forward. Also, Ms. Spivy stated there was a draft of a one page snapshot of a TMDL, which would be put on websites to make information more accessible to people. The first one was about grasslands and selenium.

Mr. Green asked where the State Board was on the definition of streambeds.

Ms. Spivy said Region 2 was taking leadership on the wetlands policy.

Mr. Gibson said Region 9 had submitted comments on the draft wetlands policy. Region 9 was concerned that it doesn't present enough protection for non-perennial streams. It was being driven by Region 1 and Region 2. The policy would be finalized late this year or early next year.

Mr. Strawn reported that he sits in on San Diego River Watershed Monitoring Workshops. There were many stakeholders in the group. One of the actions was to look at where on the San Diego River Rec1 and Rec2 events occur; and the location of dairy farms because there are good maps of farms but it is difficult to identify houses and wells.

The Riverpark Foundation, Coast Keeper, and I Love a Clean San Diego all pick up trash but quantify differently. They will get together to determine a simple method of quantification.

Mr. Gibson spoke at an Orange County Coastal Coalition meeting. The stakeholders had questions about the SOCRA permit. They discussed landscape irrigation runoff and there was no discussion on fireworks. Mr. Gibson said he intends to sign a participation agreement addendum for Lake San Marcos. Region 9 is pursuing a separate agreement with the City of Escondido to work together to identify contamination sources. On Monday, the Division of Water Rights will send someone to analyze compliance with Water Rights issues.

Chairman Destache asked if the local residents were being informed.

Mr. Gibson said they were involved and informed, and they have collected data from the lake but there could be Quality Control issues with the data.

Consent Item:

**Item 5** - Waste Discharge Requirements Revision: California Department of Transportation, District 11, Buckman Springs Safety Road Side Rest Area, San Diego County, amendments to Order No. R9-2009-0105 modifying requirements for submittal of a water quality investigation report. (Tentative Order No. R9-2011-0043) (*Fisayo Osibodu*)

Mr. Higginson moved approval of Order No. R9-2011-0043. The motion was seconded by Mr. Strawn and approved by unanimous vote.

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

**Item 6** – Informational Item: Comision Estatal de Servicios Publicos de Tijuana (CESPT) will provide an update on sewage treatment operations south of the international border. (*Bob Morris and Bart Christensen*)

Item 6 was postponed.

**Item 7** – NPDES Permit Reissuance: Fallbrook Public Utility District, Wastewater Treatment Plant 1, Discharge to the Pacific Ocean. (Tentative Order No. R9-2011-0041, NPDES Permit No. CA0108031) (*Ben Neill*)

Item 7 was postponed.

**Item 8** – NPDES Permit Reissuance: SeaWorld Parks & Entertainment, Inc., Sea World -San Diego. (Tentative Order No. R9-2011-0032, NPDES Permit No. CA0107336) (*Michelle Mata*)

Chairman Destache gave instructions for proceeding.

Ms. Michelle Mata gave a presentation for adoption of the permit.

Mr. Buddy Burton, Environmental Health & Safety for Sea World, supports most of the permit with the exception that the toxicity test doesn't allow for a dilution factor.

Mr. Phil Rosenberg, Brown & Caldwell, objects to no dilution factor for toxicity and he feels the test is not robust and they don't know impact of test results on processes.

Chairman Destache asked if staff could give an update on toxicity.

Ms. Mata gave additional information about the toxicity test, made a closing statement, and recommended adoption of the permit with errata.

Mr. Gibson stated that the permit was responsible.

Chairman Destache closed the public hearing.

Mr. Loveland moved approval of Order No. R9-2011-0032. The motion was seconded by Mr. Strawn and approved by unanimous vote.

**Item 9** – Hearing and Adoption Consideration: 2011 Basin Plan Triennial Review. The San Diego Water Board will consider adopting a short list of suggested Basin Plan revisions to serve as the basis of a three-year work plan. (Tentative Resolution No. R9-2011-0047) (*Deborah Woodward*)

Mr. Loveland reported that he received a phone call in support of tiers.

Ms. Deborah Woodward gave a presentation about revisions to the Basin Plan and the Basin Plan amendment process. This was the first in the State to involve a stakeholder group. She recommended adopting the short list.

The Board members asked questions of staff.

Ms. Clemente discussed the program, PY's, definition of wetlands, and tracking impacts to wetlands.

Mr. Gibson and Board members made comments and asked questions of staff.

Speakers that discussed the proposal:

Ms. Laura Hunter, Environmental Health Coalition

Ms. Patti Krebs, Industrial Environmental Association

Ms. Toby Roy, San Diego County Water Authority

Mr. Jim Peugh, San Diego Audubon Society

Ms. Mary Jane Foley, expressed concerns with the proposal.

Ms. Gabriel Solmer, San Diego Coastkeeper

Ms. Helen Perry, City of Santee read a letter from the City.

Ms. Woodward supported comments on Indirect Potable Reuse (*IPR*). Further, she suggested that if IPR were moved to Tier 1, then something else should be moved out of Tier 1.

Board Members and Mr. Gibson made comments and asked questions of staff.

Ms. Woodward recommended adoption of the short list.

Chairman Destache closed the public hearing. He said he would like staff to look into the UST issue near the desalination project in Orange County.

Mr. Loveland moved approval of Resolution No. R9-2011-0047. The motion was seconded by Mr. Anderson and approved by unanimous vote.

**Item 10** – TMDL Basin Plan Amendment Hearing: Resolution Amending the Water Quality Control Plan for the San Diego Basin (9) to Incorporate the Sediment Total Maximum Daily Load (TMDL) for Los Peñasquitos Lagoon. The San Diego Water Board will deliberate and consider adopting an amendment to incorporate the sediment TMDL into the Basin Plan. (Tentative Resolution No. R9-2011-0021) (*Cathryn Henning*)

Item 10 was postponed.

**Item 11** – San Diego Shipyard Sediment Site, Tentative Cleanup and Abatement Order No. R9-2011-0001, San Diego County, Third Amended Order of Proceedings Issued by Presiding Officer for Prehearing Proceedings on May 17, 2011. The Board may affirm, modify or reject the Third Amended Order of Proceedings. (Tentative Resolution No. R9-2011-0051) (*Frank Melbourn*)

Chairman Destache gave a summary and said he wanted the rest of the Board members to weigh in on the schedule and understand procedures.

Mr. Frank Melbourn, Advisory Team, discussed the schedule.

Chairman Destache said the schedule allowed for public comment and seemed workable.

Ms. Gabriel Solmer, San Diego Coastkeeper, discussed a motion that excluded their expert.

Ms. Catherine Hagan stated that it was not appropriate to discuss at that time.

Ms. Laura Hunter, Environmental Health Coalition, discussed problems with the process.

Ms. Catherine Hagan reminded the Board that a motion was filed from NAASCO to remove Coastkeeper as expert, and it was not appropriate to discuss at that time.

Ms. Jill Witkowski, San Diego Coastkeeper, said she wanted to know the rules for the process.

Mr. Cris Carrigan, State Board, Counsel to Cleanup Team who prepared the CAO, supported adoption of Third Amended Order of Proceedings with a revision.

Mr. Kelly Richardson, Latham & Watkins, attorney for NASSCO supported adoption and asked for an edit.

Mr. Matt Dart, Attorney, DLA Piper, BAE systems, agreed with comments made by Mr. Richardson.

Board members asked questions of staff.

Ms. Hagan addressed Board Members questions.

Ms. Witkowski requested clarification on four items.

Ms. Hagan and Mr. Smith asked for time to discuss suggested edits.

Chairman Destache gave the Advisory Team time during lunch to discuss suggested edits.

*At 12:30 PM, the meeting recessed for lunch and to discuss Closed Session items a – f.*

**Item 12** - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

**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)*
- b. *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)*
- c. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate [re: San Diego Water Board's adoption of Order No. R9-2009-0038 amending Order No. R9-2006-0065 for Poseidon Resources (Channelside), LLC, NPDES Permit No. CA0109223, approval of a Flow, Entrainment and Impingement Minimization Plan under the California Water Code]. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*

- d. *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)*
- e. *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)*
- f. *State of California Department of Finance, State Water Resources Control Board, And California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010) (Catherine George Hagan).*

**Petitions for Review Pending Before State Water Resources Control Board**

*None at this time (all petitions are currently being held in abeyance).*

The meeting reconvened at 1:30.

**Item 11 - Continued**

Ms. Hagan discussed edits.

- Amendments to Order: The Cleanup Team recommended, page 12, that revisions to TCAO and Draft Technical Report, parties will have the opportunity to comment on revisions, and comments on FEIR limited to Response to Comments that are part of FEIR.
- Hearing Brief to allow for Hearing Briefs. Hearing Notice would specify deadline for hearing briefs and page limits of hearing briefs.
- Page 11 – change that removes phrase “consider whether to allow,” will allow additional limited comments by other Designated Parties on that new evidence.

Clarification to designated parties for hearing process procedures.

Ms. Wiltowski requested a date change for the hearing because their expert witness could not be there.

Board Members and Ms. Hagan discussed changing the November hearing date to November 29, 30, Dec 1, or two days preceding the December 14, 2011 Board meeting, and then adoption at the December Board meeting. Email will be sent to Board Members and parties about date change.

Ms. Hagan asked for concurrence with proposed edits.



Mr. Carrigan, Mr. Richardson, Mr. Dart agreed with the proposed edits. Coastkeeper and Environmental Health Coalition had no comments.

The Advisory Team recommended adoption of the Resolution with errata.

Mr. Green moved approval of Resolution No. R9-2011-0051 with errata. The motion was seconded by Mr. Higginson and approved by unanimous vote.

**Item 13** – *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 14** – *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 15** – *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)]

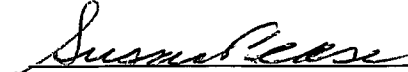
The Closed Session was not held.

**Item 16** – Arrangements for Next Meeting and Adjournment


Wednesday, August 10, 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 2:00 p.m.

These minutes were prepared by:

  
\_\_\_\_\_  
Susan Pease  
Interim Executive Assistant

Signed by:

  
\_\_\_\_\_  
David Gibson  
Executive Officer