

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

MINUTES OF MEETING
JUNE 13, 2012

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: Grant Destache, Eric Anderson, George Loveland, Gary Strawn, Tomas Morales, and Henry Abarbanel.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Chris Witte; John Odermatt, David Barker, Robert Morris, Amy Grove, Bruce Posthumus, Jeremy Haas, Eric Becker, Sean McClain, Frank Melbourn, John Anderson, Chiara Clemente, Barry Pulver, Joann Lim, Sheila-Christine McQuaid-Moran, Cynthia Gorham, Laurie Walsh, Jody Ebsen, Michelle Mata, Brian Kelley, Helen Yu, Carol Tamaki, Craig Carlisle, Amy Mecklenborg, Fisayo Osibodu, Kelly Dorsey, Kristin Schwall, Cheryl Prowell, Roger Mitchell.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Jahr. Kennedy Court Reporters – Bonnie Breen

Public Attendance: Paloma Aguirre, WiLDCOAST; Margarita Diaz, PFEA; Ken Johansson, CalTrans; Con Kontaxis, CalTrans; Richard Tynan, TREVA; Jim King; Yahi Henshaw, OC Waste and Recycling; Scott McMillan, AECOM; Lindsay Cavallan, AECOM; Michele Stress, County of San Diego; Heather Stroud, County of San Diego; Mike Welch; Mark Dunsavage, Camp Pendleton; Joe Nainan, Village News; Grace Lowenberg, City of San Diego; Kathie Washington, BRG; John Stokes, SDUSD; Mark Hammond, City of Oceanside; Fred Jacobsen, SDG&E; Todd Snyder, County of San Diego; Brian Shin, Camp Pendleton; Barry Snyder, AMEC; Vipui Toshi, Dudek; Bill Prinz, City of San Diego—LEA; Hani Anthony, City of San Diego—ESD; Cherlyn Cac, City of San Diego; Alison Witerg, City of Oceanside; Paul Hartman, City of Vista; Sylvia Castillo, City of San Diego; Hamid Fathi, City of San Diego; Richard Opper, City of San Diego; Cindy Lin, U.S. EPA; Mike Hastings, Los Peñasquitos Lagoon Foundation; Tracy Cline, County of San Diego; Kelly Barker, City of Del Mar; Ruth Kolb, City of San Diego; Lisa Skutecki, Brown & Caldwell; Rick Ahlers, ARCADIS; Darren Smith, California State Parks; Steve Strapac, City of Poway; Mark West, Surfrider; Roderick Michener, Surfrider; Ian Trowbridge, San Diegans

for Open Government; Dan Murphy, Surfrider; Ted Von Bitner, Orange County Public Works/OC Stormwater Program; Kris McFadden, City of San Diego; Livia Borak, Coastal Environmental Rights Foundation/San Diego Coastkeeper; Bill Harris, City of San Diego; Greg Cross, City of San Diego; Scott Morgan, Kinder Morgan Energy Partners; Michael Tracy, Kinder Morgan.

Item 2 – Public Forum

The following speakers expressed concern regarding unseasonal cross-border Tijuana river flow caused by sewage treatment plants in Tijuana and the lack of a formal notification procedure when spills occur, such as the one on April 4, 2012:

- Paloma Aguirre, WILD Coast
- Mark West, Surfrider Foundation
- Roderick Michener, Surfrider Foundation
- Jim King, Imperial Beach resident and Surfrider Council Member
- Margarita Diaz, PFEA
- Dan Murphy, Surfrider Foundation

Richard Tynan, Tijuana River Valley Equestrian Association and land owner, spoke of the need to be able to use power tools such as chain saws and motorized access such as golf carts during cleanups of the horse trails in the Tijuana River Valley.

Ian Trowbridge, Chair of San Diegans for Open Government, spoke of the need to dredge the Tijuana River flood channels.

Mr. Destache and Mr. Gibson discussed the possibility of having a public meeting regarding the Tijuana River Valley Recovery Strategy, the need for funding of the Recovery Strategy, and the availability of the Recovery Strategy plan on the Regional Board's website.

Item 3 – Minutes of Board Meeting: April 11, 2012

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.

Approval of the minutes was deferred until the August meeting in order for the minutes to be modified to include the Board discussion following the presentations of Item No. 6.

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. Gibson discussed the Executive Officer's Report.

Consent Calendar: Items 5 through 8 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 5 – NPDES Permit Amendment: City of Oceanside Brine Discharge from the Mission Basin Desalting Facility to the Oceanside Ocean Outfall (Tentative Order No. R9-2012-0042) (*Joann Lim*).

Ms. Lim made a presentation that provided additional background information for the item.

Item 6 – NPDES Permit Amendment: Marine Corps Base Camp Pendleton Brine Discharge from the Advanced Water Treatment Plant at Haybarn Canyon to the Oceanside Ocean Outfall (Tentative Order No. R9-2012-0041) (*Joann Lim*).

Item 7 – Waste Discharge Requirements: San Diego Unified School District, discharges of fill to non-federal waters of the State for the Jonas Salk Elementary School Project, San Diego County (Tentative Order No. R9-2012-0007) (*Alan Monji*).

Item 8 – Rescission of the following Waste Discharge Requirements:

- a. Order No. R9-2008-0071 for Resource Environmental Limited Liability Corporation, In-situ Chemical Oxidation Project at 105 and 112 South Rancho Santa Fe Road, San Marcos;
- b. Order No. R9-2005-0148 for the Driscoll West Boat Repair Facility discharge of Industrial Storm Water to San Diego Bay;
- c. Order No. R9-2004-0154 for Dynegy South Bay, LLC, South Bay Power Plant discharge to San Diego Bay; and
- d. Order No. R9-2007-0009 for the Jack and Mark Steifel Dairy, Winchester, Riverside County (Tentative Order No. R9-2012-0043) (*Robert Morris*).

A motion was made by Dr. Abarbanel and seconded by Mr. Anderson to adopt the Consent Calendar in its entirety. A vote was taken, and the Board unanimously approved the Consent Calendar.

Mr. Destache called a recess at 10:06 a.m. and reconvened the meeting at 10:24 a.m.

Remainder of the Agenda (Non-Consent Items):

Item 9 – Informational Item: Regional Strategic Monitoring Framework (*Bruce Posthumus, Lilian Busse*).

Mr. Posthumus presented a plan for the monitoring and assessment of the health of water bodies in the San Diego Region.

The Board expressed support for the plan, citing the importance of early stakeholder participation. In response to a question about the allocation of resources, Mr. Posthumus cited the San Francisco Bay Regional Monitoring Program as exemplary.

Ted Von Bitner of Orange County Public Works and the Orange County Storm Water Program also expressed support for the monitoring and assessment plan.

Item 10 – Waste Discharge Requirements: Tentative General Order for Closed, Abandoned, or Inactive Nonhazardous Solid Waste Units within the San Diego Region (Tentative Orders Nos. R9-2012-0001 and Tentative Monitoring and Reporting Program No. R9-2012-0002). Note: Item 10 may be considered with Item 11, below, but will be acted upon first. (*Amy Grove*)

The Board considered Items 10 and 11 together, but voted on them separately. After the Chair opened the public hearing, staff (*Amy Grove*) gave a presentation about the proposed orders.

Michele Stress, Department of Public Works, County of San Diego, commented on the proposed orders.

Sylvia Castillo, Senior Civil Engineer for the City of San Diego, commented on the proposed orders.

The Board questioned staff about the proposed orders.

Mr. Destache closed the public hearing. A motion was made by Mr. Strawn and seconded by Dr. Abarbanel to adopt Tentative Order No. R9-2012-0001 and Tentative Monitoring and Reporting Program No. R9-2012-0002. A vote was taken, and the Board unanimously adopted the Orders.

Item 11 – Waste Discharge Requirements: Tentative General Order for Closed, Abandoned, or Inactive Burn Sites within the San Diego Region (Tentative Order No. R9-2012-0003) (*Amy Grove*).

A motion was made by Mr. Loveland and seconded by Mr. Strawn to adopt Tentative Order No. R9-2012-0003. A vote was taken, and the Board unanimously adopted the Order.

Mr. Destache recessed for lunch and Closed Session at 11:39 a.m. and reconvened at 1:00 p.m.

Item 12 – Public Hearing: A Resolution Amending the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) to Incorporate the Sediment Total Maximum Daily Load (TMDL) for Los Peñasquitos Lagoon (Tentative Resolution No. R9-2012-0033) (*Deborah Jayne*).

After Mr. Destache opened the public hearing, staff (*Deborah Jayne*) made a presentation about the proposed order.

The Board questioned staff about the proposed order.

Mike Hastings, Director of the Los Peñasquitos Lagoon Foundation, commented on the proposed order.

Kris McFadden, Deputy Director of the City of San Diego, commented on the proposed order.

Heather Stroud, Deputy City Attorney for the City of San Diego, commented on the proposed order.

Kelly Barker of the City of Del Mar Clean Water Program commented on the proposed order.

Darren Smith, Environmental Scientist for California State Parks, commented on the proposed order.

Livia Borak, speaking on behalf of both the Coastal Environmental Rights Foundation and San Diego Coastkeeper, commented on the proposed order.

Dr. Cindy Lin, San Diego Board Liaison for the U.S. EPA, commented on the proposed order and presented proposed errata.

Fred Jacobsen, Principal Environmental Specialist for SDG&E, spoke in support of the errata proposed by Dr. Lin.

At the Board's suggestion, the Responsible Parties agreed to adjourn temporarily to finalize the language of the errata.

Mr. Destache called a recess at 3:15 p.m. in order for the Responsible Parties to complete the proposed errata. The meeting reconvened at 3:35 p.m. and moved to Item 13

Item 13 – NPDES Permit Notice of Enrollment Amendment: Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge, Consideration of a Resolution authorizing the Executive Officer to amend Kinder Morgan's Notice of Enrollment under Order No. R9-2008-0002, NPDES No. CAG919002, to increase the daily average discharge flow rate limitation (Tentative Resolution No. R9-2012-0045) (*Bob Morris*).

Catherine Hagan introduced the letter submitted by Kinder Morgan into the record, with no objections from any of the parties.

Mr. Morris made a presentation regarding the proposed order.

The Board questioned staff about the presentation and the proposed order.

Mike Tracy, an attorney for Kinder Morgan Energy Partners, commented on the proposed order.

Kris McFadden, Deputy Director of the City of San Diego, made a presentation regarding the proposed order.

The Board questioned Mr. McFadden about his comments.

Grace Lowenberg, Deputy City Attorney for the City of San Diego, commented on the proposed order.

The Board questioned Ms. Lowenberg, Mr. McFadden and staff about Ms. Lowenberg's and Mr. McFadden's comments.

Richard Opper, Special Counsel to the City of San Diego, commented on the proposed order.

A motion was made by Mr. Strawn and seconded by Mr. Anderson to adopt Resolution No. R9-2012-0045. A vote was taken, and the Board unanimously adopted the Resolution.

Item 12 (cont'd) - Ms. Jayne presented the finalized errata to the Board.

San Diego Water Board staff will request that the State Water Board designate the North County Transit District as an enrollee under its soon to be re-issued statewide Phase II Small MS4 General Permit.

Mr. Destache closed the public hearing. After the Board's deliberation, a motion was made by Dr. Abarbanel and seconded by Mr. Morales to adopt Resolution No. R9-2012-0033 with all Errata. A vote was taken, and the Board unanimously adopted the Resolution.

Item 14 – *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 v. San Diego Regional Water Quality Control Board*, Petition for Writ of Mandate. Los Angeles County Superior Court, Case No. BS133238 (Mandatory Minimum Penalties) (filed April 2010) (Joann Lim)
- 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*)
- g. *South Orange County Wastewater Authority and South Coast Water District v. San Diego Regional Water Quality Control Board,* Petition for Writ of Mandate. Orange County Superior Court Case No. 30-2011-00501106 (Refusal to Modify NPDES Permit) (filed August 2011) (*Kristin Schwall*)
- h. *In re: Citizens Development Corporation, Debtor and Debtor in Possession,* Case No. 10-15142-LT11. United States Bankruptcy Court, Southern District of California. (San Diego Water Board Claim in Bankruptcy) (filed June 2011) (*Catherine George Hagan*)
- i. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, (NPDES No. CAS0108740) Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of the County of Orange, and the Orange County Flood Control District adopted on December 16, 2009. Test Claim filed by County of Orange, et al., with Commission on State Mandates, No. 10-TC-11 (filed June 2011).* (*Jessica Newman*)
- j. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (NPDES No. CAS0108766) adopted November 10, 2010, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula and Wildomar, Co-Claimants, filed with Commission on State Mandates, No. 11-TC-03 (filed November 2011).* (*Catherine George Hagan*)

Petitions for Review Pending Before State Water Resources Control Board:¹

- k. Petitions of the National Fireworks Association and Fireworks & Stage FX America Inc., Coastal Environmental Rights Foundation, and San Diego Coastkeeper (General National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2011-0022 (NPDES No. CAG999002) for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks), SWRCB/OCC Files A-2164(a)-(c), filed June and July 2011. (*Michelle Mata*)
- l. Petition of Citizens Development Corporation (Water Code Section 13267 Investigative Order No. R9-2011-0033 dated September 14, 2011, Requiring Submission of Technical Reports Pertaining to Investigation of Lake San Marcos Nutrient Impairment, San Diego County), SWRCB/OCC File A-2185, filed October 2011. (*Laurie Walsh*)
- m. Petition of City of San Diego (Time Schedule Order No. R9-2011-0052 dated September 14, 2011, for the Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek, San Diego County), SWRCB/OCC File A-2186, filed October 2011. (*Ben Neill*)
- n. Petition of Jack Eitzen (Administrative Assessment of Civil Liability Order Nos. R9-2011-0048 and R9-2011-0049 against Jack Eitzen for 38175 and 38155 Via Vista Grande, Murrieta, Riverside County), issued October 12, 2011), SWRCB/OCC File A-2193, filed November 2011. (*Rebecca Stewart*)
- o. Petitions for Review of San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024 for National Steel and Shipbuilding Company (NASSCO), BAE Systems, San Diego Ship Repair (BAE Systems), Campbell Industries, City of San Diego, San Diego Gas & Electric (SDG&E) and San Diego Unified Port District (Port District) issued June 13, 2012. Petitions for Review and Requests for Stay filed by NASSCO, BAE Systems and City of San Diego. Petitions for Review w/o requests for stay filed by SDG&E, Star & Crescent Boat Company and Port District. SWRCB/OCC File A-XXXX, filed April 2012. (*Frank Melbourne*)

¹ Petitions for review of San Diego Water Board actions or inactions filed with the State Water Board being held in abeyance by the State Water Board are not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at chagan@waterboards.ca.gov or 858-467-2958 for more information.

- p. Petition of NASSCO for Review of Resolution No. R9-2012-0025 (Certifying Final Environmental Impact Report for San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024), adopted June 13, 2012, SWRCB/OCC File A-XXXX, filed April 2012. (*Frank Melbourne*)
- q. Petition of South Laguna Civic Association for Review of Order No. R9-2012-0013, NPDES No. CA0107611, NPDES Permit Reissuance: South Orange County Waste Authority, Discharges to the Pacific Ocean via Aliso Creek Ocean Outfall, adopted April 11, 2012, SWRCB/OCC File A-XXXX, filed May 2012. (*Joann Lim*)

This Closed Session was held and the Board discussed Items a and e.

Item 15 – *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)].

This Closed Session was not held.

Item 16 – *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)].

This Closed Session was not held.

Item 17 – *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)].

This Closed Session was not held.

Item 18 – Arrangements for Next Meeting and Adjournment
Wednesday, August 8, 2012 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

There being no further business, the meeting was adjourned at 5:25 p.m.

These minutes were prepared by:

Signed by:

Chris Witte
Executive Assistant

David Gibson
Executive Officer