

State of California
Santa Ana Regional Water Quality Control Board

Minutes of the October 16, 2020 Board Meeting
Video and Teleconference Meeting
No Physical Meeting Location
(Authorized by and in furtherance of
Executive Orders [N-29-20](#) and [N-33-20](#))

Chair Ruh called the meeting to order at 9:11 a.m.

1. **Introductions**

Board Members Present at Virtual Board Meeting:

William Ruh, Chair
William P. von Blasingame, Vice Chair
Tom Rivera
Daniel P. Selmi
Lana Peterson
Kristine A. Murray
Joseph Kerr

Staff Present at Virtual Board Meeting:

Hope A. Smythe, Executive Officer
Jayne Joy, Assistant Executive Officer
Teresita Sablan, Regional Board Counsel
Ann E. Sturdivant, Division Chief
Mark E. Smythe, Division Chief
Lauma Willis, Division Chief
Cindy Li, Chief of Land Disposal
Julio C. Lara, Chief of Wastewater
Terri Reeder, Chief of Basin Planning – Coastal Waters
Glenn Robertson, Engineering Geologist
Mehrnoosh Behrooz, Water Resource Control Engineer
Afshin Amini, Chief of Site Cleanup Program
Alan Kuoch, Engineering Geologist
Chuck Griffin, Senior Water Resources Control Engineer
Kevin Heinemann, Information Technology Manager
Don Nguyen, Information Technology Associate
Daniel Mefford, Information Technology Associate
Jeannie Aguilar, Associate Governmental Program Analyst, Board Clerk
Daniel Ellis, Environmental Scientist, Division of Water Quality
Sean Maguire, State Board Liaison
Nickolaus Knight, Attorney, State Water Board
Philip Wyels, Assistant Chief Counsel, State Water Board
Jennifer Fordyce, Assistant Chief Counsel, State Water Board

Bryan Elder, Senior Water Resources Control Engineer, State Water Board
Mandy Roman, Public Participation Specialist, State Water Board
Itze Abeyta, Associate Governmental Program Analyst, State Water Board

Also Present at Virtual Board Meeting

Dave Isola, Attorney for Cham-Cal
Ed Chambers, President of Cham-Cal
Marc Gutierrez, Spanish Interpreter
Peter Petty, Court Reporter
(*Court Reporter recorded items 1, 4, 6, 7, 8, 9, and 12*).

Virtual Public Attendance by Virtual Speaker Cards Received

Brett Korte, UCI Environmental Law Clinic; Garry Brown, Orange County Coastkeeper; Lauren Chase, Orange County Coastkeeper; Al Javier, Eastern Municipal Water; Parag Kalaria, EVMWD; Scott Maloni, Poseidon Water; Peter MacLaggan, Poseidon Water; Tom Luster, Coastal Commission; Wendy Hall, State Lands Commission; Lucinda Calvo, State Lands Commission; Keith Merkel, Merkel and Associates.

Break at 11:30 a.m. return at 11:46 a.m. and break at 1:15 p.m. to 1:45 p.m.

Item 2. Public Forum:

Brett Korte, attorney with UCI Environmental Law Clinic representing Azul asked the Board if he could speak about Poseidon. Attorney Teresita Sablan informed Brett Korte that this item is pending before the Board and the Board would not be accepting comments at this time. Garry Brown with Orange County Coastkeeper also requested to speak about Poseidon. Attorney Teresita Sablan reminded Mr. Brown that we would not be accepting comments regarding Poseidon.

Item 3. State Water Resources Control Board (SWRCB) Liaison Report

This item was presented by Sean Maguire.

Mr. Maguire discussed the investigation and challenges of the pervasive presence of PFAS in the environment. PFAS has been used by many industries and detected throughout the State. Mr. Maguire mentioned that the Water Board has required testing at source sites, such as, landfills, airports, chrome plating facilities, and wastewater treatment plants. He also said they have been looking at drinking water supply wells in close proximity to the sources. Mr. Maguire said that nearly every source site tested has indicated the presence of some level of the PFAS compounds. Mr. Maguire said that discussions are occurring related to source control methods and phasing out of these chemicals. Currently, the investigation is ongoing and future updates will be presented to the Board.

Mr. Maguire informed and explained to the Board the Executive Order signed by the Governor regarding biodiversity a goal of conserving 30% of state lands and coastal water by 2030. Mr. Maguire discussed climate change acceleration and the need to take steps to mitigate climate change and promote biodiversity.

Mr. Maguire talked about COVID-19 and the ongoing impacts of what we have experienced with the Water Boards financially. Mr. Maguire also mentioned that a lot of our permittees and entities that we work with closely are feeling a financial strain because many households haven't been able to pay their water or wastewater bills, and that the households have been accumulating a debt over the last several months. Mr. Maguire addressed there is a prohibition on water shutoffs and households continue to have water in their house. Mr. Maguire clearly specified we do not know what the economic recovery looks like over the coming months.

Item 4. Regional Board Meeting Minutes of July 30, 2020, July 31, 2020 and August 7, 2020

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

Chair Ruh made note that Board Member Lana Peterson will join the Board meeting later today. Chair Ruh asked the Board Members for a motion of the Minutes and asked Ms. Aguilar to do a roll call vote.

Motion: It was moved by Board Member Rivera, seconded by Board Member Murray, and the Minutes of the July 30, 2020, July 31, 2020 and August 7, 2020 Board Meetings was unanimously approved by roll call vote.

Roll call vote: Board Member Joe Kerr - Aye, Board Member Kris Murray - Aye, Board Member Daniel Selmi - Aye, Board Member Tom Rivera - Aye, Vice Chair William von Blasingame - Aye, Chair William Ruh - Aye.

Item 5. Proposed Board Meeting Dates for 2021

A list of tentative dates for the 2021 Board Meetings was presented. Board Members were advised that if there were any conflicts with any of the dates, to contact the Executive Officer, as this item would be considered for adoption at the December 4, 2020 Board meeting.

Item 6. Consideration of the Consent Calendar items are listed with an asterisk

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

Chair Ruh asked for a motion and asked Ms. Aguilar to do a roll call vote.

Item *7. Rescissions – Orders for the following six facilities are proposed to be rescinded as the discharge has ceased or the project has been completed or the facility will be regulated by another appropriate Order. Order Number R8-2020-0017

1) Order R8-2011-0050, U.S Army Corps, Lower Newport Bay Dredging Project, Project has been completed, WDR is no longer necessary.

2) Order R8-2014-0044, California Portland Cement Plant, 695 South Rancho Ave, Colton, discharge has been eliminated. WDR is no longer necessary.

3) R8-2005-0079 TSO R8-2009-0070 (as amended by TSO R8-2013-0061 and TSO R8-2014-0026), City of Irvine, Road Undercrossing Dewatering Sites, Irvine, the Order and TSO was renewed/replaced by Order R8-2019-0061. Order R8-2019-0061 omitted inclusion of rescission and replacement of Order R8-2005-0079 and the TSOs.

4) R8-2018-0087, Beckman Coulter, Inc., 4300 Harbor Blvd, Fullerton, discharge has been eliminated, WDR is no longer necessary.

5) Order 93-44, Live Nation/San Bernardino County Special Districts, Glen Helen Amphitheater, 2575 Glen Helen Parkway, San Bernardino, Discharges from the facility are hauled to another WWTP for processing. Discharge has been eliminated. WDR is no longer necessary.

6) R8-2007-0041 (as amended by R8-2009-0045) and TSO R8-2009-0069 (as amended by R8-2013-0060 and TSO R8-2014-0025), General Waste Discharge Requirements for Discharges to Surface Water from Groundwater Remediation, The Order and TSO was renewed/replaced by Order R8-2019-0061. Order R8-2019-0061 omitted inclusion of rescission and replacement of Order R8-2007-0041 and the TSOs.

Item *8. Waste Discharge Requirements for San Bernardino County Environmental Management Division, Flood Control District, Cucamonga Basins 6, 7, and 8 Maintenance Project, City of Upland, San Bernardino County – Order Number R8-2020-0044

Motion: It was moved by Board Member Murray, seconded by Board Member Selmi and unanimously carried to adopt Orders R8-2020-0017, and R8-2020-0044 with Errata Sheet as presented by roll call vote.

Roll call vote: Board Member Joe Kerr – Aye, Board Member Kris Murray - Aye, Board Member Daniel Selmi - Aye, Board Member Dr. Tom Rivera - Aye, Vice Chair William von Blasingame - Aye, Chair William Ruh - Aye.

Item 9. Public hearing on Administrative Civil Liability Complaint R8-2020-0002 for Violation of Cleanup and Abatement Order No. R8-2016-0042 at the Cham-Cal Engineering Facility in Orange County – Order Number R8-2020-0002

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

Chair Ruh announced, this is the time and place set aside for the public hearing of the matter of Administrative Civil Liability Complaint R8-2020-0002 issued to Cham-Cal Engineering Company and Western Avenue Associates, L.P. This is to assess a penalty

of \$1,140,000 for failure to comply with Cleanup and Abatement Order R8-2016-0042 at the Cham-Cal Engineering facility in Orange County. Due to the ongoing COVID-19 pandemic, this hearing before the Santa Ana Water Board is taking place virtually through the Zoom platform.

Chair Ruh opened the hearing by administering the Oath to each individual speaker from the prosecution team. The Oath was administered to the prosecution team one by one due to the meeting being on Zoom and not in person.

Advisory Team:

Assistant Executive Officer Jayne Joy; Teresita Sablan, Attorney for the Santa Ana Regional Water Quality Control Board; and Mehrnoosh (Mona) Behrooz, Water Resources Control Engineer.

The Advisory Team has not had any substantive conversations regarding the issues involved in this proceeding with the Prosecution Staff or the Dischargers.

Prosecution Team:

Hope Smythe, Executive Officer; Ann Sturdivant, Supervising Engineering Geologist; Nick Amini, Senior Water Resources Control Engineer; Chuck Griffin, Senior Water Resources Control Engineer; and Alan Kuoch, Engineering Geologist of the Santa Ana Water Board; and, Bryan Elder, Senior Water Resources Control Engineer, and Nick Knight, Attorney with the State Water Board's Office of Enforcement assisting the Prosecution Team staff.

Jennifer Fordyce, Assistant Chief Counsel for the State Water Board is available to assist the advisory team.

Discharger:

Ed Chambers, Cham-Cal Engineering and Western Avenue Associates, L.P. represented by Attorney Dave Isola.

The hearing was conducted in accordance with the final hearing procedures and order of proceedings. The designated parties for the hearing were the Santa Ana Water Board Prosecution Team and Cham-Cal Engineering Company and Western Avenue Associates, L.P.

Each designated party was provided with an opportunity to provide testimony, cross examination, and time for closing statements within an allotted time. An official timekeeper was present.

Prosecution Presentation

Alan Kuoch, Engineering Geologist, provided a presentation of evidence regarding the Cleanup and Abatement Order R8-2016-0042 for the Cham-Cal Engineering facility in Garden Grove, Orange County. Mr. Kouch presented the facts of the Cham-Cal case that has led to the proposed Administrative Civil Liability. Mr. Kouch said Cham-Cal property is severely contaminated with PCE and he presented an overview of Cham-Cal's history of noncompliance. Mr. Kouch pointed out that Cham-Cal is a repeat offender and the Santa

Ana Water Board staff has made numerous efforts to assist Cham-Cal in complying with the Cleanup and Abatement Order.

Mr. Kouch indicated Santa Ana Water Board alleged two specific violations in the Administrative Civil Liability Complaint: Violation Number 1: Failure to submit the IRAP on time (562 days late). Violation Number 2: Failure to implement the required vapor mitigation measures (865 days late). To date, the IRAP has not been completed and vapor mitigation measures remain inadequate. On Violation Number 1: The Prosecution Team has elected to collapse the days from 562 to 104 days of violation resulting in a liability of \$520,000. Violation Number 2: The Prosecution Team elected to collapse the days from 865 to 124 days of violation resulting in a liability of \$620,000.

Mr. Kouch disclosed Santa Ana Water Board did not apply any staff costs due to the initial liability amount exceeding the statutory maximum. The final liability amount is \$1,140,000.

Bryan Elder, State Water Board, presented an analysis to the Board of the economic benefit for non-compliance and the ability of Cham-Cal to pay the claim.

Discharger's Presentation

Mr. Isola objected to Mr. Kouch's presentation and said his presentation was misleading. Mr. Isola read Water Code section 13360(a) for purposes of this proceeding. Mr. Isola said three IRAPs were submitted to the Santa Ana Water Board staff and they did not want to give an opportunity to Mr. Chambers and to his consultants to move forward with the proposals that they were making for purposes of the IRAP. Mr. Isola mentioned the letters from the Santa Ana Water Board to the Discharger are contained in the GeoTracker database.

Mr. Chambers said neighboring Bazz Houston's property is contaminated and it is contaminating the Cham-Cal property. Mr. Chambers said a barrier needs to be put up to stop the flow onto his property so his property can be remediated. Mr. Isola directed questions to Mr. Chambers regarding the contamination.

Cross-Examination

Mr. Knight asked Mr. Kouch clarifying questions and said he did not have any questions in cross examination for Mr. Chambers. Mr. Isola cross examined Mr. Kouch.

Public Comment Speaker

Lauren Chase, Attorney at Orange County Coastkeeper, recommends a liability recalculation without the collapsing of days and voiced her support for the Prosecution Team for taking these violations seriously.

Prosecution Team's Closing Statement

Closing statements by Hope Smythe and Ann Sturdivant.

Discharger's Closing Statement

Closing statement by Dave Isola and Ed Chambers.

Prosecution Team's Rebuttal

Nickolaus Knight delivered a brief rebuttal. Mr. Knight stated that Mr. Chambers did not clean up the site and he did not comply with the orders, and the Santa Ana Water Board was obligated to bring enforcement action.

Open Discussion

Board Members asked questions to staff, Mr. Isola and Mr. Chambers.

Chair Ruh closed the public hearing and the Board agreed to a closed session for deliberation on Item 9. Lunch break and closed session were combined.

Closed Session

At 1:15 p.m., the Board adjourned to lunch followed by a closed session to deliberate on the hearing on Cleanup and Abatement Order Number R8-2020-0002.

Resume Open Session

The Board resumed at 3:38 p.m. Chair Ruh said the objections were overruled. There was no discussion from the Board, therefore, Chair Ruh asked for a motion and a roll call vote to affirm the staff recommendation.

Motion: It was moved by Vice Chair William von Blasingame seconded by Board Member Murray and was unanimously carried to adopt Order Number R8-2020-0002 by roll call vote, affirming the Cleanup and Abatement Penalty of \$1,140,000 as proposed in Complaint Number R8-2020-0016.

Roll call vote: Board Member Joe Kerr - Aye, Board Member Kris Murray - Aye, Board Member Daniel Selmi - Aye, Board Member Tom Rivera - Aye, Vice Chair William von Blasingame - Aye, Chair William Ruh - Aye.

Item 10. Presentation of the Recent Groundwater Management Zones Ambient Water Quality Determinations for the Period of 1999-2018

(This item was postponed to the December 4, 2020 Board Meeting).

Item 11. Upper Temescal Valley Groundwater Management Zone Basin Plan Amendment – Resolution Number R8-2020-0038

(This item was postponed to the December 4, 2020 Board Meeting).

Item 12. Status Update on Continued Hearing for Tentative Order Number R8-2020-0005, NPDES Number CA8000403, Poseidon Resources (Surfside) L.L.C., Proposed Huntington Beach Desalination Facility

(Information pertaining to this item is contained in a verbatim transcript of the proceedings).

This item was presented by Hope Smythe, Executive Officer, Santa Ana Water Board. Staff available to answer questions: Terri Reeder, Santa Ana Water Board and Daniel Ellis, State Water Board.

Ms. Smythe said the intent of this item is to review the Board's direction that came out of the August 7, 2020 hearing and to provide an update on staff and discharger activities related to the mitigation project to offset the impacts of the Huntington Beach Desalination Plant proposed by Poseidon Water (Poseidon). Ms. Smythe mentioned the Board agreed that the mitigation projects should be comprised of 75% restoration and 25% preservation, where the Bolsa Chica Inlet Dredging Project is the 25% preservation project. Ms. Smythe specified the Board emphasized its desire to keep all the existing Bolsa Chica projects that the proponent has already proposed, including the Inlet Dredging Project.

Ms. Smythe said Poseidon is ready to submit their proposed mitigation proposal for staff's review and they understand that their submittal of the revised mitigation plan must comply with the Ocean Plan requirements. Ms. Smythe stipulated staff and other agencies will review the Poseidon proposed mitigation plan and will bring the revised Tentative Order and revised Attachment K back to the Board for consideration, hopefully, early 2021. Ms. Smythe asked Board members if they had any questions.

Board members asked questions and addressed concerns to staff which led to open discussion.

Item 13. Executive Officer's Report

None.

Item 14. Regional Board Member and Executive Officer Communications

Attorney Teresita Sablan reminded the Board there is a closed session under e (1) and (6).

Closed Session

At 4:46 p.m. the Board adjourned to a closed session under e (1) and (6).

Resume Open Session

The Board resumed from session e (1) and (6) discussion at 4:50 p.m. Chair Ruh welcomed Board Member Lana Peterson and asked if there were any comments from the Board members or staff. No comments received. Chair Ruh thanked everyone and proceeded to adjournment.

Adjournment – Chair Ruh adjourned the meeting at 4:55 p.m. to the regular Board Meeting of December 4, 2020 at 9:00 a.m. This will be a video and teleconference meeting. Due to the COVID-19 emergency and the Governor's Executive Order N-33-20, recent Board meetings have been presented as video and teleconference meetings with no physical meeting location, and solely via remote presence. Please follow our website for further updates.

Respectfully submitted:

HOPE A. SMYTHE
Executive Officer

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