

State of California
Santa Ana Regional Water Quality Control Board

Minutes of the September 17, 2021 Board Meeting
Video and Teleconference Meeting
No Physical Meeting Location
(Authorized by and in furtherance of
Executive Order N-08-21)

Chair Peterson called the meeting to order at 9:00 a.m.

Court Reporter recorded items 1, 4, 5, 6, 7, 8 and 9.

Item 1. Introductions

Board Members Present at Virtual Board Meeting

Lana Peterson, Chair
Kris A. Murray, Vice Chair
William Ruh
Daniel P. Selmi

Board Members Absent at Virtual Board Meeting

Joe Kerr
Letitia Clark

Staff Present at Virtual Board Meeting

Jayne Joy, Executive Officer
Katharine Buddingh, Regional Board Counsel
Ann E. Sturdivant, Division Chief
Lauma Willis, Division Chief
Kevin Heinemann, Information Technology Manager
Don Nguyen, Information Technology Associate
Daniel Mefford, Information Technology Specialist I
Jeannie Aguilar, Staff Services Manager I/ Board Clerk
Maher Zaher, Water Resource Control Engineer
Michell Beckwith, Senior Environmental Scientist
Reyna Mendoza, Scientific Aid
Kyle Fructuoso, Scientific Aid
Joanne Schneider, Retired Annuitant
Linda Candelaria, Environmental Scientist
Claudio Tenorio, Environmental Scientist
Terri Reeder, Senior Engineering Geologist
Dorene D'Adamo, State Board Liaison
Catherine Hagan, Attorney IV

Also Present at Virtual Board Meeting

Marlee Nelson, Court Reporter
Amanda Carr, Orange County Public Works
Julia Woo, Orange County Public Works
John Kappeler, City of Newport Beach
Susan Paulsen, Irvine Company Consultant
Keith Garner, Irvine Company Consultant

Virtual Public Attendance by Virtual Speaker Cards Received

Dean Kirk, Irvine Company; Karen Ashby, Larry Walker Associates; Jian Peng; County of Orange; Raymond Hiemstra, Orange County Coastkeeper; Jerry Desmond, Recreational Boaters of California; John Marshall, South Shore Yacht Club- Newport Harbor; David Kennedy, BoatU.S.; Cleve Hardaker, Recreational Boaters of California; Melinda McCoy, John Wayne Airport- Orange County; Matthew Lentz, GSI Environmental; Shelly Anghera, Moffatt & Nichol; Dave Webb, City of Newport.

Item 2. Public Forum

None.

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

This item was presented by Dorene D'Adamo.

Ms. D'Adamo discussed the drought. The State Water Board is working with the Department of Water Resources, US Bureau of Reclamation and Fisheries agencies to plan for next year.

Ms. D'Adamo mentioned that it will be important to receive updated and improved modeling. This year's modeling missed the mark on the following factors: higher temperatures in the spring and dry soils. The State Water Board is expecting to receive newer and improved modeling to address these factors.

Ms. D'Adamo provided a curtailments update. The watershed that is most important for the Water Board to track is the Bay-Delta watershed. In times of drought, the most junior water systems are cut off from diversion to protect the Bay-Delta watershed. It is important for these individuals to not divert water out of their priority of right when water is not available.

Ms. D'Adamo mentioned that counties are contacting us regarding concerns for drinking water supplies and the drought. Staff held two workshops on August 25, 2021, and August 31, 2021. The workshops provided information on resources available, the process to request assistance to the Division of Drinking Water and understanding the role of local emergency services versus state services.

Ms. D'Adamo discussed wastewater arrearages. The Governor issued an executive order regarding drinking water debt and the inability of local water suppliers to go after that debt. The legislature provided a \$985 million funding source and provided us with authority to address arrearages for drinking water and wastewater. The program will be administered through the Division of Drinking Water, phase one will be for drinking water arrearages and phase two will be for wastewater arrearages.

The Water Shut off Moratorium (SB155) scheduled to expire on September 30, 2021, was extended to December 31, 2021. The Bagley-Keene Open Meeting Act for Teleconferencing suspension was extended through January 31, 2022. Chair Joaquin Esquivel has been confirmed as a State Board Member for another four years. The Office of Environmental Health Hazard Assessment (OEHHA) has released the Public Health Goals for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). A workshop will take place on September 28, 2021, the comment period has been extended to October, 28, 2021. After the Public Health Goal process is complete, the Water Board will start the process for developing maximum containment levels.

Board Members had questions for Ms. D'Adamo.

Item 4. Regional Board Meeting Minutes of June 18, 2021

Chair Peterson asked for a motion and asked Board Clerk Ms. Aguilar for a roll call vote.

Motion: It was moved by Board Member Ruh, seconded by Vice Chair Murray and the Minutes of the June 18, 2021, Board Meeting was unanimously approved by roll call vote.

Roll call vote: Board Member Daniel Selmi - Aye, Board Member William Ruh – Aye, Vice Chair Kris Murray – Aye, Chair Lana Peterson – Aye.

Item 5. Consideration of the Consent Calendar items are listed with an asterisk

Chair Peterson asked the Board Members for a motion and asked Board Clerk Ms. Aguilar for a roll call vote.

Item *6. Waste Discharge Requirements for BLC Fleming, LLC, Legado Specific Plan Project, City of Menifee, Riverside County- Order Number R8-2021-0041

Item *7. Change of Ownership from Terracina Investors, LLC, to KB Home Coastal, Inc., Terracina Residential Project, Riverside County, Order Number R8-2021-0043

Item *8. Mitigation Amendment (Order Number R8-2021-0045) for Pacific Summit-Foothill, LLC, Sycamore Heights Residential Development Project, San Bernardino County, Order Number R8-2021-0016

Motion: It was moved by Board Member Ruh, seconded by Board Member Selmi and unanimously carried to adopt Orders R8-2021-0041, R8-2021-0043 and R8-2021-0016 as presented by roll call vote.

Roll call vote: Board Member Daniel Selmi - Aye, Board Member William Ruh - Aye, Vice Chair Kris Murray - Aye, Chair Lana Peterson - Aye.

Item 9. Basin Plan Amendments to Incorporate Total Maximum Daily Loads (TMDLs) for Copper in Newport Bay

Chair Peterson asks Board members if there are any recusals. Daniel Selmi recused himself from participating in the workshop.

This was a public workshop, and no action was taken by the Board. This item was presented by Santa Ana Board staff Dr. Linda Candelaria, Environmental Scientist, and a group presentation by Orange County Public Works, the City of Newport, and the Irvine Company.

Santa Ana Board Staff

The presentation by Dr. Linda Candelaria provided an update on the Copper (Cu) TMDLs for Newport Bay. Information on the applicable water quality criteria (California Toxics Rule criteria for Cu in saltwater) and appropriate sediment guidelines (Effects Range Low (ERL) and the State's Sediment Quality Provisions) were presented as well as the history and background of the Cu TMDLs.

Santa Ana Water Board staff conducted an impairment assessment for metals, including Cu, and evaluated data from 2002 to 2014. Water Board staff found that Upper and Lower Newport Bay are still impaired for Cu. Additional newer data (2015 – 2019) also confirm that the Bay is still impaired for Cu.

Water Board staff developed Cu TMDLs for Upper and Lower Newport Bay and confirmed that the largest source of Cu to the Bay is from Cu anti-fouling paints (AFPs) on boat hulls, approximately 18,000 lbs dissolved Cu per year based on a count of 5,000 boats. Tributary runoff from San Diego Creek and the Santa Ana Delhi channel was the second largest source of Cu to the Bay, approximately 3,000 lbs and 500 lbs dissolved Cu per year for wet year and dry year, respectively.

The allocation for boats is approximately 7,200 lbs dissolved Cu per year; therefore, the TMDLs require that Cu discharges from boats be reduced by approximately 60% no later than 12 years from USEPA approval of the TMDLs. The TMDLs require that the dischargers develop their own implementation plan(s) to achieve the reduction in Cu discharges and monitor water and sediment quality. Responsible parties include the City of Newport Beach, County of Orange, marina owner/operators, individual boat owners, in-water hull cleaners (divers), and boatyards. The TMDLs apply to both recreational and commercial boats.

Water Board staff have addressed stakeholder comments and have held several meetings, informational presentations, and workshops; the next steps are to respond to the latest written and oral comments, revise proposed Basin Plan Amendment documents (as needed), continue having ongoing meetings with stakeholders and prepare for an adoption hearing within the next few months.

Board Members had questions for Dr. Candelaria.

Orange County Public Works

The Orange County Public Works presentation was done by Amanda Carr and Julia Woo. Ms. Carr states that the County is the lead NPDES Permittee for the 34 cities within Orange County and are within two Regional Water Boards. Orange County Public Works

leads the effort on joint compliance programs and field monitoring and data analysis for water bodies throughout the county. In the Newport Bay Watershed, Orange County Public Works led the collective efforts of the nine watershed cities, the Orange County Flood Control District, Irvine Ranch Water District, and the Irvine Company. Ms. Carr mentioned that they have seen significant water quality improvements.

Ms. Carr discusses several legal areas of concern which are: the County and the City are not dischargers of copper anti-fouling paints, the County and the City cannot control the release of copper from antifouling paints, the County and the City lacks the knowledge as to the individual conduct and decisions of individual boat owners, and that the County is a trustee and not a traditional landowner.

Ms. Carr discusses several policy areas of concern which are: there needs to be more specific information on compliance pathways, where and how compliance is determined, instructions for incorporation of TMDLs into permits, approach for monitoring, need to allow AFP product conversion to occur, the interim and final dates of attainment actions and assessment of resulting water quality need to be based on time necessary to implement the prioritized actions.

Ms. Carr discusses several technical areas of concern which are: monitoring data and analyses do not reflect and characterize current conditions, proposed sediment target is not technically valid and has not been peer-reviewed, allocations need clarification, and implementation plan does not clearly identify who is responsible for what requirements and by when.

Ms. Carr discusses recommendations which are: to modify the proposed Basin Plan to address the deficiencies and need for clarification prior to adoption, postpone the adoption hearing until modifications are complete, and to hold additional stakeholder workshops to reconcile the issues and develop implementation alternatives.

The City of Newport

The City of Newport presentation was done by John Kappeler and Shelly Anghera. Mr. Kappeler discussed several critical points which are: Copper levels in Newport Harbor are decreasing, both the City and the County don't have the authority to regulate and approve all boat bottom paints used in California, and that the City wants to continue to partner with the State to help with a successful copper reduction program. Dr. Candelaria used data from 2002-2014 however a lot of dredging has been done since 2002-2014 and the dynamics of the bay are changing and improving. Mr. Kappeler provided two recommendations to the Board which are: to finish the current programs and to complete the dredging. The City will continue to work with DPR and continue to monitor Copper levels.

The Irvine Company

The Irvine Company presentation was done by Susan Paulsen and Keith Garner. The Irvine Company believes that copper concentrations are already declining. There are programs already in place (anti-fouling paints changes and reductions of loadings from the watershed) that will further reduce copper concentrations. Ms. Paulsen notes that toxicity is not seen now, even in samples with copper concentrations higher than TMDL targets.

Mr. Garner addressed two legal concerns that the TMDLs must be based on substantial evidence and that Marina owners are not dischargers.

Board Members had questions and comments for the presenters.

The public comment period was opened by Chair Peterson.

Speakers: Dean Kirk, John Kappeler, Julia Woo, Karen Ashby, Jian Peng, Amanda Carr, Raymond Hiemstra, Susan Paulsen, Keith Garner, Jerry Desmond, John Marshall, David Kennedy, Cleve Hardaker, Melinda McCoy, Matthew Lentz, Shelly Anghera and David Web.

Item 10. Underground Storage Tanks Corrective Action Plans

Report on file.

Item 11. Underground Storage Tanks Site Closure Report

Report on file.

Item 12. Executive Officer's Report

Jayne Joy submitted an Executive Officer Report discussing our Human Rights to Water activities and provided information on public meetings for the former Ford Aeronutronics Site in Newport Beach. Board Member Selmi had questions as to why Craig Communications, Ford's communication consultant, moderated the meeting. Ms. Joy explains that we have been working jointly with Ford for several meetings and Craig Communications handles the functionality (setup) of the meetings. Board Member Selmi has reservations, since Craig Communications is employed by Ford. Board Member Ruh states that Board Member Selmi makes a valid opinion. Chair Peterson mentions that sometimes state agencies partner with responsible parties for meetings and mentions that we can make this point clear to the public. Ms. Joy will follow up with the Board Members suggestions.

Item 13. Regional Board Member and Executive Officer Communications

Board Members discussed having a hybrid Board Meeting in October. Ms. Joy recommends December 2021 or February 2022 for a hybrid meeting.

Closed Session

There was no closed session.

Adjournment

Chair Peterson adjourned the meeting at 12:17 p.m. to the regular Board Meeting of October 15, 2021, 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-08-21, 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:

JAYNE JOY, P.E.
Executive Officer

/jb