



Colorado River Basin Regional Water Quality Control Board

MINUTES OF BOARD MEETING

October 15, 2024, 9:00 am to 11:56 am

In-Person and Zoom Video/Teleconference Meeting

Archived audio and video webcasts of Board meetings are available at the following link: <https://cal-span.org/static/meetings-RWQCB-COLO.php>

Introductory Matters

1. Introductions, Pledge of Allegiance and Roll Call

The meeting was called to order by Chair Satin at 9:00 am on October 15, 2024.

Board Chair Peter Satin announced that Vice-Chair Vivian Perez requested to participate remotely in accordance with the Bagley-Keene Open Meetings Act, Government Code section 11123.2, which requires a quorum of Board Members to be physically present at the meeting location.

The Board Clerk conducted a roll call of Board Members physically present at the meeting. Peter Satin, Ed Muzik, Nancy Wright and Azucena Beltran-Serrano were physically present at the meeting location. Beatriz Gonzalez arrived at 9:10 a.m.

The Board Chair determined that a quorum was physically present at the meeting location, and that Vivian Perez was permitted to participate remotely in the meeting via Zoom.

State and Regional Water Board Staff Present

Paula Rasmussen, Cassandra Owens, David Lancaster, Mary Castaneda, Dan Mefford, Kai Dunn, Jose Cortez, Emma McCorkle, Michael Perez, Kevin Gonzalez, Wendy Wyels, and David Boyers, Assistant Chief Counsel, State Board Office of Chief Counsel. Laurel Firestone participated remotely via Zoom

PETER SATIN, CHAIR | PAULA RASMUSSEN, EXECUTIVE OFFICER

Public Attendance

Daniel Cabrera, Coachella Valley Water District
Jenna Clark, Coachella Vallet Water District
Bob Stadum, Hi-Desert Water District Board

Remote Public Attendance

Frank Delzompo, Turtle Rock 29 Homeowners Association
Marlee Nelson, Court Reporter

2. Public Forum

There were no Public Speakers.

3. Approval of Minutes

Minutes of September 10, 2024, Board meeting.

Motion to approve Item 3: Nancy Wright moved, Ed Muzik seconded, a roll call vote was taken.

Roll Call Vote: Peter Satin – Aye, Vivian Perez – Aye, Azucena Beltran-Serrano- Aye, Ed Muzik – Aye, Nancy Wright – Aye.

The motion was passed to approve the minutes of September 10, 2024.

4. Update from the State Water Resources Control Board Liaison, Laurel Firestone

The State Water Board Liaison, Laurel Firestone, presented an update on State Board actions, and strategies for statewide and regional activities

Uncontested Calendar of Items for Adoption

(Item 5)

5. Waste Discharge Requirements Order R7- 2024-XXXX

Parties: Coachella Valley Water District
Subject: North Cathedral City Regional Stormwater Project
Location: Riverside County
Staff Contact: Logan Raub, Senior Environmental Scientist
(Logan.Raub@waterboards.ca.gov)

Chair Satin recused himself from voting on this item.

Motion to approve Item 5: Ed Muzik moved, Beatriz Gonzalez seconded, a roll call vote was taken.

Roll Call Vote: Peter Satin – recusal, Vivian Perez – Aye, Azucena Beltran-Serrano-Aye, Beatriz Gonzalez – Aye, Ed Muzik – Aye, Nancy Wright – Aye.

The motion was passed to approve Uncontested Order Item 5 as presented.

Contested and Discussion Calendar of Items for Adoption

(Items 6-7)

6. Cease and Desist Order R7- 2024-XXXX

Parties: Turtle Rock 29 Homeowners Association
Subject: Turtle Rock Estates Subdivision, Wastewater Collection, Treatment and Disposal System
Location: San Bernardino County
Staff Contact: Wendy Wyels, Environmental Program Manager I
(Wendy.Wyels@waterboards.ca.gov)

The Chair administered the Oath for those intending to speak on this item.

Wendy Wyels, Prosecution Team, provided a presentation discussing Turtle Rock’s Waste Discharge Requirements and violations that took place from 2011 to 2017. Ms. Wyels described the Notice of Violation (NOV) that resulted from the May 2022 inspection and the actions taken by the Discharger in response. She summarized the need for a Cease and Desist Order (CDO), the contents of the tentative Order, and the proposed revisions in the Change Sheet. Ms. Wyels and Assistant Chief Counsel David Boyers, Prosecution Team counsel, addressed Board Member questions and comments.

Speaker: Frank Delzompo, Turtle Rock 29, Homeowners Association

Member Muzik inquired about for confirmation of 57 homes developed out of the 143 potential hookups, and the capacity of the seepage pits. He also asked about the responsibility of the HOA vs. the developer. David Lancaster, Board’s counsel, confirmed that the HOA does own the wastewater treatment plant systems, but there may also be a third-party owner.

Chair Satin questioned about outreach to the HOA timeline, given that there were non-compliance issues between 2017-2022. Ms. Wyels commented that she began working on the case in 2022 and found no previous record in the file.

Member Muzik questioned whether the equipment is the problem or is it operator error. Ms. Wyels stated that the equipment has not been maintained to keep the plant operating at the level it should, and there is a lack of funding to maintain it.

Frank Delzompo, Turtle Rock 29 HOA, provided background information on the housing tract and facility updates, and addressed questions from the Board.

Member Wright questioned if the seven seepage pits are adequate for the 66 lots and the HOA, and possible grant money assistance. David Lancaster, Board counsel, provided clarification and addressed the questions.

Chair Satin asked for clarification of the waste discharge requirements compliance work plan of the Tentative Order, and the compliance and requirements thereof. Ms. Wyels and the Board's counsel addressed the questions and provided clarification of the requirements listed in the Order.

Motion to approve Item 6 (Tentative Order), subject to the Change Sheet: Nancy Wright moved, Azucena Beltran-Serrano seconded, a roll call vote was taken.

Roll Call Vote: Peter Satin – Aye, Vivian Perez – Aye, Azucena Beltran-Serrano- Aye, Beatriz Gonzalez – Aye, Ed Muzik – Aye, Nancy Wright – Aye.

Motion passed to approve Item 6 with the Change Sheet.

7. Cease and Desist Order R7- 2024-XXXX

Parties:	Antoine Garabet
Subject:	Residential Onsite Wastewater Treatment System, 58761 Barron Drive, Yucca Valley (APN 060117201)
Location:	San Bernardino County
Staff Contact:	Michael Perez, WRC Engineer (Michael.Perez@waterboards.ca.gov)

Chair Satin administered the Oath for those intending to speak on this item.

Michael Perez, Prosecution Team, gave a brief presentation, providing background information, the Yucca Valley septic tank prohibition, and public outreach. He concluded with a recommendation to adopt the Tentative Cease and Desist Order (Tentative Order). Michael Perez and Assistant Chief Counsel David Boyers, Prosecution Team counsel, addressed Board member questions and comments.

No comments from the public.

David Lancaster, Board's counsel, questioned about the billing record for water consumption submitted by the prosecution team. Mr. Perez addressed the questions.

Chair Satin questioned if staff had contacted the Antoine Garabet, staff responded that they had.

The Board’s counsel recommended that if the Board were to adopt the Tentative Order, it should do so with alternative language for Finding 18—in lieu of the initial version (as originally issued), but also in lieu the changes specified in the Change Sheet prepared by the Prosecution Team. The Board’s counsel read out the recommended alternative language to the Board, which was as follows:

Hi-Desert Water District records indicate that the Discharger’s property has received and consumed water on the property within the last year. It is therefore likely that the subject property has and will continue to generate wastewater that will be discharged from the existing OWTS, in violation of the Basin Plan prohibition. It also does not appear that the property has been abandoned or will be abandoned in the near future.

Motion to adopt/approve Item 7 (Tentative Order), subject to the alternate language for Finding 18, as read out by the Board’s counsel. Ed Muzik moved, Peter Satin seconded, a roll call vote was taken.

Roll Call Vote: Peter Satin – Aye, Vivian Perez – Aye, Azucena Beltran-Serrano- Aye, Beatriz Gonzalez – Aye, Ed Muzik – Aye, Nancy Wright – Aye.

Motion passed to approve Item 7 with alternate language in Finding 18.

8. Cease and Desist Order R7- 2024-XXXX

Parties: Jose J. Reyes
Subject: Residential Onsite Wastewater Treatment System,
6366 Hermosa Avenue, Yucca Valley (APN 060116107)
Location: San Bernardino County
Staff Contact: Michael Perez , WRC Engineer
(Michael.Perez@waterboards.ca.gov)

At the outset, Board Chair Satin disclosed that the Prosecution Team had requested leave to submit supplemental evidence, but that he had denied the request for lack of “good cause” and prejudice to Jose Reyes (Discharger).

Chair Satin administered the Oath for those intending to speak on this item.

Michael Perez, Prosecution Team, gave a brief presentation, providing background information, the Yucca Valley septic tank prohibition, and public outreach. Mr. Perez further incorporated by reference the presentation given for Item 7. He concluded with a recommendation to adopt the Tentative Cease and Desist Order (Tentative Order). He and Assistant Chief Counsel David Boyers, Prosecution Team counsel, addressed the Board Member questions and comments.

No comments from the public.

Prosecution Team counsel indicated that he disagreed with the issue statement in the Advisory Team’s Summary Report. He explained as follows: A threatened violation could be shown by the existence of a septic tank (demonstrated by the existence of a home), and occupancy or the potential for occupancy. A vacant home may not be currently discharging to the septic tank, but it could become occupied again in the future and will—at that point—threaten a discharge in violation of the prohibition. The standard articulated by the Advisory Team counsel would essentially require the Prosecution Team to continuously monitor the home for signs of occupancy (e.g., go out and knock on doors and ask if the occupants are using water). The Prosecution Team did not necessarily have “good evidence” of recent water use based on the water bill in the record, but the Basin Plan prohibition protects groundwater from potential future discharges. Additionally, the Discharger was personally served at the subject property, which means he is there at least some of the time.

Chair Satin noted that the Prosecution Team’s Google Streetview image was from 2007, and asked if they had reviewed any more recent images (e.g., satellite images). The Prosecution Team responded that they did not.

Member Muzik suggested that the Board should assume that the Hi-Desert Water District (District), as part of its own activities, had previously determined that someone could be living at the subject property. He asserted that the District would have already done its “due diligence,” and that the Board should not have to “re-do” what the District had already done. David Lancaster, the Board’s counsel, responded that it would be legally inadvisable to do. The Board’s counsel also stated that there was no direct testimony or evidence from the District regarding their outreach efforts. He reiterated that this was an “evidentiary proceeding,” which meant that assumptions regarding facts were inappropriate.

Chair Satin disagreed with Member Muzik’s suggestion, noting that the evidence in the record only established that a mailer was sent out to the subject property. He proposed continuing the hearing to a later date and allowing the Prosecution Team to submit more evidence establishing a threatened discharge of wastewater in violation of the Basin Plan prohibition.

The Board’s counsel articulated the issue before the Board: What does it mean to threaten to discharge waste, and how likely does that discharge need to be? The evidence in the record was limited to: (1) a water bill indicating that precisely one unit of water [748 gallons] was consumed on the property in 2024; and (2) photographic evidence from 2007 suggesting that the home was inhabited at the time. In other words, very little water was used onsite in 2024, and the Board did not have any other evidence about what is currently going on. What the statute actually requires is a determination that a discharge of waste is taking place or threatening to take place in violation of a prohibition.

The Board’s counsel continued to say that if the Board wanted to take the position that the mere existence of a home without a sewer connection—without any further

evidence—constitutes a threatened discharge from the septic tank, it could do so, but it would be a determination made without anyone from the Board actually going up there and looking at the subject property.

Member Muzik pointed to the Prosecution Team's history of outreach efforts, including issuances of Notices of Violation, as summarized in the Prosecution Team presentation. There was no reason for further delay in getting 100 percent of affected homes hooked up to the District's sewer system. He asked what the Board should do when 99 percent of the people have hooked up because of the prohibition. Chair Satin responded that the Board should ask the Prosecution Team to come back with stronger evidence of a threatened discharge. There were other properties that the Prosecution Team should be addressing in the meantime.

Member Muzik also argued that the Basin Plan prohibition prohibits the discharge of any wastewater from a septic tank—regardless of volume. Chair Satin responded that that one unit of consumption might not have been discharged through the septic system.

Member Wright noted that people like the Discharger have already received plenty of notification and have an active water meter. The Discharger should have appeared and stated that they were not going to be discharging any wastewater. Member Beltran-Serrano interjected to suggest that perhaps the Discharger was not ignoring the issue. Perhaps there was a language barrier. She asked that future communications and tentative orders be provided in Spanish translations as well.

Michael Perez, Prosecution Team, responded that he had considered the possibility of a language barrier. However, if the Discharger received a document on official Water Boards letterhead, he should have taken the initiative to find out what it meant (e.g., call the number on the letter).

The Board's counsel further responded to Wright's comments by noting that even if people were "sticking their head in the sand," their non-responses were not at issue in this proceeding. The issue was whether the Prosecution Team had provided sufficient evidence leading the Board to determine that a discharge was threatening to take place from the Discharger's septic tank.

Member Muzik argued that the Discharger was paying an assessment on his property, and that, if he had no wastewater discharges, he would have asked to be exempted from that assessment. He added that there was grant money available for the Discharger.

Chair Satin expressed his desire for determination based on evidence, and less on circumstantial reasoning or assumptions. He added that the Board should establish a precedent for decisions being based on strong evidence, and not simply the Board's policy preferences (i.e., "they need to connect").

Member Muzik asked Chair Satin as to what had not been done but needed to be done so that the Tentative Order could be adopted. The Board's counsel responded that staff had not been to the property. The Board's counsel explained that although the Board has a compelling policy interest at stake, this was nevertheless an evidentiary proceeding. He added that this was an individual order that needed to be based on evidence.

Chair Satin compared the evidence in this proceeding with that of the prior proceeding, which involved substantially more recent and extensive evidence suggesting an ongoing discharge of wastewater.

The Board's counsel reminded the Board that the relevant evidence in the record was limited to the billing printout from the District. The Prosecution Team requested to submit supplemental evidence of bills from previous years, but that request was denied. Continuing this proceeding would allow for the Prosecution Team to submit more evidence and give the Discharger an opportunity to oppose that submittal—and to allow the Prosecution Team to perhaps go out to the property, take a picture and then show the Board what it looks like within the last two decades.

What followed was an extended discussion between Member Muzik and David Lancaster, Board's counsel, as to the procedure for getting a tentative enforcement order on calendar for a given public meeting. Mr. Lancaster corrected Member Muzik misunderstanding that the District had actually initiated the enforcement process. Although the District had provided Board staff with a list of unconnected properties, Board staff had made the decision to bring a series of CDOs to enforce the Basin Plan discharge prohibition.

Member Muzik restated his assumption that the District's list of unconnected properties reflected a certain amount of "due diligence" as to verification of occupancy. The Board's counsel responded that there was no such evidence of any "due diligence" in the record. Michael Perez, Prosecution Team, also did not affirmatively testify that anyone at the District had represented that all of the properties on the District's list of unconnected properties were occupied or discharging wastewater.

Vice-Chair Perez asked whether there were any time limitations on when the proceeding could be continued. Chair Satin asked whether it could be continued to a date of the Prosecution Team's choosing. The Board's counsel responded that there were none. It could be heard again whenever the Board thought that there was enough time, including at the Prosecution Team's request.

Member Muzik later argued that the existence of a Notice of Violation (NOV) was itself evidence of a violation. The Board's counsel responded that NOVs could be issued for a variety of reasons; they are not evidence of a violation.

Chair Satin distinguished between a violation of the Basin Plan (i.e., failure to connect to the sewer system) and the requirements for issuance of a Cease and Desist Order

(CDO) under the Water Code. He maintained that the Board needed to uphold a higher standard of evidence.

Member Muzik countered that, as long as a home that is hooked up to the water system, a CDO should be issued to compel compliance with the Basin Plan prohibition against septic tank discharges. Member Wright added that people have been known to bypass the water meter as well. She continued to say that, as long as there is a water meter, there was a potential for a threatened discharge. Chair Satin expressed his dissatisfaction with the standards articulated by Members Wright and Muzik.

Member Gonzalez observed that both sides of the discussion had merits, but suggested that the hearing might be continued for a short amount of time.

Member Muzik argued that determining whether a home was occupied was a waste of staff time, and that the Discharger's continued failure to hook up to the sewer system was a threat to water quality. He also argued that it was inconsistent to adopt one CDO, but continue or reject another.

Following on Member Muzik's comments, Member Wright asked the Prosecution Team whether continuing the CDO would be disruptive or inconvenient to staff resources. The Prosecution Team counsel responded that a continuance would result in additional work and inconvenience, and on that basis, urged the Board against doing so. He also reminded the Board that Exhibit 14 was a Proof of Service reflecting personal service on the Discharger at the subject property—suggesting that he was occupying the residence at the time. He also reminded the Board that there were a unit of water use in July 2024. He further added that there were additional CDOs that needed to be brought before the Board. It was important to set a standard that staff could meet in bringing a prosecution, and to be mindful of what the Board was asking staff to do.

Motion to approve Item 8: Ed Muzik moved, Nancy Wright seconded, a roll call vote was initiated but not completed.

Roll Call Vote: Peter Satin – Abstain, Vivian Perez – Abstain, Azucena Beltran-Serrano-Abstain, Beatriz Gonzalez – Abstain, Ed Muzik – [did not vote], Nancy Wright – [did not vote]

Before Members Muzik and Wright could vote, David Lancaster, Board's counsel, interjected to ask Chair Satin, Vice-Chair Perez and Members Perez, Beltran-Serrano and Gonzalez whether they intended to actually abstain from voting, rather than voting against adoption. The Board's counsel explained that abstention from a vote was different than affirmatively voting "no" or "nay"; and that if Members Muzik and Wright were to vote "yes," the motion to adopt the Tentative Order would carry by a 2-0 margin.

[Note: Water Code section 13306 requires a CDO to be adopted by at least four Board Members. Even if the initial roll call vote was not stopped, the four abstentions meant that Tentative Order could not have been legally adopted regardless.]

Chair Satin responded that he had actually meant to affirmatively vote against adoption, and that he had misspoken. He instructed the Clerk to take a new roll call vote:

Roll Call Vote [Restarted]: Peter Satin – Nay, Vivian Perez – Nay, Azucena Beltran-Serrano- Nay, Beatriz Gonzalez – Aye, Ed Muzik – Aye, Nancy Wright – Aye. (3-Nays, 3-Ayes)

The roll call vote resulted in a tie, a second motion was made to continue this item to a future date: Peter Satin moved, Azucena seconded, and a roll call vote was taken.

Roll Call Vote: Peter Satin – Aye, Vivian Perez – Aye, Azucena Beltran-Serrano- Aye, Beatriz Gonzalez – Aye, Ed Muzik – Nay, Nancy Wright – Nay.

The motion was passed to continue Item 8 to a future Board meeting date.

Informational Items

(No Actions on Items 9-11)

9. Report from Executive Officer, Paula Rasmussen

The Executive Officer, Paula Rasmussen, provided an update on activities and plans for the region. She also mentioned the office renovation has started. most staff will be working remotely, and Board meetings will be held at an alternate location. She added that there is still a hold on filling vacancies at this time.

10. Comments from Board Members

Member Muzik inquired about the estimated staff time needed to prepare a CDO pertaining to the septic prohibition.

11. Report from Board Chair, Peter Satin

The Chair reported that he attended the monthly Chair's meeting with budget allocations discussions being held. He also mentioned that the Water Quality Coordinating Committee has been postponed until Spring 2025 and will be a hybrid meeting. He announced the appointment of the new Executive Officer, Michael Placencia, his start date is still pending.

Other Matters

12. Selection of 2025 Board Meeting Dates

This item was moved to the November 12, 2024 Board Meeting calendar.

Closed Session

13. Closed Session

No closed session was held.

Adjournment

There being no further business, the meeting adjourned at 11:56 am.

Next Board Meeting:
November 12, 2024 at 2:00 pm