

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
2375 Northside Drive, Suite 100
San Diego, California

MINUTES OF MEETING
AUGUST 13, 2014

At 9:00 a.m., Chairman Abarbanel called to order the meeting of the California Regional Water Quality Control Board, San Diego Region (SDRWQCB) at the Regional Water Quality Control Board, 2375 Northside Drive, San Diego, California.

Item 1 – Roll Call and Introductions

Board Members present: Henry Abarbanel, Tomás Morales, Gary Strawn, and Stefanie Warren. Sharon Kalemkarian arrived at 9:05 a.m. Eric Anderson was absent.

Staff Present: David Gibson, James Smith, Chris Blank, Kelly Dorsey, Alan Monji, John Odermatt, Alex Cali, Chiara Clemente, Julie Chan, Jeremy Haas, Chris Means, Craig Carlisle, Tom Alo, Lori Costa, Jody Ebsen, Barry Pulver, Kimberly McMurray-Cathcart, Dave Barker, Laurie Walsh, Wayne Chiu, Phil Moskal, Brandi Outwin-Beals, Helen Yu, Bruce Posthumus, Chad Loflen, Cynthia Gorham, Carey Nagoda, Lucas Lima, Debbie Woodward, Michelle Mata, Darren Bradford, Charles Cheng, Joann Lim, Tony Felix.

Others present on behalf of the San Diego Water Board: State Water Resources Control Board – Fran Spivy-Weber, James Ralph, Catherine Hagan. California Court Reporting – Marlee Nelson.

Public Attendance: Joe Naiman, Fallbrook/Bonsall Village News; Kathryn Horning, Allen Matkins; Drew Kleis, City of San Diego; Sumer Hasenin, City of San Diego; Clark Dawson, Everflow Resources; Laura Hunter, Escondido Neighbors United; Clell Swanson; Philip Gibbons, Port of San Diego; Chris Stransky, AMEC; Steve Bay, SCCWRP; Steve Steinberg, SCCWRP; Cindy Tambini, Wildlands; Paul Sherman, Wildlands; Edward Kaulius, U.S. Marine Corps; Michael Welch; Lisa Kay, Alta; Mike Richmond, City of San Diego; Bill Harris, City of San Diego; Matt O'Malley, San Diego Coastkeeper; Brian Felten, San Diego Coastkeeper; Dan McKirnan, Environmental Health Coalition; Mike Palmer, De Maximis; Kelly Richardson, Latham & Watkins; Mark Russell, General Dynamics; Alex Sleiman, City of San Diego; Julie Ballesteros, City of San Diego; Tony Khalil, City of San Diego; Mo Lahsaie, City of Oceanside; Jack Monger, IEA; Jay Davis, SFEI; Kris McFadden, City of San Diego; Marnell Gibson, City of San Diego; Jeff Strohming, City of San Diego; Amanda Guy, City of San Diego.

The Chairman took Item 3 out of order.

Item 3 – Minutes of Board Meeting: June 26, 2014

Mr. Strawn moved to adopt the minutes, and Mr. Morales seconded the motion. The minutes were approved by unanimous vote.

Item 2 – Public Forum

Laura Hunter of Escondido Neighbors United, and Brian Felten of San Diego Coastkeeper provided an update on the Chatham Brothers Barrel Yard plume in Escondido. Ms. Warren recused herself and stepped away from the dais during this discussion.

In response to a question from the Chair, Mr. Smith provided details about recent meetings regarding the Chatham Brothers Barrel Yard Plume with the Department of Toxic Substances Control and the County of San Diego.

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. Spivy-Weber reported on the agenda for the upcoming Water Quality Coordinating Committee, provided a legislative update, addressed the recently enacted drought restrictions, and announced a Funding Fair to be held in Perris, California on September 25, 2014.

Mr. Gibson expressed concern about the lack of action from Regional water districts and authorities in response to the drought restrictions. In addition, Mr. Gibson provided an update on the activities of the Tijuana River Valley Recovery Team, the movement forward of the Phase I storm water permits in Orange County, and upcoming agenda items regarding the Drinking Water program and the triennial review of the Basin Plan.

Ms. Warren provided an update on the series of Community Outreach and Environmental Justice meetings being conducted with local community organizations.

Item 5 – Future Agenda Items: Board Members may discuss items for possible inclusion on future agendas. No action will be taken. (*David Gibson*)

Mr. Strawn requested an item reporting on the results of the toxicity testing of bass in the lower San Diego River and an update on the steelhead recovery project. He suggested that Sandra Jacobsen from the University of California, San Diego, would be a good resource for the latter item.

Ms. Kalemkiarian indicated that, during the Community Outreach and Environmental Justice meetings, the dialogue should be centered more around healthy waters rather than environmental justice.

Dr. Abarbanel requested an information item or workshop to discuss ways in which to encourage direct and indirect potable reuse in the Region.

The Chairman called a recess at 9:49 a.m. and reconvened the meeting at 10:00 a.m.

Consent Calendar: Items 6 and 7 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.)

The Chairman removed Item 7 from the Consent Calendar to allow further discussion.

Item 6 – New Master Reclamation Permit: Master Reclamation Permit for the United States Marine Corps Base Camp Pendleton, Northern Regional Tertiary Treatment Plant, San Diego County (Tentative Order No. R9-2014-0006). (*Alex Cali*)

A motion to adopt the remainder of the Consent Calendar was made by Mr. Strawn and seconded by Ms. Warren. The Consent Calendar was adopted by unanimous vote.

Remainder of the Agenda (Non-Consent Items)

Item 7 – Settlement Agreement and Time Schedule Order: The Board will consider a settlement agreement with the City of San Diego for failure to implement the Post-Construction BMPs requirements contained in Municipal Separate Storm Sewer System Permits 2001-01 and R9-2007-0001. The settlement agreement is comprised of two separate orders. (*Chad Loflen*)

Chad Loflen introduced the item and the advisory team, and Chiara Clemente introduced the prosecution team and gave the prosecution team's presentation and answered Board members' questions. In addition, James Ralph from the Office of Enforcement responded to Board member questions.

The following representatives for the City of San Diego participated in the City's presentation and answered questions from the Board members:

- Kris McFadden, Director
- Marnell Gibson, Assistant Director of the Department of Public Works
- Jeff Strohming, Program Manager of Development Services
- Sumer Hasenin, Senior Civil Engineer

Ms. Kalemkiarian asked Mr. Gibson to send letters to local neighborhood groups affected by the enhanced compliance actions.

- A. Settlement Agreement and Stipulation for Entry of Order (Tentative Order No. R9-2014-0017); and

After Board discussion, a motion to adopt Tentative Order No. R9-2014-0017 was made by Mr. Morales and seconded by Mr. Strawn. Order No. R9-2014-0017 was approved by unanimous vote.

- B. Time Schedule Order for City of San Diego (Tentative Order No. R9-2014-0034).

Mr. Morales moved to adopt Tentative Order No. R9-2014-0034, and Ms. Warren seconded the motion. Order No. R9-2014-0034 was approved by unanimous vote.

The Chairman took Item 10 out of order.

Item 10 – Clean Water Act Section 401 Certification: Water Quality Certification for the San Luis Rey Mitigation Bank Project (Wildlands) (Tentative Certification No. R9-2013-0050). (*Alan Monji*)

Alan Monji gave the staff presentation and responded to questions from the Board members.

Paul Sherman and Cindy Tambini both participated in the presentation by Wildlands and responded to Board member questions.

The Board discussed the proposed certification.

A motion to adopt Tentative Order No. R9-2013-0050 was made by Ms. Kalemkiarian and seconded by Mr. Morales. Tentative Order No. R9-2013-0050 was adopted by unanimous vote.

The Board recessed for lunch at 12:06 p.m. and reconvened the meeting at 12:50 p.m.

Item 8 – Information Item: The Health and Condition of San Diego Bay. (*Bruce Posthumus*)

San Diego Water Board staff member Bruce Posthumus introduced the item and the first speaker.

Steve Steinberg of the Southern California Coastal Water Research Project (SCCWRP) gave a presentation regarding human consumption of San Diego Bay fish and shellfish.

Jay Davis, San Francisco Estuary Institute, and Chad Loflen of the Board staff, spoke regarding monitoring and assessment to evaluate the stability of San Diego Bay fish and shellfish.

Margy Gassel of the Office of Environmental Health Hazard Assessment addressed advisories in effect regarding consumption of fish and shellfish from San Diego Bay. Mr. Posthumus spoke regarding efforts to inform the public about these advisories and responded to questions from Board members.

Steve Bay of SCCWRP gave a presentation regarding efforts to characterize contaminant sources and pathways. Mr. Posthumus and Wayne Chiu of the Board staff spoke about efforts to address the contaminants. Mr. Posthumus, Mr. Chiu, and Mr. Bay responded to Board member questions.

Dan McKirnan of the Environmental Health Coalition addressed the Board.

The Chairman called a recess at 2:05 p.m. and reconvened the meeting at 2:15 p.m.

Item 9 – Information Item: Ocean Acidification and the Relationship of Discharges to the Ocean. (*David Barker*)

Branch Chief David Barker introduced the item.

Dr. Steve Weisberg, SCCWRP, gave a presentation regarding the causes and implications of ocean acidification.

Item 11 – *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]. The San Diego Water Board may meet in closed session to discuss ongoing litigation for the following cases:

Civil Actions (Judicial and Administrative, other than Petitions for Review filed with the State Water Board)

- a. *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)*
- b. *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*)

- c. *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*)
- d. *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). (*Catherine George Hagan*)
- e. *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*)
- f. *City of San Diego v. California Regional Water Quality Control Board, San Diego Division, SFPP, L.P., A Delaware Limited Partnership, and Kinder Morgan Energy Partners, L.P., A Delaware Limited Partnership, Real Parties-in-Interest. Petition for Writ of Administrative Mandamus. San Diego County Superior Court, Case No. 37-2013-00047614-CU-WM-CTL* (filed May 2013). (*Ben Neill*)

Petitions for Review Pending Before State Water Resources Control Board¹

- g. 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*)
- h. Petition of Citizens Development Corporation (Water Code Section 13267 Investigative Order No. R9-2011-0033 dated September 14, 2011, Requiring

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 generally not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at catherine.hagan@waterboards.ca.gov or 619-521-3012 for more information.

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*)

- i. 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*)
- j. 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*)
- k. Petitions for Review of San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024 for National Steel and Shipbuilding Company (NASSCO), Campbell Industries, City of San Diego, San Diego Gas & Electric (SDG&E) and San Diego Unified Port District (Port District) issued March 14, 2012. Petitions for Review and Requests for Stay filed by NASSCO, 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-2205(a), (c), (d), and (e), filed April 2012. (*Frank Melbourn*)
- l. 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 March 14, 2012, SWRCB/OCC File A-2205(a), filed April 2012. (*Frank Melbourn*)
- m. 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-2211, filed May 2012. (*Joann Lim*)
- n. Petition of City of San Diego for Review of Resolution No. R9-2012-0045, re Authorizing Executive Officer to Increase Daily Average Discharge Flow Rate Limitation under Order No. R9-2008-0002 [NPDES No. CAG919002] for the Kinder Morgan Energy Partner's Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek, June 13, 2012, SWRCB/OCC File A-2222, filed July 2012. (*Ben Neill*)
- o. Petitions for Review of Regional Municipal Separate Storm Sewer System Order No. R9-2013-0001 (NPDES No. CAS0109266), adopted May 8, 2013, filed by (1) San Diego County Regional Airport Authority (stay requested), (2) City of Lake Forest (abeyance request), (3) City of Aliso Viejo (abeyance request), (4) City of Laguna Hills (abeyance request), (5) City of Rancho

Santa Margarita (abeyance request), (6) City of Chula Vista, (7) City of National City, (8) Riverside County Flood Control and Water Conservation District, the County of Riverside, and the Cities of Murrieta, Temecula, and Wildomar (abeyance request), (9) City of Dana Point (abeyance request), (10) City of Mission Viejo (abeyance request), (11) City of San Clemente (abeyance request), (12) County of Orange and Orange County Flood Control District (abeyance request), (13) San Diego Unified Port District, (14) City of San Diego (abeyance request), (15) County of San Diego, and (16) City of Laguna Niguel. SWRCB/OCC File A-2254(a)-(p), filed June 2013. (*Wayne Chiu*)

- p. Petition of Foothill/Eastern Transportation Corridor Agency for Review of Action and Failure to Act, in Connection with Waste Discharge Requirements (Tentative Order No. R9-2013-0007) for the Tesoro Extension Project, Orange County, June 19, 2013, SWRCB/OCC File A-2259, filed July 2013. (*Darren Bradford*)
- q. Petition of San Diego United Port District, Waste Discharge Requirements Order No. R9-2013-0093 for San Diego Shipyard Sediment Remediation Project, San Diego Bay, San Diego County, July 10, 2013, SWRCB/OCC File A-2263, filed August 2013 (stay requested). (*Alan Monji*)
- r. Petition of Donan Environmental Services, Inc., Cleanup and Abatement Order No. R9-2013-0022 at the Site of the Former Santa Ysabel Chevron Station, 30350 Highway 78, Santa Ysabel, San Diego County, September 18, 2013, SWRCB/OCC File A-2277, filed October 2013. (*Sean McClain*)

This Closed Session was not held.

Item 12 – *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 concerning matters within its jurisdiction or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)].

This Closed Session was not held.

Item 13 – *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 adjudicative 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 14 – *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.

There being no further business, the meeting was adjourned at 3:53 p.m.

These minutes were prepared by:

Signed by:

Chris Blank
Executive Assistant

David Gibson
Executive Officer

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