

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

MINUTES OF MEETING
June 12, 2002

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Chairman Minan at 9:00 a.m. at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call: Board Members Present: Chairman John Minan, Gary Stephany, Laurie Black, Eric Anderson and Vickie Butcher.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Deborah Jayne, Mark Alpert, Bob Morris, John Phillips, Stacey Baczkowski, Frank Melbourn, Phil Hammer, Jeremy Haas, David Gibson, Chris Means, Paul Richter, Eric Becker, Mike Corry.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Pete Silva. Park Avenue Deposition Service: Grace Verhoeven. Public Attendance: Laura Hunter, Nohelia Ramos, Celia Martinez, Environmental Health Coalition; Dennis Bowling; Rick Engineering; David Merk, Karen Helyer, Nancy Winiarz, Richard Gills, Port of San Diego; Joshua Cleveland, Jon Dahlke, Leonard Schwendemen, Joshua Cleveland, self; Bruce Reznik, Stephanie Pacey, Annie Lin, San Diego BayKeeper; Patti Krebs, Industrial Environmental Assoc; Drew Kleis, Karen Henry, Ruth Kob, Deb Castillo, City of San Diego; Ed Kimura, Penny Elia, Sierra Club; Jack Miller, Rod Lorang, Robert Christopher, Paul Davy, County of San Diego; Denis Bechter, Niall Fritz, Jay Golby, City of Poway; Robert Zaino, Erik Steenblock, City of Santee; Russell Clark, Lori Triplett, Jordan and Mark Bousema, S&S Farms; Nancy Gardiner, Brown & Caldwell; Rob Chichester, US Navy; Arsalam Dadkhah, D-Max Engineering; Lisa Kay, MEC; Gloria Sefton, Shelley Black, Saddleback Canyons Conservancy; Scott Lyle, Nolte Asso.; Roger Freeman, Chris Crompton, Tom Wright, County of Orange; Michael Hazzard, Clean Also Creek Asso.; Driss Elwardi, City of La Mesa; Muna Cuthbert, City of Chula Vista; Terry Rodgers, Union Tribune, Gary Warkentin, Bruce Phillips, RBF Consulting; Ray Chandos, Rural Canyons Conservation Fund; Scott Peters, San Diego City Councilmember;

Dr. Richard Horner, University of Washington; Marco Gonzalez, Surfrider Foundation.

Item 2 – Public Forum

Laura Hunter, Environmental Health Coalition, talked about the South Bay Power Plant and strongly urged the Board to issue a permit that would reduce impacts of the plant. Ms. Hunter also talked about the Morrow Bay Power Plant.

Nohelia Ramos, Environmental Health Coalition, also spoke about the South Bay Power Plant and asked that the Board issue a stringent NPDES permit in September.

Celia Martinez, San Diego Bay community resident, read comment letters submitted by other residents in the community regarding the South Bay Power Plant.

Bruce Reznik, San Diego BayKeeper, requested that independent studies be done of the South Bay Power Plant.

Mr. Stephany asked Mr. Robertus when the South Bay Power Plant permit renewal would be before the Board for action. Mr. Robertus said it would be scheduled once sufficient information was available. He also talked about some other options. Mr. Stephany said he would like to see a report on the status of the permit renewal by August.

Annie Lin, San Diego BayKeeper, represented the Bay Council, spoke about the South Bay Power Plant and requested that a compliance schedule be put into the permit and asked that the Board not delay in renewing the permit.

Penny Elia, resident of Laguna Beach, talked about several subdivisions currently under review by the City of Laguna Beach. She said it was estimated that cumulative effects upon the infrastructure would overwhelm the ability to comply with the MS4 Permit as well as projected SUSMP and URMP programs.

Mr. Stephany asked Mr. Robertus if staff was involved in reviewing the subdivisions that were being reviewed by the City of Laguna Beach. Mr. Robertus said he didn't know but would ask a senior staff member. Mr. Stephany said he would like to see a report in the next Executive Officer's Report.

Item 3 – Minutes of Board Meeting of May 8, 2002

This record of the minutes of the meeting on this date is not intended for 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 Regional Board office for assistance.

Ms. Butcher moved approval of the May 8, 2002 minutes. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Items 5 - 8 – Consent Calendar

Item 5 – Administrative Assessment of Civil Liability containing a Mandatory Penalty against Manchester Resorts (San Diego Hyatt Hotel Expansion) for violation of Order No. R9-2000-0090, NPDES Permit No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. Manchester Resorts waived its right to a hearing. (Tentative Order No. R9-2002-0120) *(Frank Melbourn)*

Item 6 – Modification of Waste Discharge Requirements: Western Horizon Properties, Ramona Canyon RV Resort, San Diego County (tentative Addendum No. 1 to Order No. 88-50) *(Mo Lahsaiezadeh)*

Item 7 – Waste Discharge Requirements Revision: Asphalt Inc., Slaughterhouse Canyon Plant, San Diego County; this tentative Addendum changes the name of the owner and responsible party for the Slaughterhouse Canyon Plant from Asphalt Inc. to Hanson Aggregates (tentative Addendum No. 1 to Order No. 94-06) *(Whitney Ghoram)*

Item 8 – NPDES Permit: Waste Discharge Requirements for S & S Farms Swine Raising Facility, Ramona, San Diego County (tentative Order No. R9-2002-0067, NPDES Permit No. CA0109371) *(Mike Corry)*

Due to public concern, Item 8 was removed from the consent calendar for consideration later in the meeting.

Ms. Black moved approval of Items 5, 6, and 7. The motion was seconded by Mr. Stephany and approved by unanimous vote.

Item 9 - PUBLIC HEARING: Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate Total Maximum Daily Load (TMDL) for Diazinon in the Chollas Creek Watershed, San Diego County. (Tentative Order No. R9-2002-0123) (*Jimmy Smith*)

The hearing was opened at 9:35 a.m. Mr. Robertus introduced the item. Senior staff member Deborah Jayne and staff member Jimmy Smith gave the presentation.

Other speakers included:

Karen Henry, City of San Diego

Jack Miller, County of San Diego

Laura Hunter, Environmental Health Coalition

Bruce Reznik, San Diego BayKeeper

Ed Kimura, Sierra Club

Ms. Jayne made closing comments.

Mr. Robertus' recommendation was to allow the public to review and submit written comments on the amended Water Quality Control Plan for a period of 15 days. After June 27 staff would review and assess the written comments and present the assessments to the Board at the August 14, 2002 meeting.

Chairman Minan said the written comments should only address the recent changes made to the document. Mr. Robertus said he would not issue another draft.

Mr. Stephany asked if the Board could make changes to the Plan at the August meeting if they felt the need to do so. Chairman Minan said yes.

Mr. Stephany made a motion to accept Mr. Robertus' recommendation. The motion was seconded by Mr. Anderson and approved by unanimous vote

The hearing was closed at 11:35 a.m.

Item 10 - PUBLIC HEARING: Approval of Model SUSMP (Standard Urban Storm Water Mitigation Plan) required by San Diego Municipal Storm Water Permit (Order No. 2001-0001, NPDES Permit No. CAS0108758). (Tentative Resolution No. R9-2002-0097) (*Phil Hammer*)

The hearing was opened at 11:40 a.m. Mr. Robertus introduced the item. Staff member Phil Hammer gave the presentation.

Other speakers included:

Council Member Scott Peters, City of San Diego

Bob Christopher, County of San Diego

Rod Lorang, County of San Diego

Niall Fritz, City of Poway

The hearing was recessed for lunch at 12:10 p.m.

Item 15 - Executive Session - Discussion of Ongoing Litigation.

The Regional Board may meet in closed session to discuss ongoing litigation for the following case(s) with counsel:

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section, et al.. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61; and the related “Surfrider” case:

Surfrider Foundation, San Diego Chapter v. Robert Ortega, et al., Case No. 99-CV-2441-BTM(JFS)

Building Industry Association of San Diego County, et al. vs. State Water Resources Control Board, et al.; San Diego County Superior Court; Case No. GIC 7890263.

The Executive Session was held during the lunch break and the IBWC lawsuit was discussed.

The Public Hearing for Item 10 reconvened at 1:00 p.m.

Other speakers (con’t.)

Karen Henry, City of San Diego

Bruce Reznik, San Diego BayKeeper

Dr. Richard Horner, University of Washington, Seattle
Dennis Bowling, American Public Works Assoc.
Marco Gonzalez, Surfrider Foundation
Laura Hunter, Environmental Health Coalition
Ed Kimura, Sierra Club
Michael Hazzard, Clean Aliso Creek Association

Ms. Henry and Mr. Christopher made closing comments.

Mr. Hammer also made closing comments. He said staff concurred with the County's proposal to add language to clarify what an ephemeral stream was. Mr. Hammer said staff would also agree to another language change the County proposed making it read, "BMP's constructed in receiving waters may be used to satisfy SUSMP requirements if that use is approved by the Regional Board after Clean Water Act Section 401 review as applicable." Mr. Hammer also said that staff felt the permit would have to be amended to allow for the LEAD method.

Mr. Richards talked about interpretations of the language in the permit.

Mr. Robertus made a recommendation to continue to work toward providing some kind of project, possibly a pilot with an amendment to the permit.

The public hearing was closed at 2:00 p.m. and moved to deliberation by the Board.

Mr. Anderson concurred with staff to leave the current habitat loss language as written.

Mr. Stephany said innovative programs should be allowed and not be penalized if the program didn't work.

Ms. Black concurred with Mr. Anderson and Mr. Stephany.

Chairman Minan said there was strong support for not using mitigation wetlands as BMPs.

Mr. Richards recommended adding a finding to the resolution stating that the Regional Board concluded that the LEAD methodology was not incompatible with the requirements and also reflected the concerns that were raised.

Chairman Minan made a motion to adopt Resolution No. R9-2002-0097 with the following amendments: clarification of ephemeral stream definition in the SUSMP, endorse the construction of the permit to allow the utilization of the LEAD methodology, the language change, “BMP’s constructed in receiving waters may be used to satisfy SUSMP requirements if, but only if, that use is approved by the Regional Board after Clean Water Act Section 401 review as applicable”. Mr. Richard’s recommendation to add a finding was also added. The motion was seconded by Mr. Stephany.

Mr. Richards said that Section 401 only applied to federal permits and asked how the BMP constructed wetlands would come under review by the Regional Board if there were not federal permits associated with them.

Mr. Hammer said the question Mr. Richards raised could be a concern. He said the proposed language might need to be changed.

Chairman Minan suggested deleting the motion and bringing the item back after more careful consideration.

Mr. Lorang made a suggested language change.

Mr. Richards said the language could read, “BMP’s constructed in receiving waters may be used to satisfy SUSMP requirements if, but only if, that use is approved by the Regional Board.”

Mr. Hammer said the Model SUSMP language required a waiver of infeasibility to implement the LEAD method and felt the language warranted clarification.

Chairman Minan said the Board felt a site by site infeasibility determination did not have to be made.

Mr. Hammer referred to page 9 & 10 of the Model SUSMP, attachment 2 to supporting document 1, and proposed the first sentence under alternative methods for achieving treatment requirements read, “Copermittees may implement the LEAD method, as proposed by the City in it’s May 16, 2002 letter as attached in an appendix, for meeting the BMP requirements in Section VI.2.C, Step 8, ‘Design to Treatment Control BMP Standards,’ for inclusion in their jurisdictional SUSMP.” Mr. Hammer also suggested adding a bullet stating: “Alternative treatments shall be limited to redevelopment and/or infill projects” and another statement: “Each copermittee may implement an alternative method for no more

than three pilot projects within its jurisdiction during this permit cycle. For each project where an alternative method is implemented, the effectiveness of the alternative method shall be monitored and reported on to the Regional Board by the end of the permit cycle”.

Chairman Minan said the LEAD method was the only alternative method approved by the Board at that time.

The motion was approved by unanimous vote.

Item 11 - Section 401 Water Quality Certification: County of Orange, Rancho Potrero Leadership Academy, Access Road and Stream Crossing, Orange County (tentative Resolution No. R9-2002-0146) (*Jeremy Haas*)

Mr. Robertus introduced the item. Staff member Jeremy Haas gave the presentation.

Other speakers included:

Leonard Schwendemen, land owner
Michael Hazzard, Clean Aliso Creek Association
Shelly Black, Saddleback Canyons Conservancy
Ray Chandos, Rural Canyons Conservation Fund
Gloria Sefton, Saddleback Canyons Conservancy
Thomas Wright, Orange County Probation Dept.
Chris Crompton, County of Orange
Gary Warkentin, RBF Consulting
Bruce Phillips, RBF Consulting
Roger Freeman, council for the County of Orange

Mr. Robertus recommended one of two options: Adopt the tentative Resolution or defer the matter to the Executive Officer for a decision.

After Board Member discussion, Ms. Black made a motion to adopt Resolution No. R9-2002-0146. The motion was seconded by Mr. Stephany and approved by unanimous vote.

Item 8 – NPDES Permit: Waste Discharge Requirements for S & S Farms Swine Raising Facility, Ramona, San Diego County (tentative Order No. R9-2002-0067, NPDES Permit No. CA0109371) (*Mike Corry*)

Chairman Minan announced that due to Board Member Black having to leave the meeting at that time, there would no longer be a quorum.

Ms. Butcher made a motion to have the remaining board members constitute a subcommittee of the whole for purposes of receiving testimony. The motion was seconded by Mr. Stephany and approved by unanimous vote.

Board Member Black left the meeting.

Chairman Minan said public testimony would be received but no action would be taken due to lack of a quorum.

Mr. Robertus introduced the item. Staff member Mike Corry gave the presentation.

Board Members asked questions of Mr. Corry.

Other speakers included:

Mark Bousema, S & S Farms Swine Raising Facility

Russell Clark, Ramona resident

Joshua Cleveland, neighbor to S & S Farms

John Dahlke, resident across from S & S Farms

Mr. Bousema made closing comments. Board Members asked questions of Mr. Bousema.

Mr. Corry made closing comments.

Mr. Robertus recommended closing the public comment period and approving the tentative Order at a future Board meeting. He said he would provide a transcript of the hearing to the board members not present.

Chairman Minan closed the public hearing and said the item would be brought back to the Board for deliberation at a later date.

Item 12 - Strategic Plan – Vision For The Future – November 2001, State Water Resources Control Board and Regional Water Quality Control Boards. Overview of the Strategic Plan by State Board Member Peter Silva. (*John Robertus*)

Item 12 was postponed to a future meeting.

Item 4 – Chairman’s, Board Member’s, State Board Liaison’s and Executive Officer’s Reports.

Chairman Minan noted that he attended the Water Reuse Conference and the Wetlands Recovery Project Board of Governors meeting. He spoke about AB 2156, proposed legislation to establish the San Diego River Conservancy. He also reported that Mr. Anderson and he attended the workshop on the Regional Board’s Waiver Policy. He mentioned the June 18 San Diego Bay Contaminated Marine Sediments Workshop.

Mr. Stephany spoke about the training session he attended at Camp Pendleton on June 6, 2002.

Mr. Robertus talked about the increase of sewage spills in various cities and a decrease in others. Chairman Minan suggested writing letters to the various cities highlighting their comparative performance and citing the Board’s concerns.

Item 13 - Executive Session - Consideration of Initiation of Litigation.

The Regional Board may meet in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control or the federal Clean Water Act.

The Executive Session was not held.

Item 14 - Executive Session - Discussion of Pending Litigation.

The Regional Board may meet in closed session to discuss pending litigation.

The Executive Session was not held.

Item 16 - Executive Session – Personnel.

The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)].

The Executive Session was not held.

Item 17 - Arrangements for Next Meeting and Adjournment

Wednesday, August 14, 2002 - 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 4:47 p.m.

These minutes were prepared by:

Lori Costa
Executive Assistant

Signature of Executive Officer:

John H. Robertus