

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

MINUTES OF MEETING
September 11, 2002

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Chairman Minan at 9:05 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, Janet Keller, Terese Ghio, Richard Wright, Eric Anderson, Vickie Butcher and Laurie Black.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Bob Morris, Mark Alpert, John Phillips, Brian Kelley, Julie Chan, Vicente Rodriguez, Paul Richter, David Hanson, Sherrie Komeylyan, Frank Melbourn, Jody Ebsen, Shane Landry, Carol Tamaki.

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: David Merk, Port District; Carol Squire, Attorney General's Office; Catherine Stites, Dave Schlesinger, Art Letter, Gary Sirota, Jim Simmons, Bajagua Project; Charles Devine, Camp Pendleton; Dan Kackert, TJ River Valley Equestrian Assoc.; Stephen Siciliano, Environment Reporter; Bill Dougherty, Foster Wheeler; Mario Lewis, Sally Spener, USIBWC; Joe Martin, citizen; Roger Castillo, Daniel Castillo, A&E Sons; Frank Biehl, Lee&Ro Inc.; Rob Chichester, Brian Gordon, Bret Radsliff, US Navy; Bill Clevenger, GEOCON; Don MacFortne, Bayle Engineering; Ed Kimura, Sierra Club; Paul Gagliardo, Earth Tech; Lyle Hitchcock, Applied Protein System; Ted Popowchak, CH2M Hill; Gary Friedman, MWH; John Brandt, Law Crandall; Stasi Redding, David Fritz, AWM; Mayda Winter, Mayor Diane Rose, Ron Rogers, Dave Pollom, Kermit Brown, Robert Sepulveda, City of Imperial Beach; Laura Hunter, EHC; Jalal Ahmadpour, Mehdi Arbabian, Otay Water District; Linda Beresford, Foley & Lardner; Andrew Shogren, Cong. Bob Filner; Patti Krebs, IEA; Carolyn Powers, CARE; Humberto Peraza, Senator Boxer; Russ McCarthy, CMSD; Anderson Donan, DES; Ernest Moretti, self; Terry Rogers, Union Tribune; Nick Inzunza, citizen; Erik Larson, Farm Bureau; Rick Ryan, Adobe Falls Park; Robert Moyer, US EPA; Marco Gonzalez, Surfrider Foundation; Lori Saldana, Border Environ.

Coop. Commission; Richard Borevitz, citizen; Andrew Webster, Rancho CA Water District.

Chairman Minan announced that three minutes of silence would be observed in remembrance of 9/11.

Item 2 – Public Forum

Rick Ryan talked about Adobe Falls Community Park and spoke in opposition of the SEP soon to be implemented there.

Item 3 – Minutes of Board Meeting of August 14, 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 August 14, 2002 minutes. The motion was seconded by Ms. Keller and approved by unanimous vote.

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

Executive Officer Robertus announced that senior staff members Robert Morris and Julie Chan were the recipients of Supervisory Performance Awards. Chairman Minan presented them with Certificates of Appreciation.

Mr. Robertus talked about a proposed bill that would increase fees that dischargers pay, the WQCC being held on November 7 & 8 and said the California Coastal Commission acted on the Point Loma NPDES Permit issue.

Pete Silva, State Board Liaison, talked about the storm water permit lawsuit in Los Angeles. He said the hearings on Phase II of the MS4s were complete and a draft permit would be out soon. He also talked about the construction and industrial permits.

Chairman Minan talked about a few items that were discussed at the August 20 Chairs' meeting in Sacramento which included the WQCC, the State and Regional Boards Strategic Plan and the Watershed Strategic Plan.

Mr. Wright mentioned the data visualization program demonstration that was given to Regional Board staff by Dr. Gersberg at San Diego State University.

Ms. Ghio said she had been contacted by several business's regarding interpretations of the storm water permit. She said she thought the issue was going to be addressed at the copermittee meetings.

Item 5 – Waste Discharge Requirements Rescission:

A. Pete Verboom Dairy No. 1, San Diego County, Order No. 95-14;

B. Pete Verboom Dairy No. 2, San Diego County, Order No. 95-65.

(Tentative Order No. R9-2002-0208) (*Whitney Ghoram*)

Mr. Anderson made a motion to approve Order No. R9-2002-0208. The motion was seconded by Ms. Butcher and approved by unanimous vote.

Item 6 – PUBLIC HEARING: Proposed Consent Decree establishing a deadline for the International Boundary and Water Commission, United States Section to select, and initiate implementation of, a strategy to provide secondary treatment for wastewater from the International Wastewater Treatment Plant (IWTP), San Diego County. (*David Hanson*)

Chairman Minan explained the Public Hearing procedures.

Mario Lewis, U.S. International Boundary and Water Commission, gave a presentation on their project development process.

Other speakers included:

Robert Moyer, US EPA, represented Alexis Strauss, was in support of the Consent Decree

The remaining speakers were opposed to the Consent Decree:

Andrew Shogren, represented Congressman Bob Filner

Diane Rose, Mayor, City of Imperial Beach

Ron Rogers, Imperial Beach Councilman

Marco Gonzalez, Surfrider Foundation

Dave Schlesinger, Bajagua

Jim Simmons, Bajagua

Paul Gagliardo, Earth Tech

Carolyn Powers, CARE

Dan Kackert, Tijuana River Valley Equestrian Assoc.

Art Letter, Consultant for Bajagua
David Pollom, Imperial Beach resident
Robert Sepulveda, Imperial Beach resident
Kermit Brown, Imperial Beach resident
Gary Sirota, represented Bajagua
Nick Inzunza, resident of the Tijuana River Valley
Lori Saldana, Border Environment Cooperation Commission, neither for or against

Mr. Lewis gave his closing statements.

Board Members asked questions of Mr. Lewis.

Mr. Robertus recommended that the Board meet in closed session.

The hearing was recessed for lunch and Executive Session at 11:35.

Item 12 - *Executive Session* - Discussion of Ongoing Litigation

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

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.

Schutte and Koerting Inc. and Ametek Inc. (Ketema) (Petitioners) v. the California Regional Water Quality Control Board, San Diego Region (Respondent), Case No. GIC 772197.

Chairman Minan announced that during the Executive Session the Board Members discussed the IBWC lawsuit and the Schutte and Koerting Inc. and Ametek Inc. lawsuit.

The hearing was reconvened at 12:50 p.m.

Mr. Robertus recommended approval of the Consent Decree with a possible modification of provisions pertaining to the force majeure.

Board Members made comments about the Consent Decree, IBWC and the treatment plant. They expressed that the public should contact congress regarding appropriations.

Chairman Minan talked about coercive penalties, the deadline of December 31, 2004 and funding problems.

Mr. Wright said the force majeure needed to be strengthened and made a motion to amend the proposed Consent Decree to include the statement, "IBWC contends that lack of funding constitutes a force majeure event. The Regional Board disagrees". The motion was seconded by Ms. Ghio and approved by unanimous vote.

Ms. Black made a motion to approve the Consent Decree. The motion was seconded by Mr. Wright and approved by unanimous vote.

Item 7 – NPDES Permit: U.S. Navy Point Loma Complex: An NPDES permit regulating industrial storm water and point source discharges of wastes to San Diego Bay from various activities, including ship repair, pier boom cleaning and aquatic animal training. (Tentative Order No. R9-2002-0002, NPDES Permit No. CA0109363) (*Paul Richter*)

Mr. Robertus introduced the item and reminded the public that the public comment period was closed. Staff member Paul Richter gave the presentation.

Ms. Ghio made a motion that the requirement "90%, 50% of the time" be removed from the permit. The motion was seconded by Mr. Anderson. The motion did not carry.

Ms. Keller made a motion to approve Order No. R9-2002-0002. The motion was seconded by Ms. Black and approved with opposition by Ms. Ghio.

Item 8 – PUBLIC HEARING: Administrative Civil Liability with Mandatory Penalties against Manchester Resorts - Hyatt Hotel Expansion Construction Dewatering, San Diego, CA for Violation of Order No. 2000-90, NPDES Permit No. CAG919001. (Tentative Order No. R9-2002-0293) (*Sherrie Komeylyan*)

Mr. Robertus announced that the discharger waived their right to a hearing and the item would be brought back to the Board after a 30-day public review period.

Item 9 – PUBLIC HEARING (continued): Complaint No. R9-2002-0053 for Administrative Assessment of Civil Liability against Mr. Ernest Moretti, owner of the former Santa Ysabel Chevron station, for noncompliance with California Water Code section 13267. (Tentative Order No. R9-2002-0085) (*Barry Pulver*)

Mr. Robertus introduced the item. Staff member Barry Pulver gave the presentation.

Other speakers included:
Ernest Moretti, site owner
Anderson Donan, Donan Environmental Services

Mr. Pulver made closing comments.

Chairman Minan addressed Mr. Moretti's procedural concerns.

Mr. Robertus talked about the technical report.

Ms. Ghio asked a question of Mr. Richards about Mr. Moretti's ability to pay. Mr. Richards said the State Board reviewed his financial records and determined that paying the liability would create a financial hardship for Mr. Moretti.

Chairman Minan recommended that the Board set an amount to reduce the liability if Mr. Moretti submitted a corrective action plan by a specified date.

Board Members discussed different options with Mr. Richards.

Mr. Wright left the meeting at 2:35 p.m.

Mr. Robertus recommended that the Board set the amount of liability and adopt the Order.

Board Members agreed that a reduction in the liability would be appropriate due to Mr. Moretti's recent cooperation and asked that he continue to be cooperative in submitting a corrective action plan.

Chairman Minan made a motion to adopt Order No. R9-2002-0085, reducing the amount of liability to staff costs which would be \$16 per day x 774 days equaling \$12,384. The motion was seconded by Ms. Ghio and approved by unanimous vote.

Ms. Ghio asked that staff also look at other potential responsible parties around the site.

Item 10: PUBLIC HEARINGS A-G (*Vicente Rodriguez*)

Mr. Robertus introduced the items and staff member Vicente Rodriguez gave the presentation. Mr. Rodriguez said the Public Hearings for Items A – G would not be held and gave a status report on each item.

A. PUBLIC HEARING: Administrative Assessment for Civil Liability against Castillo & Sons, A&E Auto Recycling for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0284)

Status: Outstanding fees were paid.

B. PUBLIC HEARING: Administrative Assessment for Civil Liability against Carlsbad Business Park, LLC for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0285)

Status: Construction activity ceased in 1999. The outstanding fees were paid.

C. PUBLIC HEARING: Administrative Assessment for Civil Liability against Kemper Insurance Company for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0286)

Status: Waived their right to a hearing and settled in full payment.

D. PUBLIC HEARING: Administrative Assessment for Civil Liability against TMP Homes for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0287)

Status: Outstanding fees were paid a few days prior to the issuance of the complaint.

E. PUBLIC HEARING: Administrative Assessment for Civil Liability against Pacific Bell for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0288)

Status: Due to an incorrect mailing address for Pacific Bell, they did not receive the complaint. The outstanding fees were paid and a notice of termination was submitted.

F. PUBLIC HEARING: Administrative Assessment for Civil Liability against Richmond American Homes (41500 Margarita Road, Escondido) for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0289)

Status: Waived their right to a hearing and settled in full payment.

G. PUBLIC HEARING: Administrative Assessment for Civil Liability against Richmond American Homes (Butterfield Stage Road, Temecula) for failure to pay storm water annual fees in violation of California Water Code section 13260. (Tentative Order No. R9-2002-0290)

Status: Waived their right to a hearing and settled in full payment.

Mr. Rodriguez said the Regional Board would notice and establish a 30-day public comment period for Items 10. A, C, F and G and bring them back to the Board for adoption at a future meeting.

Chairman Minan said it was important that the public be aware that the Regional Board intended to enforce, through action, the collection of storm water fees.

Item 11 – PUBLIC HEARING: Basin Plan Amendment - Modify and reissue the Regional Board's Waiver Policy (tentative Resolution No. R9-2002-0186)
(Christina Arias)

Chairman Minan opened the Public Hearing at 3:10 p.m. Mr. Robertus introduced the item and Assistant Executive Officer Coe gave the presentation and recommended adoption of the Resolution.

Other speakers included:

Eric Larson, San Diego County Farm Bureau

Linda Beresford, Foley & Lardner

Andrew Webster, Rancho California Water District

Mr. Coe addressed some of the speakers concerns in his closing comments.

Mr. Robertus recommended adoption of the Waiver Policy.

Mr. Anderson disclosed that he was an owner of a nursery and a member of the farm bureau but felt he could make an impartial decision.

Ms. Butcher made a motion to adopt Resolution No. R9-2002-0186. The motion was seconded by Ms. Keller and approved by unanimous vote.

The Public Hearing was closed at 3:40 p.m.

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 15 - *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 16 - Arrangements for Next Meeting and Adjournment

Wednesday, October 9, 2002 - 9:00 a.m.
Rancho California Water District
District Board Room
42135 Winchester Road
Temecula, California

There being no further business, the meeting was adjourned at 3:45 p.m.

These minutes were prepared by:

Signature of Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus