

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

MINUTES OF MEETING
May 12, 2004

Chairman Minan called the regular meeting of the California Regional Water Quality Control Board, San Diego Region, to order at 9:00 a.m. at the City of Laguna Beach, Council Chambers, 505 Forest Avenue, Laguna Beach, California.

Item 1 – Roll Call: Board Members Present: Chairman John Minan, Gary Stephany, Janet Keller and Terese Ghio.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, Bob Morris, Mark Alpert, Pete Michael, Rebecca Stewart, Frank Melbourn and Jeremy Haas.

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: Bob Moore – South Coast Water District; Mayor Bill Phillips, John Whitman, Kimberly Colbert – City of Aliso Viejo; Dave Seymour – SMWD; Walker Reed – self; Richard Boon, Nicole Murphy – County of Orange; John Wainwright – SECOR International; Penny Elia – Sierra Club; Rob Chichester – CNRSW; Kelly Wittorff – Foley & Lardner; Mayor Susan Ritschel – City of San Clemente; Mayor Joe Soto – City of San Juan Capistrano; Wayne Baglin – City of Laguna Beach; Joe Ames – City of Laguna Hills; Roger von Butow – Clean Water Now!; Mary Jane Foley – Stormwater Public Outreach; Gabriel Solmer – San Diego BayKeeper; Mike Suby – Pure Effect; Gail Prothero – self; Sandy Purdon, Tim Leathers – Clean Marina Program; Leigh Johnson, Univ. of California SeaGrant; Marco Gonzalez, San Diego BayKeeper; Terry Rodgers – Union Tribune.

Chairman Minan announced that there was not a quorum of the Board and said no action items would be heard until another Board Member arrived. He also announced that Item 12 was postponed to a future meeting.

Item 2 – Public Forum

Joe Soto, Mayor of San Juan Capistrano, said the City was committed to implementing storm water permits and talked about some of their successful environmental programs.

Board Member Wright arrived at 9:05 a.m.

Bill Phillips, Mayor of Aliso Viejo, said the City was committed to protecting water quality and discussed their enforcement programs designed to educate the public on pollution prevention practices.

Board Member Butcher arrived at 9:15 a.m.

Susan Ritschel, Mayor of San Clemente, said they had a very aggressive water quality improvement program that included education, compliance, enforcement and capital improvement projects.

Gabriel Solmer, San Diego BayKeeper, talked briefly about the proposed Gregory Canyon Landfill and the April 28, 2004 Bay Council letter regarding sediment contamination remediation deadlines.

Wayne Baglin, City Council Member of Laguna Beach, talked about steps they had taken to reduce sewer spills.

Walker Reed, resident of Laguna Beach, talked about an environmental document prepared by Laguna Beach and a letter from the California Coastal Commission regarding an amendment request to the City's certified Local Coastal Program.

Mr. Stephany asked Mr. Robertus for information showing what the City of San Clemente did with their clean beach fees.

Gail Prothero, resident of San Juan Capistrano, briefly spoke about beach pollution, a major development plan on Rancho Mission Viejo and underground storage tank leaks at two gas stations.

Chairman Minan asked Mr. Robertus to follow up on Ms. Prothero's comment about the underground storage tank leaks.

Item 3 – Minutes of Board Meeting of February 11, 2004

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. Ghio noted that at the bottom of page 7, under Item 17, it should read that Gary Stephany was elected “Vice Chair.” Mr. Robertus noted that also on page 7, Item 15, the word “Chutte” should read “Schutte.”

Mr. Stephany moved approval of the February 11, 2004 minutes as amended. The motion was seconded by Ms. Ghio and approved by unanimous vote.

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

Pete Silva, State Board Liaison, briefly talked about next year’s budget, fees, Board Member appointments, possible reduction in Board Member seats, the Ocean Summit held in Sacramento, the Ocean Plan and construction permits.

Chairman Minan said he received a letter from Joan Hartmann, Wetlands Recovery Project, commending the work of staff members Deborah Woodward and Bruce Posthumus. Chairman Minan announced that Deborah Jayne was the new Executive Director of the San Diego River Conservancy. He also spoke about the draft resolution addressing federal facilities failure to pay fees,

Mr. Wright talked briefly about his presentation on Supplemental Environmental Projects at the Water Quality Coordinating Committee meeting in Sacramento on April 19, 2004.

Chairman Minan also talked about the WQCC meeting.

Mr. Robertus reported on the 2004 Environmental Award that the Regional Board received from the U.S. EPA for outstanding achievement.

Chairman Minan acknowledged the communities, environmental organizations and staff that take part in protecting water quality.

Mr. Robertus mentioned several items in the Executive Officer's Report including the San Diego County Municipal Storm Water Permit Reissuance Analysis Summary (B-4), the Supplemental Environmental Project Quarterly Status Report (B-12), the 14-Mile Border Infrastructure System (B-15), and the Cal/EPA Ocean Summit to Discuss Ocean Report (C-2). Mr. Robertus also talked about upcoming workshops and agenda notifications.

Consent Calendar Items 5 - 10

Item 5 – An Emergency Temporary Conditional Waiver of Statutory Requirements to File a Report of Waste Discharge and the Adoption of Waste Discharge Requirements for Management and Disposal of Solid Wastes from the 2003 Wildfire Destruction in the San Diego Region. (Tentative Addendum No. 1 to Resolution No. R9-2003-0391) (*John Odermatt*)

Item 6 – City of San Diego: Administrative Assessment of Civil Liability containing a \$9,000 Mandatory Minimum Penalty against the City of San Diego for violation of effluent limitations established by Order No. R9-2003-0050, NPDES No. CA0109029, Waste Discharge Requirements for Groundwater Extraction Waste Discharges to San Diego Bay from the San Diego Convention Center, San Diego County. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0107) (*Rebecca Stewart*)

Item 7 – Kinder Morgan Energy Partners, LP, San Diego: Administrative Assessment of Civil Liability containing a \$3,000 Mandatory Minimum Penalty against Kinder Morgan Energy Partners, LP for violation of effluent limitations established by Regional Board Order No. R9-2001-0096, NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters within the San Diego Region, Except for San Diego Bay. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0101) (*Frank Melbourn*)

Item 8 – San Diego County Water Authority, San Marcos: Administrative Assessment of Civil Liability containing a \$12,000 Mandatory Minimum Penalty against San Diego County Water Authority for violation of effluent limitations established by Regional Board Order No. R9-2001-0096, NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction

Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters within the San Diego Region, Except for San Diego Bay. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0100) (*Frank Melbourn*)

Item 9 – NPDES Permit Revision: U.S. Naval Base Point Loma, San Diego Bay (tentative Addendum No. 2 to Order No. R9-2002-0002, NPDES Permit No. CA0109363) (*Paul Richter*)

Item 10 – NPDES Permit Revision: U.S. Naval Base Coronado, San Diego Bay (tentative Addendum No. 1 to Order No. R9-2003-0008, NPDES Permit No. CA0109185) (*Paul Richter*)

Mr. Wright moved approval of Consent Items 5 – 10. The motion was seconded by Ms. Butcher and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 11 – Status Report: Orange County Coastkeeper, Kelp Reforestation Project: The Orange County Coastkeeper will give a brief presentation on their Kelp Reforestation Supplemental Environmental Project funded through Administrative Civil Liability Order No. R9-2003-0037 issued to South Coast Water District. (*Rebecca Stewart*)

Mr. Robertus and Ms. Stewart introduced the item. Nancy Caruso, Orange County Coastkeeper showed a video on their kelp reforestation project.

Board Members asked questions of Ms. Caruso.

Item 12 – Resolution to State Water Resources Control Board: University of California Scripps Institution of Oceanography, Consideration of Exception to the 2001 California Ocean Plan. (Tentative Resolution No. R9-2004-0013) (*Sabine Knedlik*)

Item 12 was postponed.

Item 13 – PUBLIC HEARING: Southland Corporation, Store No. 20342, Oceanside: Administrative Assessment for Civil Liability containing a \$3,000 Mandatory Minimum Penalty against Southland Corporation for Violation of Order No. 96-41, NPDES Permit No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges From Construction and Remediation Projects to Surface Waters within the San Diego Region, Except for San Diego Bay. If the discharger waives its right to a hearing, the matter will be postponed to a subsequent meeting to allow for a 30-day public review period. (Tentative Order No. R9-2004-0113) (*Frank Melbourn*)

Mr. Robertus introduced the item and staff member Frank Melbourn gave the presentation.

Other speakers included:
John Wainwright, SECOR International

Mr. Melbourn made closing comments and recommended adopting the order.

Mr. Stephany and Ms. Ghio spoke about mandatory minimum penalties (*MMPs*) and said *MMPs* should have been designed so that they didn't penalize dischargers that take corrective actions in a timely manner. They expressed their concerns to Mr. Pete Silva, State Board Liaison.

Mr. Wright made a motion to adopt Order No. R9-2004-0113. The motion was seconded by Ms. Keller and opposed by Mr. Stephany. Ms. Ghio and Ms. Butcher abstained therefore the motion did not carry.

After further Board Member discussion, Mr. Stephany reluctantly changed his vote and approved the motion. Ms. Ghio and Ms. Butcher also changed their vote and approved the motion.

A motion made by Ms. Butcher to reconsider was approved by unanimous vote.

The motion previously made by Mr. Wright and seconded by Ms. Keller was approved by unanimous vote.

Item 14 – PUBLIC HEARING: Southland Corporation, Store No. 22894, Escondido: Administrative Assessment for Civil Liability containing a \$9,000 Mandatory Minimum Penalty against Southland Corporation for Violations of Order No. 96-41, NPDES Permit No. CAG919002, General Waste Discharge

Requirements for Groundwater Extraction and Similar Waste Discharges From Construction and Remediation Projects to Surface Waters within the San Diego Region, Except for San Diego Bay. If the discharger waives its right to a hearing, the matter will be postponed to a subsequent meeting to allow for a 30-day public review period. (Tentative Order No. R9-2004-0114) (*Frank Melbourn*)

Mr. Robertus introduced the item and staff member Frank Melbourn gave the presentation.

Other speakers included:

John Wainwright, SECOR International

Board Members asked questions and made comments.

Mr. Melbourn made closing comments, and Mr. Robertus recommended adopting the order.

Mr. Stephany made a motion to adopt Order No. R9-2004-0114.

After Board Member discussion, Ms. Keller seconded the motion. The motion was approved 5-1 with opposition by Ms. Ghio.

Item 15 – Status Report: Orange County MS4 Storm Water Programs Annual Report (*Jeremy Haas*)

Staff member Jeremy Haas gave the presentation.

Other speakers included:

Larry McKenney, County of Orange, presented their Stormwater Program

Mary Jane Foley, consultant, Stormwater Public Outreach

Item 16 – Status Report: Clean Marina Program (*Pete Michael*)

Senior staff member Pete Michael introduced the item.

Other speakers included:

Sandy Purdon, Clean Marina Program

Tim Leathers, Cabrillo Isle Marina

Leigh Johnson, University of California - SeaGrant

Marco Gonzalez, San Diego BayKeeper

The meeting was recessed for lunch and Executive Session at 12:45 a.m.

Item 17 – *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 (David Hanson); and the related “Surfrider” case:

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

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. City of San Diego, U.S. District Court, Southern District of California, Case No. 03CV1381-B(POR) (David Hanson); and the related case:

San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San Diego; U.S. District Court, Southern District of California; Case No. 01-CV-0550-B (POR) (David Hanson)

WILLIAM P. JOHNSON, an individual; and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD – SAN DIEGO, a State of California board and DOES 1-50. Superior Court of the State of California for the County of San Diego, Case No. GIC815227; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027 for violations of the statewide Construction Storm Water Permit, Order No. 99-08-DWQ. (Frank Melbourn)

Building Industry Association of San Diego County, et al. v. California State Water Resources Control Board and Regional Water Quality Control Board,

San Diego; In the Court of Appeal of the State of California, Case No. GIC 780263 (Phil Hammer)

Fallbrook Public Utilities District v. State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region, Case No. GIC 819771 (referred to as “MMP case”); Petition for Writ of Mandate challenging administrative assessment of civil liability based on mandatory minimum penalties for violation of effluent limits in NPDES waste discharge requirements. (Frank Melbourn)

Fallbrook Public Utilities District v. State Water Resources Control Board ,et al., San Diego County Superior Court Case No. GIC822179 (referred to as “Permit Modification case”); Regional Board failure to act on a request by Fallbrook PUD to amend certain permit conditions contained in NPDES waste discharge requirements. (Victor Vasquez)

Divers' Environmental Conservation Organization v. State Water Resources Control Board, San Diego Superior Court, Case No. GIC819689. Petition for Writ of Mandate challenging waste discharge requirements for U.S. Navy, Naval Station San Diego based on absence of numeric effluent limits for toxic pollutants in discharges of storm water. (Paul Richter)

The Executive Session was held.

Item 19 – *Executive Session* - Discussion of Pending Litigation

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

Schutte & Koerting, Inc. and Ametek, Inc v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region

The Executive Session was not held.

Item 18 – *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 20 – *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 21 - Arrangements for Next Meeting and Adjournment

Wednesday, June 9, 2004 - 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 2:00 p.m.

It was brought to the attention of the Executive Officer that there would not be a quorum on June 9th so the meeting date was changed to June 10th.

These minutes were prepared by:

Signature of Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus