

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

MINUTES OF MEETING  
November 10, 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 Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

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

Staff Present: Arthur Coe, Michael McCann, David Barker, Lori Costa, Pete Michael, John Phillips, Frank Melbourn, Hashim Navrozali, Paul Richter, Alan Monji, Mike Porter and Jeremy Haas.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Pete Silva. Sylvia Becker Reporting: Nealy Kendrick. Public Attendance: Alan Langworthy – City of San Diego; Gabriel Solmer, Bruce Reznik – San Diego BayKeeper; Gilbert Grotta – California ISO; Jeff Paul – NRG Energy; Dave Mayer, James White, Jim Nylander – Duke Energy; Meg Rosegay – Pillsbury Winthrop; Scott Peterson – SDG&E; Michael Welch, Margaret Peary, Kara Peterson, Rock Retchl – self; Ed Kimura – Sierra Club; Al Huang, Laura Hunter, Sonia Rodriguez – Environmental Health Coalition; Jim Peugh – San Diego Audubon; Marco Gonzalez – Surfrider Foundation; Lorena Gonzalez – State Lands Commission; Julie Byford – SWSD; Larry Oberts – UCSD; Dick Dietmeier – South Coast Water District; Sean Bolton – U.S. Navy; Tom Collins, Suzanne Lawrence, Linda Rasmussen – Scripps Institution of Oceanography; John Lormon – Procopio, Cory, Hargreaves & Savitch; Lupita Jimenez – So. Bay Green Party; Richard Watson – Caltrans; Jim Hogan – Mactec; and Ben Penning – POTW.

**Item 2** – Public Forum

Margaret Peary, expressed her concern with storm water runoff and mulching issues at DeAnza Mobile Home Park. Ms. Peary requested that the Regional Board monitor the property on a regular basis.

*Board Member Butcher arrived at 9:05 a.m.*

**Item 3** – Minutes of Board Meeting of October 13, 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.*

Mr. Stephany moved approval of the October 13, 2004 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 (EO) Reports.

Mr. Art Coe presented senior staff member John Phillips with a Leadership Training Certificate for completing leadership training courses.

Chairman Minan talked about pending legislation concerning the border fence and asked Mr. John Richards questions about the issuance of waste discharge requirements.

Mr. Mike McCann briefly spoke about the Mission Valley Preserve tour that he and Chairman Minan attended with the San Diego River Conservancy.

Chairman Minan announced that he was invited to speak to the Association of Metropolitan Sewerage Agencies conference on November 12<sup>th</sup>.

Ms. Butcher announced that Mr. Coe would be speaking about water quality at the 8<sup>th</sup> Africa Trade and Business conference on November 13<sup>th</sup>.

*Consent Item 5*

**Item 5** – NPDES Permit Revision: U.S. Navy, Naval Base San Diego, San Diego County (tentative Addendum No. 1 to Order No. R9-2002-0169, NPDES Permit No. CA0109169) (*Paul Richter*)

Mr. Stephany moved approval of Consent Item 5. The motion was seconded by Mr. Wright and approved by unanimous vote.

**Item 7** – NPDES Permit Renewal: Duke Energy South Bay, LLC, South Bay Power Plant, San Diego County (tentative Order No. R9-2004-0154, NPDES Permit No. CA0001368) (*Hashim Navrozali*)

Assistant Executive Officer, Art Coe introduced the item. Staff member Hashim Navrozali gave the presentation.

James White, Duke Energy, also gave a presentation.

Other speakers included:

Scott Peterson, San Diego Gas & Electric

Gilbert Grotta, California ISO

Lorena Gonzalez-Bradford, Lieutenant Governor Cruz Bustamonte's Office

Bruce Reznik, San Diego BayKeeper

Al Huang, Environmental Health Coalition

Gabriel Solmer, San Diego BayKeeper

Senior staff member John Phillips made closing comments. Board Members asked questions of Mr. Phillips and Mr. Richards.

Ms. Ghio was concerned about requiring the discharger to do monthly monitoring for five years for pollutants that hadn't been detected in 7-8 years.

Board Members discussed several issues that were raised by the discharger and interested parties.

After Board Member discussion, Ms. Ghio made a motion to require monthly monitoring of priority pollutants and toxicity for one year. If they remained in full compliance, it would be reduced to quarterly monitoring for the second year and semi-annually after that. If there were violations, it would go back to monthly monitoring. Mr. Stephany seconded the motion. Ms. Keller, Ms. Butcher and Mr. Wright were opposed therefore the motion failed.

After Board Member discussion on thermal limitations, staff member John Phillips recommended amending Finding 18 to read, "In the event of a state of emergency, as declared by a proper state authority, due to energy shortages in the State of California the ISO may require the South Bay power plant to increase its power output to levels that may cause a violation of its thermal effluent limits."

A motion was made by Ms. Ghio to approve the amendment recommended by staff. The motion was seconded by Ms. Butcher and approved by unanimous vote.

Mr. Stephany made a motion to approve Order No. R9-2004-0154 with errata and the amendment. The motion was seconded by Ms. Butcher and approved with opposition by Ms. Ghio.

### *Consent Item 6*

**Item 6** – City of Oceanside: Administrative Assessment of Civil Liability containing an \$18,000 Mandatory Minimum Penalty against the City of Oceanside for violation of effluent limitations established by Order No. R9-2000-0011, NPDES No. CA0107433, Waste Discharge Requirements for the City of Oceanside, San Luis Rey and La Salina Wastewater Treatment Plants, Discharge to the Pacific Ocean via the Oceanside Ocean Outfall. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0394) (*Rebecca Stewart*)

Chairman Minan requested a copy of the letter that was sent to the Regional Board by the City of Oceanside that explained the basis for the single operational upset.

Mr. Stephany moved approval of Consent Item 6. The motion was seconded by Ms. Butcher and approved by unanimous vote.

### **Item 9** – Approval of Year 2005 Board Meeting Schedule (*John Robertus*)

A motion was made by Ms. Butcher to approve the 2005 Board Meeting schedule. The motion was seconded by Ms. Ghio and approved by unanimous vote.

**Item 10** – Delegation of authority to the Chair or a subcommittee of the Regional Board to address certain matters in the absence of a quorum. The Board will consider appointing a subcommittee authorized to act as a hearing panel or designate hearing officers for the purpose of conducting hearings and forwarding recommendations to the appropriate decision making body. (*Resolution No. R9-2004-0384*) (*John Robertus*)

Ms. Ghio wanted to clarify that the resolution would only be in effect if there wasn't a quorum appointed by the Governor.

After Board Member discussion with Mr. Richards, the following language was added to the resolution, “should five or more seats on the Board be vacant:” after the words, *Now therefore be it resolved, that.*

A motion was made by Mr. Wright to adopt the resolution with the amendment. The motion was seconded by Ms. Keller and adopted with opposition by Mr. Stephany.

*The meeting was recessed for lunch and Executive Session at 12:40 p.m.*

**Item 11** – *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*)

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*. San Diego Superior Court, Case No. GIC 822750. Verified Petition for Writ of Mandate for Breach of Contract.

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*. San Diego Superior Court, Case No. GIC 824706. Verified Petition for Writ of Mandate for Breach of Contract.

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 824707. Complaint for Breach of Contract, Specific Performance, Intentional Misrepresentation, Bad Faith Denial of Existence of Contract, Compensatory Damages, Exemplary Damages and for Declaratory Judgment, Request for Jury Trial.*

The Executive Session was held and all the items listed were discussed.

*The meeting reconvened at 1:30 p.m.*

**Item 8** – NPDES Permit Renewal: University of California, Scripps Institution of Oceanography, San Diego County (tentative Order No. R9-2004-0378, NPDES Permit No. CA0107239) (*Paul Richter*)

Mr. Coe introduced the item and staff member Paul Richter gave the presentation.

Chairman Minan said that once the permit was reissued, it would include the conditions set forth in State Board Resolution No. 2004-0052. He then said that there was a factual error in Finding 11 of the Resolution that said the Regional Board reviewed the exception request and recommended the exception be granted, which in fact it had never been brought before them as an action item. He asked staff to contact the State Board to have the finding corrected.

Other speakers included:

Tom Collins, Scripps Institution of Oceanography

John Lormon, Procopio, Corey, Hargreaves & Savitch

Marco Gonzalez, Surfrider Foundation

Mr. Lormon made closing comments.

Mr. Richter made closing comments.

Ms. Ghio recommended delaying the permit renewal due to lack of information and to give the discharger the opportunity to do studies and prepare reports and bring the study results back to the Board at a future meeting.

Chairman Minan called a recess in order for Mr. Richards to look at the proposed changes by staff.

Mr. Richards said the changes being proposed by staff were minor. Mr. Richter explained the proposed changes. Mr. Richter also commented on some of the testimony presented by other speakers.

Board Members asked questions of Mr. Richter.

Mr. Phillips said that the permit could be written to provide the discharger time to do the studies, collect data and make recommendations. He recommended bringing the permit back to the Board for approval at the February 2005 Board Meeting.

Mr. Lormon made additional comments.

Ms. Ghio made a motion to continue the item for three or four months and for staff to work with the public and Scripps to develop appropriate timetables. The motion was seconded by Mr. Stephany and approved by unanimous vote.

**Item 12** – *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 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* - 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 15** - Arrangements for Next Meeting and Adjournment



Wednesday, December 8, 2004 - 9:00 a.m.  
Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

With there being no further business, the meeting was adjourned at 3:31 p.m.

These minutes were prepared by:

Assistant Executive Officer:

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Lori Costa  
Executive Assistant

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Arthur L. Coe