

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

MINUTES OF MEETING
March 9, 2005

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, Jennifer Kraus, Richard Wright, Eric Anderson, Alan Barrett, and Susan Ritschel.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, John Phillips, Bob Morris, Craig Carlisle, Bruce Posthumus, Pete Michael, Mark Alpert, John Odermatt, Stacey Baczkowski, Julie Chan, Kelly Dorsey, Paul Richter, Hashim Navrozali, Eric Becker, Amy Grove, Jody Ebsen, Mike Porter, Tom Alo, Frank Melbourn, Ben Neill, Jeremy Haas, Phil Hammer, Alan Monji and Tony Felix.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Sylvia Becker Reporting: Nealy Kendrick. Public Attendance: Eric Nichols, Scott Martin, Kevin Ryan – Kinder Morgan Energy Partners; Jeff Paul – NRG Energy; Dick Dietmeier – self; Jack Eidt – Wild Heritage Planners; Jerry Collamer – Save Trestles; Laura Hunter, Al Huang, Sonia Rodriguez – Environmental Health Coalition; Alfredo Lopez – self; Michael Hazzard – Clean Aliso Creek Association; Curt Stanley – Shell Global Solutions; Kathleen Gillmore – Shell Oil Company; Dan Connally – Tetra Tech; Ed Kimura – Sierra Club; Richard Opper – Opper & Varco; Dave Seymour – SMWD; Wes Danskin – USGS; Chuck Katz, Rob Chichester, Brian Gordon, Daphne Crane – US Navy; Wayne Rosenbaum – Foley & Lardner; Grace Lowenberg, Marsi Steirer, Ted Olson, Chris Gonaver – City of San Diego; Barry Pulver – County of San Diego; Rick Hall – RBF Consulting; Robert Coppa – Fieldstone Communities; Phil Rosenberg – Harges & Associates; Michael Pallamary, John Millar – Rancho Del Sol Nurseries; Shari Sehlheryt – SeaWorld; Jason Dennis – Griffith Company; Richard Runge - So. Coast Water District; Andrew Zinegle – CA State Assembly; Patti Krebs – Industrial Environmental Association; Scott Sobiech – USFUS; Kona Kaimulon, Glenn Ericson, Mo. Lahsaie, Scott Smith – City of Oceanside; Karen

VanErt, Shaun Flater – Rick Engineering; Hugo Bermudez – NASSCO; Terry Rodgers – Union Triune; Gabriel Solmer, Bruce Reznik – San Diego BayKeeper; David Kay, Robert Heckler, Southern California Edison, Bill Paznokas, CA Dept. of Fish and Game.

Item 2 – Public Forum

Laura Hunter, Environmental Health Coalition, talked about a report they released titled “Survey of Fishers on Piers in San Diego Bay.”

Sonia Rodriguez, Environmental Health Coalition, said she was the one that conducted the survey on the piers and urged cleanup of the bay.

Alfredo Lopez, fisherman at National City pier, said he was concerned for his family who eat the fish he catches and urged the Board to take action to get the bay cleaned up.

Jack Eidt, Wild Heritage Planners, said they wanted to designate the San Mateo watershed under the Critical Coastal Area Program.

Jerry Collamer, Surfrider Foundation, also talked about the Critical Coastal Area Program and protecting the creeks.

Michael Pallamary, land use consultant, informed the Board of several alleged violations associated with the construction of the Carmel Valley Trunk Sewer project and asked the Board to look into the matter.

John Millar, Rancho Del Sol Nurseries, also talked about the above alleged violations.

Michael Hazzard, Clean Aliso Creek Association, requested an agenda item in Laguna Beach on May 11, 2005 to talk about Aliso Creek issues.

Gabriel Solmer, San Diego BayKeeper, talked about the Border fence between San Diego and Tijuana issue they talked about last month and urged the Board to contact key senators to get the hearing process in place in order for the environmental impacts to be considered.

Item 3 – Minutes of Board Meeting of February 9, 2005

This record of the minutes of the meeting on this date is not intended as 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. Robertus noted that a correction needed to be made to page 2, under Public Forum, speaker David Merk, the word “haul” should read “hull” in two places.

Mr. Wright moved approval of the February 9, 2005 minutes with the correction. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Consent Item:

Item 4 – NPDES Permit Renewal: Waste Discharge Requirements for Mountain Water Ice Company, San Diego County (tentative Order No. R9-2005-0015, NPDES Permit No. CA0108391) (*Tony Felix*)

Mr. Wright moved approval of Order No. R9-2005-0015. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 5 – NPDES Permit Renewals:

A. NPDES Permit Renewal: Waste Discharge Requirements for the Southern California Edison, San Onofre Nuclear Generating Station, Unit 2, San Diego County (tentative Order No. R9-2005-0005, NPDES Permit No. CA0108073) (*Hashim Navrozali*)

B. NPDES Permit Renewal: Waste Discharge Requirements for the Southern California Edison, San Onofre Nuclear Generating Station, Unit 3, San Diego County (tentative Order No. R9-2005-0006, NPDES Permit Nos. CA0108181) (*Hashim Navrozali*)

Both oral and written comments will be received by the Regional Board regarding these items up to and during today’s hearing. The Regional Board will schedule a subsequent date for deliberating on all testimony and making a decision on the adoption of tentative Order Nos. R9-2005-0005 and R9-20005-0006.

Ms. Kraus disclosed that she was an Industrial Environmental Association Board member, which Southern California Edison was a member of but felt it would not influence her actions on the item.

Mr. Robertus introduced the item and staff member Hashim Navrozali gave the presentation.

Board Members asked questions of staff and Mr. Richards.

Other speakers included:

David Kay, Southern California Edison

Bill Paznokas, Department of Fish and Game

Jerry Collamer, Surfrider Foundation and Sierra Club

Jack Eidt, Wild Heritage Planners

Bruce Reznik, San Diego BayKeeper

Laura Hunter, Environmental Health Coalition

Al Huang, Environmental Health Coalition

Ed Kimura, Sierra Club

Gabriel Solmer, San Diego BayKeeper

Patti Krebs, Industrial Environmental Association

Michael Hazzard, Citizen Watershed Monitors

Mr. Kay made closing comments.

Robert Heckler, SONGS, answered a question about monitoring asked by Ms. Ritschel.

Board Members asked questions of staff.

Senior staff member John Phillips made closing comments.

Mr. Wright said that he would like to keep the public comment period open so that interested parties could comment on staff's response to comments.

Mr. Robertus recommended closing the public comment period at 5:00 p.m.

Ms. Ritschel made a motion to leave the public comment period for an additional two weeks. Mr. Anderson seconded the motion.

Board Members made comments and made requests of staff.

The motion was approved with opposition by Mr. Wright.

Item 6 – PUBLIC HEARING: A public hearing may be held regarding the issuance of Cleanup and Abatement Order No. No.R9-2005–0033 to Fieldstone Communities Inc. for alleged violations of the California Water Code caused by discharges of excessive amounts of sediment from the Oak Hill residential development site in the City of Oceanside. (*Christopher Means*)

Item 7 – PUBLIC HEARING: A public hearing may be held regarding the issuance of Cleanup and Abatement Order No.R9-2005–0044 to Florida SouthChase LP for alleged violations of the California Water Code caused by discharges of excessive amounts of sediment from the Morro Hills Villages residential development site in the City of Oceanside. (*Christopher Means*)

Mr. Robertus introduced the items and Mr. Richards framed the issues. Staff member Christopher Means gave the presentation.

Other speakers included:

Wayne Rosenbaum, Foley and Lardner, represented the dischargers.

Mr. Rosenbaum stopped his presentation to allow Board discussion of his two issues before proceeding further.

Chairman Minan reviewed the two requests and discussed them with Mr. Rosenbaum and Mr. Richards.

The meeting was recessed for lunch 1:10 p.m. and reconvened at 1:45 p.m.

Item 6 - Continued

Mr. Rosenbaum continued with his presentation.

Mr. Means made brief closing comments. Mr. Robertus recommended that the Board affirm the Cleanup and Abatement Orders.

Chairman Minan recommended amending the orders by adding the following language, taken from the Policy and Procedures Manual, to the end of the order,

after the signature line: “The Regional Water Quality Control Board reserves its right to take any enforcement action authorized by law.”

Ms. Ritschel recommended amending the orders by adding the following language: “Rescission of the CAO will be considered when the Executive Officer has determined that Fieldstone Communities (*Florida SouthChase*) had complied with the directive in the CAO.”

Ms. Ritschel motioned to affirm Order No. R9-2005-0033 with Addendum No. 1 and the two amendments. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Ms. Ritschel motioned to affirm Order No. R9-2005-0044 with Addendum No. 1 and the two amendments. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Item 8 – PUBLIC HEARING: Addendum to Cleanup & Abatement Order: Mission Valley Terminal (tentative Addendum No. 5 or Order No. 92-01) (*Kelly Dorsey*)

Mr. Robertus introduced the item and staff member Kelly Dorsey gave the presentation.

Other speakers included:

Richard Opper, Opper & Varco, represented the City of San Diego
Marci Steirer, City of San Diego
Chris Gonaver, City of San Diego
Curt Stanley, Shell Global Solutions
Kevin Ryan, Kinder Morgan

Mr. Opper made brief closing comments.

Ms. Dorsey addressed Mr. Opper’s and Mr. Stanley’s concerns and made closing comments.

Ms. Dorsey recommended revising directive no. 2 to include language requiring cleanup to background water quality and no. 4 to include language to clarify the requirements of the feasibility study, add clarifying language and correct various typographical errors.

Ms. Dorsey recommended closing the public comment period.

Per Mr. Opper's request, Mr. Robertus asked staff to include in the findings a reference to the agreement that was reached between the City and Kinder Morgan regarding future remedial work for the site.

Senior staff member John Odermatt addressed a question concerning Shell Oil asked by Mr. Wright.

Chairman Minan recommended adding the following language, taken from the Policy and Procedures Manual, to the end of the order, after the signature line: "The Regional Water Quality Control Board reserves its right to take any enforcement action authorized by law."

Chairman Minan recommended adding the statement: "as soon as practicable or.." to page 2 of the tentative order, before the dates that cleanup is to be completed.

Ms. Ritschel motioned to close the public hearing and public comment period. The motion was seconded by Mr. Wright and approved by unanimous vote.

Board Member Ritschel left the meeting at 3:30 p.m.

Item 9 – Status Report: U.S. Navy–Status of Alternative Toxicity Study (*John Phillips*)

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

Other presenters included:
Rob Chichester, U.S. Navy
Chuck Katz, U.S. Navy

Board Members asked questions of Mr. Chichester and Mr. Katz.

Chairman Minan made a recommendation to the Navy.

Item 10 – Report on Settlement of Litigation: *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) (*John Robertus*)

Chairman Minan suggested making changes to the language in the Terms of Proposed Settlement, items B and C, which would read:

B. \$260,000 to the **Southern California Coastal Water Research Project Authority** for the purpose of conducting a sediment toxicity source analysis water quality project in Chollas Creek **as directed by the Regional Board;**

C. \$500,000 to **an interest bearing escrow account to fund** water quality related monitoring in San Diego Bay and Mission Bay **as directed by the Regional Board;**

Mr. Robertus said he would publish the corrections in the notifications section of the April 13, 2005 agenda.

Ms. Kraus made a motion to authorize Mr. Robertus to sign the settlement agreement with the changes noted by Chairman Minan. The motion was seconded by Mr. Barrett and approved by unanimous vote.

Item 11 – Chairman's, Board Members', State 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.

Mr. Richards gave the Board an update on the William Johnson court case.

Mr. Robertus briefly talked about the 2005 Community Leaders Water Forum, and commented on the Update of the Bacteria-Impaired Waters Total Maximum Daily Load Project I for Beaches and Creeks and the Regional Harbor Monitoring Program items in his report.

Mr. Wright asked Mr. Robertus if he was still planning on arranging a tour of San Diego Bay. Mr. Robertus said yes.

Mr. Wright urged Board Members to visit the Tijuana Estuary to look at the sedimentation. He said fifteen acres of salt marsh were lost as a result of sedimentation.

Mr. Wright said he would give a copy of the newly published Tijuana River Atlas to any Board Member interested.

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. 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*)

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 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* - 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, April 13, 2005 - 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 4:45 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus