

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

MINUTES OF MEETING  
August 10, 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: John Minan, Jennifer Kraus, Richard Wright, Janet Keller, Susan Ritschel and Daniel Johnson.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, Mark Alpert, Bob Morris, Pete Michael, Brian Kelley, Julie Chan, Craig Carlisle, Tom Alo, Victor Vasquez, Dat Quach, Eric Becker, Chris Means, Alan Monji, Cynthia Gorham-Test, Vicente Rodriquez, Mike Porter, Kristin Schwall, Charles Cheng and Lisa Honma.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Philip Wyels. Jan White & Associates Reporting: Mary Ann Young. Public Attendance: John Rudolph, Marilyn Schwartz - Nautilus Environmental; Keith Battle – Pala Band of Mission Indians; Mark Hammond, Barry Martin, Lonnie Thaboley – City of Oceanside; Jon Van Rhyn, Chandra Wallar, Alan Langworthy, Ruth Kolb – City of San Diego; Barbara Montgomery – SDG&E; Laura Hunter, Georgette Gomez – Environmental Health Coalition; Brian Wall – Chevron; Dick Runge – SCWD; Cristina Kwong – Hydranautics; Mekaela Mahoney, Michael Leggieri, Gabriel Solmer, Bruce Reznik – San Diego BayKeeper; David Caretto – SOCWA; Dave Seymour – SMWD; Andrew Zingale – Assemblymember Lori Saldana; Dave Mulliken, Kelly Richardson – Latham & Walkins; Dean Charles, Edward Modieno – de Maximis; Michelle Russell – Project Navigator; David Silverstein – U.S. Navy; Carole Farr – Secor; Susan Huntington – San Diego River Conservancy; Tom Mulder – TN & Associates; Dave Meyer – Brown & Caldwell; David Templeton – Anchor Environmental; Bill Pedrick, Amy Komatsuzaki – Tetra Tech EC, Inc; Marco Gonzalez – Coast Law Group; Ed Kimura – Sierra Club; Darrel Hale – Fallbrook PUD; Kevin Carr – Sea World; Jim Linthrum – SAN DAG; Steve Weisberg – SCCWRP; Michael McDonough – Bingham McCutchen.

Chairman Minan announced that Item 10 was postponed.

**Item 2** – Public Forum

Keith Battle, Pala Band Mission Indians, requested a meeting with the Board members to express concerns of the Band for the groundwater quality that might be impacted by the proposed Gregory Canyon Landfill.

Jon Van Rhyn, County of San Diego, spoke about the process of the municipal storm water permit reissuance. Mr. Van Rhyn thanked Regional Board staff for participating in meetings with them and requested the Regional Board hold a forum for the Board to hear the issues presented by the County of San Diego and the co-permittees.

Board Members Wright and Ritschel requested a workshop be held in September.

Andrew Zingale, representing State Assemblymember Lori Saldana, talked about the International Wastewater Treatment Plant and read a letter from Ms. Saldana requesting the Regional Board's response to her proposals concerning the Bajagua LLC project.

**Item 3** – Minutes of Board Meeting of June 29, 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. Wright moved approval of the June 29, 2005 minutes. The motion was seconded by Mr. Johnson and approved. Ms. Ritschel and Ms. Kraus abstained.

**Item 4** – 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. Wright talked about the 2005 Clean Water Summit that he, Chairman Minan, Mr. Anderson and Mr. Robertus attended and thanked Mr. Robertus for the excellent presentation he gave.

Mr. Johnson talked about the Brownfields issue and pending applications for AB 389. Mr. Johnson asked Mr. Robertus if there was any interest in the program in the San Diego region.

Chairman Minan briefly spoke about the September 19 & 20 WQCC meeting in Sacramento. He also spoke about the CA Biodiversity Council Ocean & Coastal Economic Summit and the Southern CA Wetlands Recovery Project Board of Governors meetings he attended.

Mr. Robertus talked about the City of San Diego River Road Crossing item in his report. He also talked about a meeting he attended with five city managers and representatives from the County of San Diego regarding a Notice of Violation they were issued.

Chairman Minan said he received a letter from Wayne Nastro, U.S. EPA, encouraging the Regional Board to stay on track with regards to the development and implementation of TMDLs.

Chairman Minan asked Mr. Robertus to send a letter of appreciation to Mr. Phillips and Ms. Baczkowski, former supervisors on staff.

*Consent Calendar: Items 5 through 9*

Item 5 was removed from the consent calendar and postponed to a future meeting. Ms. Ritschel recused herself from Item 7.

**Item 5** – Metropolitan Transit System (MTS): Administrative Assessment of Civil Liability against the MTS (formerly known as the Metropolitan Transit Development Board) Violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity at its Mission Valley East Light Rail Transit Project in San Diego. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0062. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0173) (*Vicente Rodriguez*)

Item 5 was postponed.

**Item 6** – SeaWorld San Diego: Administrative Assessment of Civil Liability as a \$6,000 Mandatory Minimum Penalty against SeaWorld San Diego for violations of effluent limitations contained in Regional Board *Order No. 2000-0025, Waste Discharge Requirements for SeaWorld San Diego, Discharge to Mission Bay*. The Regional Board will consider adoption of an order accepting settlement of the proposed liability in response to Administrative Civil Liability Complaint No. R9-2005-0129. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0223) (*Mark Alpert*)

**Item 8** – Revision of Master Reclamation Permit with Waste Discharge Requirements: Olivenhain Municipal Water District, 4-S Ranch Wastewater Treatment Plant, San Diego County (tentative Addendum No. 2 to Order No. R9-2003-0007) (*Brian Kelley*)

**Item 9** – Revision of Waste Discharge Requirements: Port of San Diego, Campbell Shipyard Bay Sediment Cap, Closure and Maintenance, San Diego Bay (tentative Addendum No 1 to Order No. R9-2004-0295) (*Dat Quach*)

Mr. Wright made a motion to approve Consent Items 6, 8 and 9. The motion was seconded by Ms. Kraus and approved by unanimous vote.

**Item 7** – South Orange County Wastewater Authority (SOCWA): Administrative Assessment of Civil Liability as a \$9,000 Mandatory Minimum Penalty against the SOCWA for violation of effluent limitations established by Order No. R9-2000-0013, Waste Discharge Requirements Discharge to the Pacific Ocean through the South Orange County Wastewater Authority San Juan Creek Ocean Outfall in Orange County. The Regional Board will consider adoption of an order accepting settlement of the proposed liability in response to Administrative Civil Liability Complaint No. R9-2005-0124. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2005-0224) (*Mark Alpert*)

Mr. Wright made a motion to approve Consent Item 7. The motion was seconded by Ms. Keller and approved with abstention by Ms. Ritschel.

*Remainder of the Agenda (Non-Consent Items):*

**Item 10** – NPDES Permit Reissuance: Waste Discharge Requirements For The Fallbrook Public Utility District Wastewater Treatment Plant No. 1 Discharge To The Pacific Ocean Via The Oceanside Ocean Outfall (Tentative Order No. R9-2005-0137, NPDES No. CA0108031) (*Victor Vasquez*)

Item 10 was postponed.

**Item 11** – NPDES Permit Reissuance: Waste Discharge Requirements For The City Of Oceanside San Luis Rey And La Salina Wastewater Treatment Plants And Brackish Groundwater Desalination Facility Discharge To The Pacific Ocean Via The Oceanside Ocean Outfall (Tentative Order No. R9-2005-0136, NPDES No. CA0107433) (*Victor Vasquez*)

Mr. Robertus introduced the item and staff member Victor Vasquez gave the presentation.

Other speakers included:

Barry Martin, City of Oceanside

Kelly Richardson, Latham & Watkins

Michael Leggieri, San Diego BayKeeper

Ms. Ritschel made a motion to approve Order No. R9-2005-0136 with errata. The motion was seconded by Mr. Johnson and approved by unanimous vote.

**Item 12** – Cleanup of Marine Sediments in San Diego Bay adjacent to Shipyard Leaseholds: Discussion concerning Tentative Cleanup and Abatement Order No. R9-2005-0126 and follow up to Public Workshop conducted on June 29, 2005. To assure that the Regional Board proceedings in this matter are fair and impartial, it is necessary to separate the functions of staff members presenting evidence from staff members advising the Regional Board. Arthur Coe will direct staff presenting evidence and recommendations to the Regional Board, and John Robertus will direct staff advising the Regional Board on these matters.

Mr. Robertus introduced the item and explained the procedures that would be followed.

**a.** Status Report on the Development of appropriate Marine Sediment Quality Objectives by the State Water Resources Control Board and the Southern California Coastal Water Research Project. No action will be taken by the Regional Board. (*John Robertus*)

Steve Weisberg, Southern California Coastal Water Research Project Authority and Chris Beegan, State Water Resources Control Board gave the status report.

**b.** Status Report on Documents and Activities related to the Cleanup of Sediments in San Diego Bay and in support of Tentative Cleanup and Abatement Order No. R9-2005-0126. No action will be taken by the Regional Board. (*Arthur Coe*)

Mr. Robertus introduced the item. Senior staff member David Barker gave a brief status report.

*The meeting was recessed for lunch and Executive Session at 12:00 p.m.*

**Item 13** – *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.*

**Item 17** – *Executive Session* - Discussion of Pending Litigation

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

The Executive Sessions were held. The William Johnson, BIA, Divers Environmental, Schutte & Koerting cases and the San Diego City School Board were discussed.

*The meeting reconvened at 1:00 p.m.*

**Item 12** (continued)

c. Discussion of a Process to establish Marine Sediment Quality Objectives, to establish cleanup levels, and to issue a Cleanup and Abatement Order. The

Regional Board will consider whether to amend its Water Quality Control Plan (Basin Plan) to adopt Sediment Quality Objectives prior to issuance of a Cleanup and Abatement Order with final cleanup levels. That Process shall include having the Chair conduct one or more pre-hearing conferences to set the procedures for the Cleanup and Abatement Order proceeding(s). Action may be taken by the Regional Board. (*John Robertus*)

Mr. Robertus introduced the item and explained the procedures that would be followed.

Mr. Art Coe, who was part of the Shipyard Sediment Site Cleanup Team, said they did not recommend pursuing a Basin Plan Amendment at that time.

Chairman Minan, Mr. Coe and Mr. Wyels discussed the process.

Other speakers included:

Marco Gonzalez, Coast Law Group

Laura Hunter, Environmental Health Coalition

David Mulliken, Latham & Watkins

David Silverstein, U.S. Navy

Bruce Reznik, San Diego BayKeeper

Gabriel Solmer, San Diego BayKeeper

Chairman Minan made a motion to direct staff to present to the Board the Technical Report to support their tentative Cleanup and Abatement Order. The motion was seconded by Ms. Keller and approved by unanimous vote.

Board Members discussed the pre-hearing conference procedures.

Mr. Wright made a motion to designate the Chair to conduct the pre-hearing conference in accordance to state and federal laws. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Other speakers (continued):

Georgette Gomez, Environmental Health Coalition

Gabriel Solmer, San Diego BayKeeper



**Item 16** – *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 18** – *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 19** - Arrangements for Next Meeting and Adjournment

Wednesday, September 14, 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 2:30 p.m.

These minutes were prepared by:

Executive Officer:

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Lori Costa  
Executive Assistant

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John H. Robertus