

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

MINUTES OF MEETING
December 14, 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 and Introductions: Chairman Minan congratulated Ms. Ritschel and Mr. Wright on their reappointments. Chairman Minan introduced and welcomed Julianne Nygaard, the newest member on the Board. Ms. Nygaard gave a brief history of her background.

Board Members Present: John Minan, Eric Anderson, Richard Wright, Susan Ritschel, Daniel Johnson, Alan Barrett and Julianne Nygaard.

Staff Present: John Robertus, Arthur Coe, Michael McCann, David Barker, Lori Costa, Bob Morris, Mark Alpert, Brian Kelley, Pete Michael, Julie Chan, John Odermatt, John Anderson, David Gibson, Craig Carlisle, Chris Means, Jeremy Haas, Tony Felix, Alan Monji, Deborah Woodward, Frank Melbourn, Cindy Warner, Alyson Miller, Melissa Valdovinos, Joann Lim, Charles Cheng, Amy Grove, Mike Porter, Ben Neill, Phil Hammer, Megan Quigley, Victor Vasquez, Christina Arias, Lesley Dobalian, Don Perrin, Eric Becker and Jimmy Smith.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Jan White & Associates Reporting: Mary Ann Young. Public Attendance: Robert Ladwig, George O’Day, Wendy Loeffler, David Bentley – Cantarini/Holly Springs; Geoffrey Smith –Escondido Creek Conservancy; Richard Opper – Opper & Varco; Lisa Prazeau – Friends of Reidy Canyon Creek; Jim Sutter – Koehler Kraft; Gabriel Solmer, Bruce Reznik – SD Coastkeeper; Laura Hunter, Rebecca Pearl – Environmental Health Coalition; Robert Ranniko – Knight & Carver; Richard Runge – SCWD; Paul Brown – SDUPD; David Morgez – Eastern Municipal Water District; Ed Modiano – De Maxims; J. Schroeder – BAE Systems; Kristina Schneider – Brown & Caldwell; Lynne Baker – Neighbors of the Highlands; Laura Larsen – RBF Consulting/Caltrans; Winter Lei – SDUT; Wayne Rosenbaum – Foley & Lardner;

Joseph DeStefano II, Kelly Barker, John Van Rhyn – County of San Diego; Elaine Lukey, Conrad Hamman – City of Carlsbad; John C. – D-Max Engineering; John Rudolph – Nautilus Environmental; Garret Williams – Weston Solution (MEC); Mo Lahsaie – City of Oceanside; John Phillips – City of El Cajon; Larry McKenney – County of Orange; Betty Vainik – City of San Diego; Roger Morrison, Danis Bechter – City of Poway; Danny King – City of Solana Beach; Jason Uhley – Riverside County Flood Control; James Lough – City Attorney Imperial Beach, Lemon Grove, Solana Beach; Kerry Miller – City of Encinitas; Kirk Ammerman – City of Chula Vista; Cora Long – City of Lemon Grove; Jerry Livingston – Staff Counsel/BIA; Marco Gonzalez – Coast Law Group.

Item 2 – Public Forum

Geoffrey Smith, Escondido Creek Conservancy, reported on activities in the Escondido area that would cause stress on Escondido Creek.

George Courser and Lisa Prazeau, Friends of Reidy Canyon Creek, also reported on construction and agricultural activities. Ms. Prazeau reported that Pacific Paradise Nursery was discharging wastes to Reidy Creek.

Richard Opper, Opper & Varco, expressed his concern about lead (Pb) being a very toxic constituent throughout the region. Mr. Opper focused on Brownfield redevelopment to clean up lead and requested that the Regional Board participate in a workgroup to develop and support new rules needed for Brownfields.

Chairman Minan said he felt the problem raised by Mr. Opper was a statewide and perhaps a nationwide concern. He offered strategies that could be carried out at the regional level and stated the Regional Board would take his request under advisement.

Laura Hunter, Environmental Health Coalition, congratulated Mr. Wright and Ms. Ritschel on their reappointments and Ms. Nygaard on her appointment. Ms. Hunter then expressed her disappointment with the Board's decision to rescind the NOV's issued to San Diego County municipal storm water copermittes at the November 9th meeting. She also said they would like to be part of a Brownfield workgroup if one was established.

Item 3 – Minutes of Board Meeting of November 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. Wright moved approval of the November 9, 2005 minutes. The motion was seconded by Ms. Ritschel and approved with abstention by Mr. Barrett and Ms. Nygaard.

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.

Chairman Minan reported that in his role as the Regional Board representative on the San Diego River Conservancy Board, he was elected Vice Chair at their December meeting. He said he would like to get Board Member approval for him to sit as Vice Chair on that Board. Mr. Wright moved approval for Chairman Minan to sit as Vice Chair on the Conservancy Board. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Chairman Minan reported on a few River Conservancy issues.

Chairman Minan announced that Mr. Robert Russell offered to solicit the contributions needed to pay for the plaque that was being made to honor past and present Regional Board members. He also reported that he planned to invite past Board members to attend the unveiling of the plaque at the February 8, 2006 Board meeting.

Chairman Minan reported on a few additional items including the February 8 election of Chair and Vice Chair, proposed legislation dealing with the Regional Board, the second pre-hearing conference on Bay sediment, and the IEA conference he attended.

Mr. Johnson reported that he also attended the IEA conference and spoke on “The Role of Science and Regional Board Decision-Making.”

Ms. Ritschel reported to the public that the State Board would be holding a public hearing on the new statewide general waste discharge requirements for wastewater collection system agencies on February 8, 2006 at 10:00 a.m. in Sacramento.

Chairman Minan and Mr. Robertus presented staff member Ben Neill with an individual award and senior staff members Julie Chan, Bob Morris, David Barker and Craig Carlisle with a group award in recognition for their ongoing commitment to customer service. *Cal/EPA awarded the certificates.*

Mr. Robertus reported on Transnet Funding, the IEA conference, the Notice of Violation rescission and the discharge of concrete slurry to De Luz Creek.

Mr. Wright asked for a report on the gas spill (*tanker fire*) in Mission Valley (*near Qualcomm Stadium*). Mr. Robertus said staff was sent to the site to do an inspection but staff didn't report back that formal action needed to be taken.

Mr. Tim Miller, City of San Diego, said the City was currently investigating the tanker fire in Mission Valley.

Mr. Johnson asked for an update on his and Mr. Wright's previous request for Regional Board staff to work with the Dept. of Environmental Health. Mr. Robertus gave an update of activities.

Ms. Ritschel asked Mr. Robertus to notify the City of Oceanside of his concerns with the flood control project and that they were being investigated.

Chairman Minan asked Mr. Robertus if the Board had any legal obligations with grants that were behind schedule in the Grants Program. Mr. Robertus, Mr. Richards and Mr. David Gibson responded to his question.

Consent Items

Chairman Minan announced that Item 9 was removed from the Consent Calendar.

Item 5 – Update of Waste Discharge Requirements: Anza Sanitary Landfill, County of Riverside (tentative Order No. R9-2005-0183) (*Amy Grove*)

Item 6 – Waste Discharge Requirements and Section 401 Water Quality Certification for Bently-Monarch J.V./Benteq, Cantarini Ranch and Holly Springs Projects, Carlsbad, San Diego County (tentative Order No. R9-2005-0230) (*Jeremy Haas*)

Item 7 – NPDES Permit Reissuance: Encina Wastewater Authority, Encina Water Pollution Control Facility and Satellite Wastewater Treatment Plants, Discharge to the Pacific Ocean via the Encina Ocean Outfall, San Diego County (tentative Order No. R9-2005-0219, NPDES No. CA0107395) (*Victor Vasquez*)

Item 8 – Revision of Waste Discharge Requirements: Eastern Municipal Water District, Temecula Valley Regional Water Reclamation Facility, Riverside County (tentative Addendum No. 2 to Order No. 2000-165) (*Charles Cheng*)

Mr. Wright moved approval of Consent Items 5 (with errata), 6, 7 and 8. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 9 – Administrative Assessment of Civil Liability against the City of Carlsbad for violations of Order No. 99-08-DWQ, Statewide General Construction Storm Water Permit, at the Municipal Golf Course project at 5800 Hidden Valley Road, Carlsbad, California, WDID No. 9 37C337203. The Regional Board will decide whether to accept the City's submitted payment of staff's recommended liability and waiver of the right to a public hearing, or to reject the offer and schedule a public hearing for the February 2006 Regional Board Meeting. (Tentative Order No. R9-2005-0277) (*Frank Melbourne*)

Conrad Hamman, City of Carlsbad, spoke to the Board about the violations.

Mr. Robertus said the City responded very quickly. Board Members asked questions of Mr. Hamman.

After discussion, Mr. Anderson made a motion to reject the offer and schedule a public hearing at a future meeting. Mr. Johnson seconded the motion.

Ms. Ritschel made a motion to accept the offer and require the City to adopt a new policy, if one did not exist, that would require the City's storm water personnel, prior to enacting new construction projects in the city, to do a review to insure compliance with the Board's requirements. Ms. Nygaard seconded the motion.

The motion made by Ms. Ritschel failed with a 4-3 vote.

The first motion, made by Mr. Anderson, was approved with a 5-2 vote.

The City withdrew their settlement offer.

Item 10 – Section 401 Water Quality Certification: KB Home, San Marcos Highlands Residential Project, County of San Diego. The Regional Board will consider the issuance of a technically conditioned Section 401 certification for impacts from the discharge of fill material to Agua Hedionda Creek. *The public comment period for this item is closed.* (Tentative Resolution No. R9-2005-0272) (*Christopher Means*)

Mr. Johnson recused himself from participating in the item as his firm had been retained by KB Home on another project.

Ms. Nygaard also recused herself from participating in the item, as she was not present for the previous hearing.

Mr. Robertus introduced the item and staff member Chris Means gave the presentation.

Chairman Minan said the wording “*acceptable*” and “*non-acceptable*” *pollutant concentration levels* should be clarified to KB Home so they knew what was acceptable and what was not.

Mr. Robertus recommended approving the Resolution.

Mr. Anderson said he wanted to be sure it was understood that the issuance of the 401 permit was not an endorsement of the proposed project for the purposes of LAFCO review to the annexation portion of the project into the City of San Marcos.

Mr. Robertus recommended continuing the item to later in the day to allow staff to write a paragraph to be added to the Resolution.

Item 11 – Supplemental Environmental Project (SEP): JRMC Real Estate, Inc., Escondido, CA. The Regional Board will consider a \$200,000 SEP proposal. Proposal of a SEP is part of the settlement of the \$1.2 million Administrative Civil

Liability Order (ACL) No. R9-2005-0237 adopted by the Regional Board on September 14, 2005, which allows the Discharger to satisfy up to \$200,000 of the liability to fund SEPs that are acceptable to the Regional Board. If the Regional Board does not approve the discharger's proposal by December 14, 2005, then JRMC will be required to direct the \$200,000 to the State Board's Cleanup and Abatement Account. (Tentative Resolution R9-2005-0262) (*Frank Melbourn*)

Mr. Johnson recused himself from participating in the item.

Wayne Rosenbaum, Foley and Larder, represented JRMC Real Estate. Mr. Rosenbaum recommended that the Board approve the proposed SEP.

Chairman Minan asked Mr. Rosenbaum if they considered working with Geoffrey Smith, Escondido Creek Conservancy, on the SEP. Mr. Rosenbaum said he felt the project did work with the Conservancy.

Frank Melbourn gave an overview of the proposed SEP.

Mr. Wright requested an overview of the erosion management plan. Keith Merkel, Merkel & Associates, described the development of the erosion plan.

Mr. Robertus recommended adoption of the Resolution.

Mr. Wright proposed a change to the Resolution that would read, "A copy of the result and software would be provided to the Regional Board."

Ms. Ritschel made a motion to adopt Resolution R9-2005-0262 with the change proposed by Mr. Wright. The motion was seconded by Ms. Nygaard and approved by unanimous vote. *Mr. Johnson was not present.*

The meeting was recessed for lunch and Executive Session at 12:15 p.m.

Item 15 – *Executive Session* - Discussion of Ongoing Litigation

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

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*)

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.

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

The Executive Session was held. The IBWC case was discussed.

The meeting reconvened at 1:00 p.m.

Item 10 –Continued

Mr. Means said the following recommended language would be added to the Resolution: “*Whereas the issuance of Section 401 Water Quality certification does not represent a specific position by the Regional Board on the decision by LAFCO*

regarding the annexation of the County of San Diego portion of the project into the City of San Marcos.”

Resolution No. R9-2005-0272 was approved by unanimous vote.

Item 14 – Workshop: A review of the requirement for fiscal assurances as required in the Municipal Storm Water Permits in the San Diego Region. The Regional Board will review and discuss compliance with the regulatory requirement to establish sustained funding for the copermitttee storm water program. Participation by dischargers and the public is encouraged. (*John Robertus*)

Mr. Robertus introduced the item.

Other speakers included:

Jason Uhley, Riverside County Flood Control

Jon Van Rhyn, County of San Diego

Larry McKinney, County of Orange

James Lough, City Attorney

Kerry Miller, Encinitas City Manager

Jerry Livingston, attorney for BIA

Marco Gonzalez, Coast Law Group

Chairman Minan addressed the issues raised by the copermitttees. Mr. Wright and Ms. Ritschel talked about standardization.

Staff member Phil Hammer answered questions asked by the Board.

Item 12 – NPDES Permit Reissuances: Storm Water discharges from the following seven boat repair facilities adjacent to San Diego Bay: (*Tony Felix*)

- a. Driscoll Custom Boats (tentative Order No. R9-2005-0147, NPDES Permit No. CA0109061);
- b. Driscoll’s West (tentative Order No. R9-2005-0148, NPDES Permit No. CA0109070);
- c. Knight & Carver Yachtcenter (tentative Order No. R9-2005-0149, NPDES Permit No. CA0109088);
- d. Koehler Kraft (tentative Order No. R9-2005-0150, NPDES Permit No. CA0109096);
- e. Nielsen-Beaumont Marine (tentative Order No. R9-2005-0151, NPDES Permit No. CA0109100);

- f. Shelter Island Boatyard (tentative Order No. R9-2005-0152, NPDES Permit No. CA0109118); and,
- g. Southbay Boat Yard (tentative Order No. R9-2005-0153, NPDES Permit No. CA0109126).

Staff member Tony Felix gave the presentation.

Additional speaker:

Bruce Reznik, San Diego Coastkeeper

Mr. Robertus recommended the Board approve the tentative NPDES permits.

Mr. Johnson made a motion to approve Order No. R9-2005-147. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-148. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-149. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-150. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-151. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-152. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Mr. Johnson made a motion to approve Order No. R9-2005-153. The motion was seconded by Ms. Nygaard and approved by unanimous vote.

Item 13 – Status Report: Total Maximum Daily Loads For Indicator Bacteria, Project I – Beaches and Creeks in the San Diego Region. The Regional Board will hear a presentation on the Project I Bacteria TMDLs by the Water Quality Standards Unit. The Bacteria TMDLs were developed from separate wet and dry weather modeling studies of 12 different watersheds, and are technically complex. The purpose of the presentation is to provide a brief overview of the technical aspects of the TMDLs. A public workshop on the TMDLs will be scheduled for January 2006, and a public

hearing on the TMDLs is planned for the February 2006 Regional Board meeting. This is a status report item only. (*Julie Chan and Christina Arias*)

Senior staff member Julie Chan introduced the item and Christina Arias gave the presentation.

Board Members asked questions of Ms. Arias and Ms. Chan and made comments.

Mr. Robertus also made comments.

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 17 – *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 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, February 8, 2006 - 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 3:30 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus