

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

MINUTES OF MEETING  
FEBRUARY 13, 2008

At 9:00 a.m. Chairwoman Ritschel called to order the meeting of the California Regional Water Quality Control Board, San Diego Region at the Mission Viejo Civic Center, City Hall Council Chambers, 200 Civic Center, Mission Viejo, California.

**Item 1** – Roll Call and Introductions: Board Members Present: Susan Ritschel, Richard Wright, David King, Eric Anderson, Elizabeth Pearson Schneider, Kris Weber, and Wayne Rayfield.

Staff Present: John Robertus, Michael McCann, Lori Costa, James Smith, Jeremy Haas, Chad Loflen, Ben Neill. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine George and Frances Spivy-Weber. Kennedy Court Reporters: Brenda Martinez.

Public Attendance: Michelle Mehta – Natural Resources Defense Council; Shawn Hagerty – Aliso Viejo; Jim Fitzpatrick – Pronto Wash; Jennifer Weiland, Jenna Voss, Joel Magsalin, Karen Clapper, Punam Prahald, Chris Crompton, Robin LaMont, Michael Romero, Grant Sharp, MaryAnne Skorpanich, Geoff Hunt, James Fortuna, Ruby Mardonado, Richard Boon, Duc Nguyen – County of Orange; Tim Carlstedt – Bingham McCutchen; Paul Manning – McMillin Land Development; Tom Lichterman, Don Bullock – North County Transit District; Dick Runge, Richard Gardner – South Coast Water District; Deborah Carson, Rick Schlesinger, Joe Ames – City of Mission Viejo; Lisa Zawaski – Dana Point; Will Holoman, Kenneth Frank – City of Laguna Beach; Mayor Joel Bishop, Brad Fowler, Diane Harkey – City of Dana Point; Bob Woodings – City of Lake Forest; Mike Loving – City of Irvine; Rick Wilson – Surfrider Foundation; Robert Stone – Quantum Ozone Inc; Penny Elia – Sierra Club; Sara Agahi – County of San Diego; Bob Jordan – SMWD; Ken Rosenfield – City of Laguna Hills; Mike Saba – Orange County Vector Control District; Ray Hiemstra – Orange County Coastkeeper; Mark Grey, Bryan Starr – Building Industry Association; Vaikko Allen – Contech Stormwater Solutions; Stephen Nudertes – Helix; Patrick Baugr – City of Costa Mesa; Cindy Lin – US EPA; Richard Gardner – SCWD; Tina Tuason – Riverside County Flood Control; May Yahya – City of Aliso Viejo; Mayor Paul Glaab, Nancy Palmer, Tim Casey – City of Laguna Niguel; Mary Jane Foley – MJF Consulting; Michael Beanan – South Laguna Civic Association; Bob Cantrell – OTB; Bob Ring, Sam Rake – City of Laguna Woods; Erica Ryan – City of Rancho Santa Margarita; Ziad Mazboudi – City of San Juan Capistrano; Tom Bonigut – City of San Clemente; Bob Caustin – Defend the Bay.

**Item 2** – Public Forum

Tom Lichterman, North County Transit District, reported on the District's efforts to achieve compliance at the Sprinter Rail Project site and asked that the Regional Board defer any further enforcement action.

Penny Elia, Sierra Club, spoke about their concerns with a proposed project for Aliso Creek called the Super Project. She asked the Board what their involvement was in the project. Mr. Robertus said that staff would look in to the matter and report back to the Board in the March Executive Officer's Report.

Michael Beanan, South Laguna Civic Association, asked the Board to look in to the unpermitted discharges by illegal berm breaching at Aliso Beach. Chairman Ritschel asked Mr. Robertus to look in to the issue.

**Item 3** – Minutes of Board Meeting of December 12, 2007

*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. Rayfield moved approval of the December 12, 2007 minutes. The motion was seconded by Mr. Anderson and approved by unanimous vote.

**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. Anderson reported that he, Mr. Wright, and Mr. Robertus attended the Strategic Plan Update workshop in Sacramento and encouraged others to look at the current draft and make comments before the February 15 deadline.

Chairwoman Ritschel reported that she attended the Chair's meeting that was held in Sacramento on February 4. The focus of the meeting was SB 1176 introduced by Senator Perata. She said the bill would modify the way the Regional Boards were structured.

Mr. Robertus encouraged Board Members to attend the April 21 & 22 water education workshop conducted by the Water Education Foundation. The workshop would be held in San Diego and was being hosted by the Water Board's Training Academy.

Mr. King referred to Item 5 in the February 13 EO Report, "Proposed Settlement of Administrative Civil Liability Against the Cities of Vista and Carlsbad, Sewage Spill Complaint: Buena Vista Lagoon," and asked Mr. Robertus to assess fines comparable to the scale of the spill.

*Consent Calendar: Items 5 and 6 are considered non-controversial issues. (NOTE: If there is public interest, concern or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed.)*

**Item 5** – NPDES Permit Reissuance: General Waste Discharge Requirements for Discharges of Groundwater Extraction Waste to Surface Waters Within the San Diego Region Except for San Diego Bay. (NPDES No. CAG919002, Tentative Order No. R9-2008-0002) (*Vicente Rodriguez*)

This item was postponed.

**Item 6** – New Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Certification: Paul Garret Enterprises Inc. and Temecula Properties, LLC, Temecula 84 Project in Riverside County. The Regional Board will consider adoption of a tentative Order establishing waste discharge requirements and Section 401 Certification for the fill of 0.07 acres (1,375 linear feet) of waters of the State and U.S. The proposed project is a commercial development including a Professional Hospital Supply warehouse, extension of Remington Road, and widening portions of both Winchester Road and Dendy Parkway. (Tentative Order No. R9-2008-0003) (*Kristin Schwall*)

Ms. Schneider made a motion to approve Order No. R9-2008-0003. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

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

**Item 7** – PUBLIC HEARING: Reissuance of NPDES Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) draining the watersheds of the County of Orange, the Orange County Flood Control District, and the incorporated Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano within the San Diego Region (South Orange County Municipal Storm Water Requirements). The California Regional Water Quality Control Board, San Diego Region (Regional Board) will consider issuance of Tentative Order No. R9-2008-0001 (formerly Tentative Order No. R9-2007-0002) containing the South Orange County Municipal Storm Water Requirements. A public hearing for this item was held before a Panel of the Regional Board, on April 11, 2007. (Tentative Order No. R9-2008-0001, NPDES Permit No. CAS0108740) (*Jeremy Haas*) The public review and comment period for the revised Tentative Order began on December 12, 2007 with the public distribution of the revised Tentative Order. Only written comments received by 5:00 p.m. on January 24, 2008 will be provided to the Regional Board members for their consideration prior to the hearing. Oral comments will be accepted on modifications to the Tentative Order that have been made following the April 11, 2007 hearing. Time allotted for oral comments may be limited at the discretion of the Regional Board presiding officer.

Chairwoman Ritschel announced that due to Water Code section 13207 and the fact that she was on the Orange County Planning Board and Ms. Pearson Schneider was on the Laguna Beach City Council, they would not be permitted to participate in the hearing. Chairwoman Ritschel turned the hearing over to Vice Chair Wright.

Mr. Wright administered the oath to those giving testimony and then explained the hearing procedures.

Staff Counsel Catherine George asked if the Board would accept three late comment letters. The Board agreed to accept them.

Mr. Weber reported that he was a member of the Building Industry Association but felt his participation in the item would not be bias or prejudice as he had not been involved in the formulation of their comments or been approached by other members.

Mr. Robertus introduced the item and staff members James Smith and Jeremy Haas gave the presentation.

Board Members asked questions of staff.

Other speakers included:

Mayor Pro Tem Bob Ring – City of Laguna Woods  
Council Member Diane Harkey – City of Dana Point  
Mayor Paul Glaab – City of Laguna Niguel  
Mary Anne Skorpanich – County of Orange  
Richard Boon – County of Orange  
Tim Carlstedt – Bingham McCutchen  
Tim Casey – City of Laguna Niguel  
Mayor Joel Bishop – City of Dana Point  
Ken Frank – City of Laguna Beach  
Mary Jane Foley – MJF Consulting  
Jim Fitzpatrick – Pronto Wash of Southern California  
Nancy Palmer – City of Laguna Niguel  
Brad Fowler – City of Dana Point

*The meeting was recessed for Closed Session and lunch at 12:10 p.m.*

**Item 8 – Closed Session - Discussion of Ongoing Litigation** [Authorized under Government Code Section 11126, subd. (e)]. The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

Litigation Filed against the Regional Water Board

- a. *Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San*

*Diego Region, Verified Petition for Writ of Mandate. San Diego County Superior Court, Case No. GIC 822750 (filed December 2003). (John Anderson)*

- b. *Bajagua, LLC v. California State Water Resources Control Board, California Water Quality Control Board, San Diego Region, et al., Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00067722-CU-WM-CTL (filed June 2007). (John Robertus)*
- c. *Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region and California State Water Resources Control Board; (Cabrillo Power I, LLC, Real Party-in-Interest), Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37 2007-00069621-CU-PT-CTL (filed July 2007). (John Odermatt)*
- d. *William G. Dickerson and Heidi Dickerson, Husband and Wife; Larry Gunning and Penelope L. Gunning, Husband and Wife; and Perry & Papenhausen, Inc., a California Corporation v. San Diego Regional Water Quality Control Board, a Public Entity, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00075846-CU-WM-CTL (filed September 2007). (Frank Melbourn)*

Litigation filed by the Regional Water Board against other parties.

- e. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Carlos Marin, an individual in his capacity as Commissioner of the International Boundary and Water Commission, United States Section, et al., Complaint for Violations of the Clean Water Act and Related State Law Claims. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (John Robertus)*

This Closed Session was held – a, b, and e were discussed.

*The meeting reconvened at 1:05 p.m.*

**Item 7** - Continued

Michael Beanan – South Laguna Civic Association  
Mark Grey – Building Industry Association  
Raymond Heimstra – Orange County Coastkeeper  
Rick Wilson – Surfrider Foundation  
Dr. Cindy Lin – US EPA  
Michelle Mehta – Natural Resource Defense Council  
Bob Caustin – Defend the Bay  
Ziad Mazboudi – City of San Juan Capistrano

Mr. Haas answered questions asked by the Board. Ms. George addressed questions asked by the Board.

Mr. Robertus made closing comments then made a recommendation to defer adoption of the permit, rewrite it, and bring it back to the Board for adoption at a future meeting.

Mr. Weber made a motion to close the public hearing. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Mr. King made a suggestion to staff in preparing responses to comments.

After Board Member discussion, Mr. Anderson made a motion to adopt the Order with errata. The motion was seconded by Mr. Wright. The motion failed by a 2-3 vote.

**Item 9** – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to 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 or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]  
(John Robertus)

**Item 10** – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing. The Regional Board may meet in closed session to consider evidence received in an adjudicatory hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]

**Item 11** – *Closed 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 Closed Sessions, Items 9-11, were not held,

**Item 12** – Election of Chair and Vice Chair. Porter-Cologne Water Quality Control Act, Chapter 4, Article 2, paragraph 13220(b), Each regional board shall select one of its members as chairman at the first regular meeting held each year. Following the election of the Chair, the Board will elect a Vice Chair.

- a. Election of Chair
- b. Election of Vice Chair

Mr. Anderson nominated Richard Wright to be elected Chair. The nomination was seconded by Mr. Rayfield and approved by unanimous vote.

Mr. Wright nominated Ms. Ritschel to be elected Vice Chair but she respectfully declined.

Ms. Ritschel nominated David King as to be elected Vice Chair. The nomination was seconded by Mr. Rayfield and approved by unanimous vote.

**Item 13** – Arrangements for Next Meeting and Adjournment

Wednesday, March 12, 2008 - 9:00 a.m.

Water Quality Control Board


Regional Board Meeting Room

9174 Sky Park Court, Suite 100

San Diego, California

With there being no further business, the meeting was adjourned at 3:25 p.m.

These minutes were prepared by:



Lori Costa  
Executive Assistant

Signed by:



John H. Robertus  
Executive Officer