

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

MINUTES OF MEETING
SEPTEMBER 10, 2008

At 9:00 a.m. Chairman Wright called to order the meeting of the California Regional Water Quality Control Board, San Diego Region at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Chairman Wright announced that Items 6, 7, 10, 11, and 12 were postponed.

Item 1 – Roll Call and Introductions: Board Members Present: Richard Wright, Eric Anderson, Kris Weber, Wayne Rayfield, and Susan Ritschel.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, Julie Chan, Mark Alpert, John Anderson, Craig Carlisle, Chiara Clemente, Eric Becker, Brian Kelley, James Smith, John Odermatt, David Gibson, Christina Arias, Frank Melbourn, Mike Porter, Alan Monji, Wayne Chiu, Jeremy Haas, Chris Means, Laurie Walsh, Sean McClain, Chad Loflen, Kelly Dorsey, Charles Cheng, Lynn Berlad, Jody Ebsen, Cheryl Prowell, Michelle Mata, Melissa Valdovinos. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine Hagen (*George*) and Jorge Leon.

Public Attendance: Sharon Taylor – U.S. Fish and Wildlife Service; Warren Wong, Theresa Stewart – Department of Fish and Game; Khalique Khan, Luis Ledesma, Andrew Entirgh – U.S. Marine Corps, Camp Pendleton; Cari Dale, Elaine Lukey, Glenn Pruiam, Ron Kemp – City of Carlsbad; Rita Geldert, Larry Pierce – City of Vista; Larry McKenney – RBF Consulting; Scott Sterling – Dreamweaver Design; JoAnn Weber – County of San Diego; Diane Nygaard, Ann Hallock – Preserve Calavera, Dick Runge, Betty Burnett – South Coast Water District; CJ DiMento – Friends of Buena Vista Lagoon; Saqib Shivazi – MACTEC; Leslie Howard – CDM; Kasey Cinciarelli – self; Brett Bennetts – Brown and Caldwell; Gabriel Solmer, Livia Borak – San Diego Coastkeeper; Marco Gonzalez – Coast Law Group; Sara Honadle – Surfrider; Steven Walder – self; Jessica Wall – self; Joan Herskowitz – Buena Vista Audubon Society.

Item 2 – Public Forum

Betty Burnett, South Coast Water District, handed out a brochure and briefed the Board on their Ground Water Recovery Project. Board Member Rayfield suggested that the Board tour their facility the next time they were to meet in Orange County.

Board Member King arrived at 9:05 a.m.

Item 3 – Minutes of Board Meetings of August 13, 2008

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 August 13, 2008 minutes. The motion was seconded by Mr. Weber and approved with abstention by Ms. Ritschel.

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. Weber reported that he attended a Coastal Coalition meeting in Newport Beach on August 28 and commended the Coalition for their efforts.

Ms. Ritschel reported that she, Chairman Wright, and John Robertus met with the Executive Officer and Chair of the Riverside Regional Board to talk about a public process they had implemented. She said they use a facilitated task force to get through complex issues such as they did with one of their basin plan amendments. Mr. Robertus and Mr. David Barker also commented on the meeting.

Mr. Rayfield suggested that the Regional Board pick a project so the public process could be implemented. Other Board Members concurred and suggested that the first project be a small one.

Mr. Robertus said he would proceed in selecting projects to recommend to the Board.

Mr. King gave an update on the status of the San Diego shipyard sediment cleanup. He reported that the mediation would continue for another 90 days.

Chairman Wright reported on the Chair's conference call that he participated in on September 8. Items that were discussed during the meeting were: the plastic bag bill that was killed by Parada, a reduction in funds, and the fact that the state senate had not taken action on Board member confirmations. Three San Diego Regional Board Members were in need of Senate confirmation.

Mr. Rayfield reported that he attended a City of Dana Point, Ocean Water Quality sub committee meeting on September 9 which tied in to the TMDLs for Baby Beach in the Dana Point Harbor. He said the sand at Baby Beach was going to be replaced with clean sand.

Mr. Robertus talked about beach sand. He then reported on a letter he sent out to MS4 Copermittees regarding "Regional Preparations for San Diego Rain Season."

Mr. Rayfield asked if the letter went to the Orange County copermittees. Mr. James Smith said the letter went to all three counties in the Region.

Mr. King asked questions about the Marine Habitat Preservation hearings. Staff members James Smith and Chad Loflen replied.

Item 5 – Recognition: Resolution of Appreciation for Elizabeth Pearson Schneider (tentative Resolution No. R9-2008-0111) (*John Robertus*)

Chairman Wright read the Resolution into the record. Ms. Pearson Schneider was not present.

Ms. Ritschel made a motion to adopt Resolution R9-2008-0111. The motion was seconded by Mr. King and approved by unanimous vote.

Consent Calendar: Items 6 through 8 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 6 – NPDES Permit Reissuance: Waste Discharge Requirements for Genentech, Inc. discharge to the Pacific Ocean via the Oceanside Ocean Outfall, San Diego County (Tentative Order No. R9-2008-0082, NPDES Permit No. CA0109193) (*Michelle Mata*)

Item 6 was postponed.

Item 7 – Master Reclamation Permit with Waste Discharge Requirements for the United States Marine Corps: Discharges of Reclaimed Water for Landscape Irrigation at Marine Corps Base Camp Pendleton, California (tentative Order No. R9-2008-0089) (*Robert Pierce*)

Item 7 was postponed.

Item 8 – NPDES Permit Addendum: The Regional Board will consider adoption of Tentative Addendum No. 2 to Order No. R9-2007-0001, NPDES Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District and the San Diego County Regional Airport Authority. Tentative Addendum No. 2 to Order No. R9-2007-0001 will extend the reporting due date for the Illicit Discharge Detection and Elimination program component and modify specific bioassessment monitoring requirements. (*Christina Arias*)

Item 8.A. – NPDES Permit Reissuance: Waste Discharge Requirements for the Marine Corps Base, Camp Pendleton Southern Region Tertiary Treatment Plant discharge to the Pacific Ocean via the Oceanside Ocean Outfall, San Diego County (Tentative Order No. R9-2008-0096, NPDES Permit No. CA0109347) (*Melissa Valdovinos*)

Mr. Rayfield made a motion to approve Items 8 and 8.A. with errata. The motion was seconded by Mr. King and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 9 – Proposed settlement of Administrative Civil Liability Complaint against the Cities of Vista and Carlsbad for the discharge of 7.3 million gallons of untreated sewage from March 31 to April 3, 2007, from a 24-inch dia. sewer main at the Buena Vista Pump Station to Buena Vista Lagoon, San Diego County. The Regional Board will consider adoption of an Order Assessing Administrative Civil Liability in accordance with the terms of a settlement agreement between the Regional Board Prosecution Team and the Cities of Vista and Carlsbad. The Order would resolve violations alleged in Complaint No. R9-2007-0099. The settlement includes: (1) payment of \$595,000 to the State Water Resources Control Board; and (2) payment of \$500,000 to fund a Supplemental Environmental Project in Buena Vista Lagoon. If the Regional Water Board rejects the proposed settlement, the matter will be scheduled for a public hearing at a subsequent Regional Board meeting. (Tentative Order No. R9-2008-0072) (*Frank Melbourn*)

Staff member Frank Melbourn gave the presentation.

Mr. Robertus and Mr. Jorge Leon answered questions asked by the Board.

Other speakers included:

Rita Geldert – City of Vista

Glenn Pruiim – City of Carlsbad

Sharon Taylor – U.S. Fish and Wildlife Service

Warren Wong – Department of Fish and Game

Joan Herskowitz – Buena Vista Audubon Society

Diane Nygaard – Preserve Calavera

Gabriel Solmer – San Diego Coastkeeper

Steven Walder – citizen

Scott Sterling – Dreamweaver Design

Marco Gonzalez – Coast Law Group

Ms. Geldert made closing comments. Mr. Leon made closing comments.

Ms. Hagan said if both parties agreed to the SEP, and if it was the Board's desire, she recommended making a modification to the Order and the settlement agreement to accurately reflect the additional SEP and accurately describe it.

Mr. King said he felt it would be better to bring the item back for action on the Consent Calendar at the next meeting.

Mr. Rayfield made a motion to modify the settlement agreement to include the Buena Vista Creek Supplemental Environmental Project, and then bring the item back at a

future meeting for approval. The item would be on the Consent Calendar. The motion was seconded by Mr. Anderson.

After Board Member discussion, Mr. Rayfield modified his motion to call for action at the current meeting after a recess. Mr. Anderson seconded the motion.

The meeting recessed for lunch at 12:30 and reconvened at 1:55 p.m.

Board Member Rayfield departed the meeting during the recess.

Jorge Leon read in to the record the changes to the settlement agreement.

The motion was approved by unanimous vote.

Item 10 – PUBLIC HEARING: Administrative Civil Liability Complaint proposing mandatory minimum penalties against Promenade Mall Development Corporation for discharging groundwater to Mission Bay in alleged violation of effluent limitations of Order R9-2001-0096. The Regional Board will consider whether to approve, modify, or reject assessment of the \$15,000 civil liability recommended in Complaint R9-2008-0056. (Tentative Order No. R9-2008-0104) (*Jeremy Haas*)

Item 10 was postponed.

Item 11 – PUBLIC HEARING: Administrative Civil Liability Complaint proposing mandatory minimum penalties against SFPP, L.P, an Operating Partnership of Kinder Morgan Energy Partners, L.P., for discharging groundwater to Murphy Canyon Creek in alleged violation of effluent limitations of Order R9-2001-0096. The Regional Board will consider whether to approve, modify, or reject assessment of the \$229,000 civil liability recommended in Complaint R9-2008-0046. (Tentative Order No. R9-2008-0105) (*Jeremy Haas*)

Item 11 was postponed.

Item 12 – PUBLIC HEARING: A public hearing will be held regarding the Cleanup and Abatement Order issued to Dr. William Moritz for the unauthorized discharge of fill to an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek in violation of Sections 13260(a) and 13264(a) of the California Water Code. The Regional Board will consider adoption of an order to affirm, modify, or rescind the CAO. (CAO No. R9-2008-0074) (*Christopher Means*)

Item 12 was postponed.

Item 13 – *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). (Brian Kelley)*
- 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)*

The Closed Session was not held.

Item 14 – 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)

The Closed Session was not held.

Item 15 – *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)]

The Closed Session was not held.

Item 16 – *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 Session was not held,

Item 17 – Arrangements for Next Meeting and Adjournment

Wednesday, October 8, 2008 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

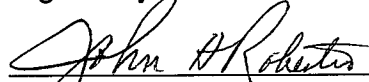
With there being no further business, the meeting was adjourned at 2:00 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer