

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

MINUTES OF MEETING
MAY 11, 2011

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

Item 1 – Roll Call and Introductions

Board Members Present: Grant Destache, Eric Anderson, George Loveland, Gary Strawn, Don Higginson, and Bill Green.

Staff Present: John Anderson, Christina Arias, David Barker, Craig Carlisle, Julie Chan, Wayne Chiu, Chiara Clemente, Jody Ebsen, David Gibson, Amy Grove, Jeremy Haas, Cathryn Henning, Deborah Jayne, Brian Kelley, Chad Loflen, Michelle Mata, Sean McClain, Amy Mecklenborg, Frank Melbourn, Alan Monji, Bob Morris, John Odermatt, Fisayo Osibodu, Mike Porter, Barry Pulver, Vicente Rodriguez, James Smith, Carol Tamaki, Laurie Walsh, and Deborah Woodward.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan and Jessica Newman. Kennedy Court Reporters – Katrina Dzwonkowski.

Public Attendance:

Seth Goldman, Jennifer Ringue – San Diego Symphony; John Freeman – Big Bay Boom; Sandy Prudon, James R. Dodson – San Diego Armed Services YMCA; John Lormon – Procopio, Cory, Hargreaves & Savitch; Khosro Aminpour – City of Chula Vista; Andy Szymanski – Coronado 4th; Robert Howard, Gary Brown – Pyro Spectaculars, Inc; Ann Heil – CASA/Tri-TAC; Kevin Carr, Patrick Owen – Sea World; Pat Pfohl – USS Midway Museum; Joe Bartocotta, Pete Auty – Fireworks America; Jaime Jensen, Brian Shin – USMC; Leslie Fitzgerald, Eileen Maher – San Diego Port District; Sara Honadle, Ross Campbell – Coastal Environmental Rights Foundation; James Craft – US NAVY; Angela Ragan – self; Kelly Richardson, Clif Williams – Latham & Watkins; Lisa Zawaski – County of Dana Point; Paloma Aguirre – Wildcoast; Joan Salat – self; Jim Peugh – San Diego Audubon Society; Phil Rosenberg – Brown and Caldwell; Lee Wilson – San Diego Port Tenants Association; Rosanna Lacarra – LaRoc Environmental; Cindy Lin – US EPA; Laura Hunter – Environmental Health Coalition; Helen Pekry – City of Santee; Gabriel Solmer – San Diego Coastkeeper.

Item 2 – Public Forum

Paloma Aguirre, Wild Coast US Mexico Border Program, spoke about dry weather flow in the Tijuana River.

Item 3 – Minutes of Board Meeting: April 13, 2011

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 San Diego Water Board office for assistance.

Mr. Loveland moved approval of the April 13, 2011 minutes. The motion was seconded by Mr. Green. The minutes were approved with abstention by Mr. Higginson.

Item 4 – Chairman's, Board Members', State Water 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. Strawn reminded and invited everyone to River Days.

Executive Officer Gibson gave his report with the support of Ms. Chiara Clemente and Mr. Jimmy Smith.

Consent Item:

Item 5 – Waste Discharge Requirements Revision: United States Marine Corps, Las Pulgas Landfill, amendments to Order No. R9-2010-0004 for design plan modifications to the Phase II expansion area. (Tentative Order No. R9-2011-0039) *(Amy Grove)*

Ms. Amy Grove gave a brief staff presentation.

Mr. Strawn moved approval of Order No. R9-2011-0039. The motion was seconded by Mr. Green and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 6 – NPDES General Permit: Residual Firework Pollutant Waste Discharges to Waters of the United States, San Diego Region (Tentative Order No. R9-2011-0022, NPDES Permit No. CAG999002) *(Michelle Mata)*

Ms. Michelle Mata gave the staff presentation.

Speakers in Opposition:

Sandy Purdon, SD Armed Services YMCA
John Lormon, Procopio, Cory, Hargreaves & Savitch LLP - legal counsel for San Diego Armed Services, YMCA

Questions were asked by Mr. Loveland. Mr. Gibson and Mr. David Barker addressed Mr. Loveland's questions.

Robert Howard, Latham & Watkins, La Jolla Community Fireworks Foundation
Jim Peugh, Conservator Chair, San Diego Audubon Society
Gabriel Solmer, Int. Executive Dir, San Diego Coastkeeper
Laura Hunter, Environmental Health Coalition
Gary Brown, General Counsel, Pyro Spectaculars, Inc.
Joan Salat, Resident Valley Center
Ross Campbell, Coast Law Group/ Coastal Environmental Rights Foundation
(Combined Sara Honadle, Coastal Environmental Rights Foundation)

Speakers in Support:

Dr. Cindy Lin, US EPA Region 9

Questions were asked by Mr. Loveland about EPA Region 9 vs. EPA Headquarters. Dr. Cindy Lin addressed Mr. Loveland's questions.

Eileen Maher, Port of San Diego/ Environmental
Karen Holdman, Port of San Diego/ Environmental
Lisa Zawaski, Sr. WQ Engineer, City of Dana Point
Seth Goldman, San Diego Symphony

Submitted cards but did not speak (in opposition):

Clif Williams, La Jolla Comm. Fireworks/ Latham & Watkins
John Freeman, SD Armed Services YMCA
Lee Wilson, Board Member/ San Diego Port Tenants Association
James R. Dodson, Law Offices of Jeff Scott, Armed Services, YMCA

Questions were asked by Mr. Green to be answered after lunch.

At 11:30 AM, the meeting recessed for lunch and to discuss Closed Session items a – f.

Item 8 - Closed Session - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

Civil Actions

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, 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). (David Gibson)

- b. In re: Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES 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 adopted on January 24, 2007. Test Claim filed by San Diego County, et al., with Commission on State Mandates, No. 07-TC-09 (filed June 2008). (Catherine George Hagan)*
- c. Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate [re: San Diego Water Board's adoption of Order No. R9-2009-0038 amending Order No. R9-2006-0065 for Poseidon Resources (Channelside), LLC, NPDES Permit No. CA0109223, approval of a Flow, Entrainment and Impingement Minimization Plan under the California Water Code]. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*
- d. South Orange County Wastewater Authority and South Coast Water District, Petition for Writ of Mandate. Orange County Superior Court, Case No. 30-2010-00364016-CU-WM-CXC (filed April 2010) (Joann Cofrancesco)*
- e. California Regional Water Quality Control Board, San Diego Region v. Bill and Heidi Dickerson, Larry and Penelope Gunning and Perry & Papenhausen, Inc. Complaint for Damages for Breach of Contract and for Specific Performance. San Diego County Superior Court, Case No. 37-2010-00096011-CU-CO-CTL (filed July 2010) (Jeremy Haas)*
- f. State of California Department of Finance, State Water Resources Control Board, And California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010) (Catherine George Hagan).*

Petitions for Review Pending Before State Water Resources Control Board

None at this time (all petitions are currently being held in abeyance).

Item 9 – Closed Session - Consideration of Initiation of Litigation or Discussion of Significant Exposure to Litigation

The San Diego Water Board may meet in closed session to initiate or consider initiating litigation against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act or to discuss

significant exposure to litigation [Authorized under Government Code Section 11126(e)]

The Closed Session was not held.

Item 10 – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing

The San Diego Water 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 11 – *Closed Session* - Personnel

The San Diego Water Board may meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing [Authorized under Government Code Section 11126(a)]

The Closed Session was not held.

The meeting reconvened at 12:33 with Item 6.

Item 6 – *Continued* - NPDES General Permit: Residual Firework Pollutant Waste Discharges to Waters of the United States, San Diego Region (Tentative Order No. R9-2011-0022, NPDES Permit No. CAG999002) (*Michelle Mata*)

Additional comments by Mr. John Lormon permitted by Chairman Destache.

Chairman Destache restated Mr. Green's questions about monitoring. Mr. Chad Loflen and Mr. Gibson addressed Mr. Green's questions.

Questions were asked by Chairman Destache about monitoring. Ms. Karen Holdman addressed his monitoring questions.

Additional questions were asked by Chairman Destache about BMPs. Ms. Mata, Mr. Gary Brown, and Mr. Loflen addressed his questions.

Questions were asked by Mr. Strawn about wires. Mr. Brown addressed Mr. Strawn's questions.

Questions were asked by Mr. Loveland about meeting in closed session.

Staff Counsel Newman addressed Mr. Loveland's questions and stated that only the topic of threat of litigation and not the broader topic of the NPDES permit may be discussed.

Questions were asked by Mr. Higginson about what is required and what may be required.

Ms. Newman asked Mr. Higginson to confirm that the City's display is not over water.

Mr. Green made comments.

Chairman Destache closed the public comment session.
The meeting recessed for Closed Session at 1:06 PM.

The meeting reconvened at 1:15. Mr. Destache reopened the public comment session.

Mr. Gibson and Mr. Barker made comments.

Chairman Destache closed the public comment session again at 1:21 PM.

Mr. Green moved to adopt the order with modification of Regional Monitoring.
Mr. Gibson made comments.

Chairman Destache asked questions of Mr. Gibson.

Board members made comments and asked additional questions of staff.

(Fifteen minute break to develop new motion language.)

Mr. Gibson made a new staff recommendation. Ms. Newman clarified staff's recommendations. Mr. Barker and Ms. Newman stated where the changes were made based on the staff recommendation.

Mr. Green asked a question about the Category 3 language.
Mr. Strawn asked who was now in Category 2 compared to before.
Mr. Barker and Ms. Newman answered.

Mr. Destache asked Mr. Gibson to update the Board on the status of the permit in one year.

Mr. Strawn moved approval of Order No. R9-2011-0022 with modifications based on the new staff recommendation. The motion was seconded by Mr. Green and approved by unanimous vote.

Item 7 – NPDES Permit Reissuance: SeaWorld Parks & Entertainment, Inc., Sea World -San Diego (Tentative Order No. R9-2011-0032, NPDES Permit No. CA0107336) (Michelle Mata)

Ms. Michelle Mata gave the staff presentation.

Speakers

Opposed: Ann Heil, CASA/ Tri-TAC

In Support: Patrick Owen, Sea World, V.P. Design and Engineering

Submitted cards but did not speak:

In Support: Kevin Carr, Sea World, Manager Water Quality

Mr. Bob Morris and Staff Counsel Catherine Hagan responded to comments made by Ms. Heil.

Mr. Green asked questions of staff.

Chairman Destache summarized. Mr. Barker and Mr. Gibson added comments.

Chairman Destache postponed the item for 30 days.

Board members made comments and asked questions of staff.

Chairman Destache directed the EO to bring the item back to the next Board meeting.

Item 12 – Arrangements for Next Meeting and Adjournment

Wednesday, June 8, 2011 - 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

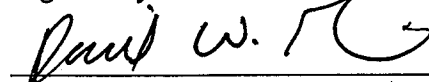
With there being no further business, the meeting was adjourned at 2:53 p.m.

These minutes were prepared by:



Vicente Rodriguez
Interim Executive Assistant

Signed by:



David Gibson
Executive Officer