

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

MINUTES OF MEETING
MARCH 14, 2012

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, Tomas Morales, and Henry Abarbanel.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Chris Witte; Frank Melbourn; John Odermatt, Deborah Jayne; Chehreh Komeylyan; Eric Becker; Chad Loflen; Craig Carlisle; Joann Lim; Tom Alo; Lilian Busse; Jeremy Haas; Charles Cheng; Cynthia Gorham; Brian Kelley; Wayne Chiu; Chiara Clemente; Cathryn Henning; Barry Pulver; Lisa Honma; Fisayo Osibodu; Vicente Rodriguez.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, Cris Carrigan and Frances Spivy-Weber. Kennedy Court Reporters – Bonnie Breen

Public Attendance: Rich von Langen, EWA; Gary Lester, EcoAnalysts, Inc.; S. Halvax, BAE; Mike Welch; Debbie Biggs, EWA; Don Little, EWA; Jill Tracy, SDG&E; Dave Rebensdorf, City of San Clemente; Chris Haynes, Navy; Mike Tracy, BAE; Laura Hunter, Environmental Health Coalition (EHC); David Silverstein, Navy; John Rudolph, Nautilus; Aladdin Masry, ABC Environmental Company; Kelly Richardson, NASSCO; Brian Ledger, Counsel for City of San Diego; Ward Benshoof, SDG&E; Ellen Gross, San Diego Unified Port District; Suzanne Varco, Star & Crescent Boat Company; Jill Witkowski, San Diego Coastkeeper.

Item 2 – Public Forum
No speakers.

Item 3 – Minutes of Board Meeting: October 12, 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.

A motion was made by Mr. Loveland and seconded by Mr. Anderson to adopt the minutes. A vote was taken, and the motion passed unanimously, with Dr. Abarbanel and Mr. Morales abstaining.

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.

Frances Spivy-Weber reported on the budget and upcoming meetings in Sacramento that the Board Members might be interested in attending.

Mr. Gibson briefly discussed the Executive Officer's Report. There was no Board discussion.

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 – Master Reclamation Permit Revision: City of San Clemente Water Reclamation Plant, Modifications to Order No. R9-2003-0123 (Tentative Order No. R9-2012-0026) (*Fisayo Osibodu*).

A motion was made by George Loveland and seconded by Eric Anderson to adopt this Order with Errata. A vote was taken, and the motion passed unanimously.

Item 6 – NPDES Permit Amendment: Encina Wastewater Authority, Approval of Local Limits (Tentative Addendum No. 1 to Order No. R9-2011-0019) (*Joann Lim*).

A motion was made by Gary Strawn and seconded by Tomas Morales to adopt the Addendum. A vote was taken, and the motion passed unanimously.

Remainder of the Agenda (Non-Consent Items):

Item 7 – Informational Item: Update on the Proposed Policy for Biological Objectives. Included presentations of technical issues by Dr. Pete Ode (Department of Fish and Game), bioassessment activities by Dr. Lilian Busse of the Water Board staff, and policy issues by Karen Larsen (State Water Board). (*Lilian Busse*)

Mr. Destache called a recess at 10:20 a.m., and the meeting reconvened at 10:35 a.m.

Item 8 – Public Hearing: Consideration of Resolution No. R9-2012-0025, certifying the Final Environmental Impact Report, including Statement of Overriding Considerations, for the San Diego Bay Shipyard Sediment Cleanup Project, Tentative Order No. R9-2012-0024 and Draft Technical Report, San Diego County. Note: Item 8 may be considered with Item 9, below, but will be acted upon first. (*Frank Melbourn*)

Item 9 – Public Hearing: Consideration of Tentative Order No. R9-2012-0024 and Draft Technical Report, naming as Dischargers BAE Systems San Diego Ship Repair, Inc., Campbell Industries, City of San Diego, National Steel and Shipbuilding Company, San Diego Gas & Electric Company, San Diego Unified Port District, and United States Navy, for the San Diego Bay Shipyard Sediment Cleanup Project, San Diego County. The San Diego Water Board may adopt, modify or reject the Tentative Order or may continue the hearing or action on the Tentative Order to a later (April 11, 2012, or some other) date. The San Diego Water Board may deliberate on the evidence received during this hearing as provided in the notice of Closed Session, Item 12, below. (*Frank Melbourn*)

Items 8 and 9 were taken together

Mr. Destache stated that all of the Board Members who were not on the panel in November have dedicated a significant amount of time reviewing the record and receiving technical briefings from the Advisory Team to familiarize themselves with the history of the Shipyard Cleanup matter, and he thanked them for that dedication. Mr. Destache then asked if any of the Board members would like to make any disclosures for the record.

Dr. Abarbanel and Mr. Morales made disclosures; there were no objections to their participation.

Mr. Destache addressed housekeeping matters and made introductory remarks.

Mr. Melbourn gave the Advisory Team's presentation.

Aladdin Masry summarized his written comments submitted today.

Kelly Richardson, counsel for NASSCO, commented on the proposed order.

Mike Tracy, counsel for BAE, commented on the proposed order.

David Silverstein, Associate Counsel for the Department of the Navy, commented on the proposed order.

Brian Ledger, Counsel for the City of San Diego, commented on the proposed order.

Ward Benshoof, counsel for SDG&E, commented on the proposed order.

Ellen Gross, Deputy Port Attorney for the San Diego Unified Port District, commented on the proposed order.

Suzanne Varco, counsel for Star & Crescent Boat Company, commented on the proposed order.

Laura Hunter of the Environmental Health Coalition commented on the proposed order.

Jill Witkowski, counsel for San Diego Coastkeeper, commented on the proposed order.

Cris Carrigan, counsel to the Cleanup Team, commented on the proposed order.

The Board adjourned for lunch and Closed Session at 12:10 p.m. Mr. Destache stated that the Board would deliberate the Tentative Orders in Items 8 and 9, and Ms. Hagan indicated that, if there was time, the Board would discuss items 10 a and h.

Item 10 – *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 v. San Diego Regional Water Quality Control Board*, Petition for Writ of Mandate. Los Angeles County Superior Court, Case No. BS133238 (Mandatory Minimum Penalties) (filed April 2010) (Joann Lim)
- 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)
- g. *South Orange County Wastewater Authority and South Coast Water District v. San Diego Regional Water Quality Control Board*, Petition for Writ of Mandate. Orange County Superior Court Case No. 30-2011-00501106 (Refusal to Modify NPDES Permit) (filed August 2011) (Kristin Schwall)
- h. *In re: Citizens Development Corporation, Debtor and Debtor in Possession*, Case No. 10-15142-LT11. United States Bankruptcy Court, Southern District of California. (San Diego Water Board Claim in Bankruptcy) (filed June 2011) (Catherine George Hagan)
- i. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, (NPDES No. CAS0108740) 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 Incorporated Cities of the County of Orange, and the Orange County Flood Control District adopted on December 16, 2009. Test Claim filed by County of Orange, et al., with Commission on State Mandates, No. 10-TC-11* (filed June 2011). (Jessica Newman)

- j. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (NPDES No. CAS0108766) adopted November 10, 2010, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula and Wildomar, Co-Claimants, filed with Commission on State Mandates, No. 11-TC-03 (filed November 2011). (Catherine George Hagan)*

Petitions for Review Pending Before State Water Resources Control Board¹

- k. Petitions of the National Fireworks Association and Fireworks & Stage FX America Inc., Coastal Environmental Rights Foundation, and San Diego Coastkeeper (General National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2011-0022 (NPDES No. CAG999002) for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks), SWRCB/OCC Files A-2164(a)-(c), filed June and July 2011. *(Michelle Mata)*
- l. Petition of Citizens Development Corporation (Water Code Section 13267 Investigative Order No. R9-2011-0033 dated September 14, 2011, Requiring Submission of Technical Reports Pertaining to Investigation of Lake San Marcos Nutrient Impairment, San Diego County), SWRCB/OCC File A-2185, filed October 2011. *(Laurie Walsh)*
- m. Petition of City of San Diego (Time Schedule Order No. R9-2011-0052 dated September 14, 2011, for the Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek, San Diego County), SWRCB/OCC File A-2186, filed October 2011. *(Ben Neill)*
- n. Petition of Jack Eitzen (Administrative Assessment of Civil Liability Order Nos. R9-2011-0048 and R9-2011-0049 against Jack Eitzen for 38175 and 38155 Via Vista Grande, Murrieta, Riverside County), issued October 12, 2011), SWRCB/OCC File A-2193, filed November 2011. *(Rebecca Stewart)*

Item 11 – *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

¹ Petitions for review of San Diego Water Board actions or inactions filed with the State Water Board being held in abeyance by the State Water Board are not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at chagan@waterboards.ca.gov or 858-467-2958 for more information.

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)].

This Closed Session was not held.

Item 12 – *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)].

This Closed Session was held, and the Board discussed Items 8 and 9.

Item 13 – *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)].

This Closed Session was not held.

The meeting reconvened at 2:12 p.m., and the Board discussed Items 8 and 9.

The Advisory Team presented an additional change to Tentative Order No. R9-2012-0024 requested by the Board.

Mr. Anderson made a motion to adopt Resolution No. R9-2012-0025 and the Environmental Impact Report, and the motion was seconded by Mr. Strawn. A vote was taken, and the motion passed unanimously.

Mr. Strawn made a motion to adopt Tentative Order No. R9-2012-0024 and the Draft Technical Report naming the Dischargers, with Errata; the motion was seconded by Dr. Abarbanel. There was some Board discussion thanking the Cleanup Team, the Advisory Team, the stakeholders, and the public for their participation in the process; a vote was taken, and the motion passed unanimously.

Item 14 – Arrangements for Next Meeting and Adjournment
Wednesday, April 11, 2011 - 9:00 a.m.
Mission Viejo City Council Chambers
200 Civic Center
Mission Viejo, California

There being no further business, the meeting was adjourned at 2:30 p.m.

These minutes were prepared by:

Chris Witte
Executive Assistant

Signed by:

David Gibson
Executive Officer