State of California
California Regional Water Quality Control Board
Colorado River Basin Region

MINUTES OF BOARD MEETING
May 16, 2007, 10:00 a.m.
City Council Chambers
City of La Quinta
78-495 Calle Tampico
La Quinta, CA 92253

The California Regional Water Quality Control Board, Colorado River Basin Region, was called to order by Chair Nancy Wright at 10:06 a.m. on May 16, 2007, in the City Council Chambers, City of La Quinta, California.

1. Roll Call (Board Members Only)

Board Members Present:

Jeff Hays, Maurice "Red" Martinez, Richard "Rick" Post, Ellen Way, and Nancy Wright. The Board Secretary stated that a quorum was present.

Staff Present:

Adnan Al-Sarabi, Jose Angel, Terry Barnes, John Carmona, Mary Castaneda, Jose Cortez, Francisco Costa, Kai Dunn, Abdi Haile, Michael Kashak, Kirk Larkin, Phan Le, Jay Mirpour, Robert Perdue, Cliff Raley, Logan Raub, Jon Rokke, Ivory Stark, Joan Stormo, Hilda Vasquez, Doug Wylie, Nadim Zeywar

Others Present:
Steve Bigley, Coachella Valley Water District (CVWD)
Bill Brunet, County of Imperial
Dwight Carey, EMD
Arlene Chun, Riverside County Flood Control (RCFC)
Dawi Dakhil, IBWC
Brett Daniels, City of Coachella
Olivia Daniels, CVWD
Bob Edwards, City of Indio
Marcus Fuller, City of Palm Springs, Public Works
Cathy Jochai, CalTrans District 8
Julia Levin, Audobon Society
Robert Nicklen
William Gonzalez, CVWD
Peter Kozelka, US EPA, Region 9

Steve Pastor, Riverside County Farm Bureau
Lee Pearl, Hi-Desert Water District
Mike Pollock, GSWC
Kim Post, Consultant Engineer, Borrego Water District
Greg Schwartz, Kent Sea Tech
Mike Shetler, Riverside County
Scot Stormo, Earth Systems Environmental
Steve Stump, RCFC
Alana Townsend, City of Palm Desert
Jason Uhley, RCFC
Tom Vandenberg, SWRCB, OCC
Gian Villarreal, RBF/CalTrans

2. Minutes

Minutes of the March 21, 2007, Board Meeting.

MOTION:
Rick Post moved, Red Martinez seconded, and motion carried unanimously that the March Minutes with Errata be approved as amended.

3. Public Forum

There were no comments from the public.

4. Uncontested Waste Discharge Requirements

R7-2007-0042	Waste Discharge Requirements for Hudson Ranch Power I LLC, Owner/Operator, Hudson Ranch I Geothermal Exploration Project Wellfield Mud Sumps/Containment Basins, Salton Sea Known Geothermal Resource Area (KGRA) – Imperial County
R7-2007-0043	Waste Discharge Requirements for Iceland America Energy LLC, Owner/Operator, Truckhaven Geothermal Exploratory Well Wellfield Mud Sump/Containment Basins, Truckhaven Geothermal Leasing Area – Imperial County

MOTION:
Jeff Hays moved, Rick Post seconded, and motion carried unanimously that Board Order Nos. R7-2007-0042 with Errata, and R-2007-0043 with Errata be adopted.

R7-2007-0044	Waste Discharge Requirements and Closure / Post Closure Maintenance for County of Imperial, Owner/Operator, Ocotillo Class III Municipal Solid Waste Management Facility, North of Ocotillo – Imperial County
R7-2007-0046	Waste Discharge Requirements and Closure / Post Closure Maintenance for County of Imperial, Owner/Operator, Palo Verde Class III Municipal Solid Waste Management Facility, Southwest of Palo Verde – Imperial County
R7-2007-0050	Waste Discharge Requirements for County of Imperial, Owner/Operator, Hot Spa Class III Municipal Solid Waste Management Facility, North of Niland – Imperial County

MOTION:
Ellen Way moved, Jeff Hays seconded, and motion carried unanimously that Board Order Nos. R7-2007-0044 with Errata, R7-2007-0046 with Errata, and R7-2007-0050 with Errata, be adopted.

R7-2007-0051	Waste Discharge Requirements for California Department of Transportation, Owner/Operator, Cactus City Rest Area, North/South Wastewater Treatment Facility, East of Indio - Riverside County

This Board Order was moved to a future Board Meeting.

R7-2007-0053	Waste Discharge Requirements for Borrego Water District, Owner/Operator, Rams Hill Wastewater Treatment Facility, Borrego Springs – San Diego County

This Board Order was moved to a future Board Meeting.

5. <u>Uncontested Enforcement</u>

R7-2007-0031	Administrative Civil Liability Order, Mandatory Minimum Penalty in the Matter of City of Calipatria, Owner/Operator Municipal Wastewater Treatment Plant and Collection Systems – Imperial County

R7-2007-0054	Administrative Civil Liability Order, Mandatory Minimum Penalty in the Matter of City of Calexico, Owner/Operator, Municipal Wastewater Treatment Plant and Collection System – Imperial County
R7-2007-0055	Administrative Civil Liability Order, Mandatory Minimum Penalty and Penalty for Violation of Other Waste Discharge Requirements in the Matter of Coachella Sanitary District, Owner/Operator Municipal Wastewater Treatment Plant - Riverside County

MOTION:
Red Martinez moved, Jeff Hays seconded, and motion carried unanimously that Board Order Nos. R7-2006-0031, R7-2007-0054, and R7-2007-0055 be adopted.

6. Contested Waste Discharge Requirements

R7-2007-0001	Waste Discharge Requirements for the Coachella Valley Water District, Mid-Valley Water Reclamation Plant No. 4

Upon request, this agenda item was considered separately from the other Uncontested WDRs. Steve Bigley, Coachella Valley Water District Manager, stated that he was not formally contesting the permit, but only wanted to discuss some elements of the proposed permit to make the Board aware of them prior to its adoption of the permit. He discussed the new effluent limits for free cyanide, the new chronic toxicity limits, and the priority pollutants that must be monitored, which are listed in the California Toxics Rule. He expressed concern about the costs of the testing required and the value of the monitoring data to be generated from these new requirements. As a result of these new, stringent requirements, he stated that the District believed that a zero discharge could be the best approach for the facility to take, and requested the Board's support in the District's efforts to recycle wastewater from this facility to achieve that goal. Jose Angel, Assistant Executive Officer, indicated that the California Toxics Rule is a statewide policy and that the State Water Resources Control Board already considered the concerns raised by CVWD in establishing the State Board's Implementation Policy for the Rule.

MOTION:
Red Martinez moved, Jeff Hays seconded, and motion carried unanimously that that Board Order No. R7-2006-0001 with Errata be adopted.

R7-2007-0053	Waste Discharge Requirements for Borrego Water District, Owner/Operator, Rams Hill Wastewater

Treatment Facility, Borrego Springs – San Diego County

Jon Rokke, Board staff, gave a presentation about the facility and explained the need to revise the WDRs to ensure groundwater quality was adequately monitored and protected, as required by the State's anti-degradation policy among other legal requirements. Kim Post, consultant engineer, Borrego Water District, expressed concern about the need for and cost of the additional monitoring requirements. He suggested evaluating an existing monitoring well, installed by the Department of Water Resources, to see whether it could provide equivalent data at less cost than installing new monitoring wells. The Board Chair requested Board staff to meet with Mr. Post to look into a Groundwater Ambient Monitoring Assessment Program as a means to help finance his additional monitoring obligations as well as to work with him on the monitoring requirements. The Board Chair concluded that until further information is obtained, the item should be continued to another Board meeting.

This Board Order was moved to a future Board Meeting.

6. Resolutions

R7-2007-0003 Expressing Appreciation to Leon Lesicka, former Board Member

MOTION:
Ellen Way moved, Jeff Hays seconded, and motion carried unanimously that Resolution No. R7-2007-0003 be adopted.

R7-2007-0017 Expressing Appreciation to Al Goff, IBWC Yuma

This Resolution was moved to a future Board Meeting.

R7-2007-0018 Expressing Appreciation to Celeste Cantu, former State Water Resources Control Board Executive Director

MOTION:
Jeff Hays moved, Red Martinez seconded, and motion carried unanimously that Resolution No. R7-2007-0018 be adopted.

7. (EAR) Account Site List

R7-2007-0058 Adoption of the FY 2007/2008 Emergency, Abandoned, Recalcitrant (EAR) Account Site List

MOTION:
Jeff Hays moved, Ellen Way seconded, and motion carried unanimously that Board Order No. R7-2007-0058 be adopted.

8. Basin Planning

R7-2007-0039 Consideration of a Basin Plan Amendment for the Bacterial Indicators TMDL Coachella Valley Storm Water Channel and Adoption of Resolution

Water quality objectives (WQOs) are not being met in the Coachella Valley Stormwater Channel (CVSC) due to exceedences in E. coli bacteria, which adversely impact beneficial uses. Regional Board staff (Dr. Francisco Costa and Ivory Stark) presented to the Regional Board for its consideration of adoption a bacterial indicators Total Maximum Daily Load (TMDL) and Implementation Plan for that portion of the CVSC from approximately the City of Indio to the Salton Sea. Jose Angel, Assistant Executive Officer, responded to comments from the Board and other speakers. Peter Kozelka, USEPA, Region 9, gave a presentation following the Staff presentation and addressed questions from the Board and its counsel regarding the TMDL, the Basin Plan, and Clean Water Act requirements. The Board staff presentation of the proposed TMDL is summarized below.

TMDL allocations and numeric targets are expressed in terms of E. coli bacteria based on recommendations from USEPA. The Colorado River Basin Region Water Quality Control Plan requires that the TMDL be expressed in terms of the three bacterial indicator organisms (Fecal coliform, enterrococci, E. coli). USEPA staff, State Board staff, and Regional Board staff agree that E. coli is the best indicator of bacterial pollution in the CVSC.

A DNA monitoring and analysis study was conducted from October 2003 to March 2004 to determine possible sources of bacteria. Potential pathogenic sources identified include: avian (40%), human (25%), rodents plus other wild mammals (25%), and livestock (<3%).

Regional Board staff drafted a bacterial indicators TMDL for CVSC, a proposed Basin Plan amendment to incorporate the TMDL into the Colorado River Basin Region Water Quality Control Plan, and prepared the necessary California Environmental Quality Act (CEQA) substitute environmental documentation in support of the Basin Plan amendment.

The TMDL has an implementation plan as required by Section 13242 of the California Water Code. Limited data are available to calculate or estimate the actual pathogenic contributions from non-point sources of pollution into CVSC and to establish appropriate controls. As a result, a two-phase implementation plan to achieve the TMDL is proposed. Phase I focuses on monitoring pathogens from wastewater treatment plants, and agricultural, urban and stormwater runoff. If WQOs are not achieved by the end of Phase I, additional actions may be implemented in Phase II to control pollutant sources in order to achieve WQOs.

Mr. Kozelka expressed EPA's support for the TMDL, noting that Board staff recently amended it to incorporate EPA's comments. He concurred that the use of E. coli was the appropriate indicator organism to use for the fresh waters at issue in the CVSC. He also noted his support for the implementation plan. In response to a question from Board Member Post, Mr. Kozelka indicated that the numeric targets specified in the TMDL are consistent with similar areas and nationally.

Mike Shetler, senior management analyst, NPDES stormwater coordinator with Riverside County Executive Office, expressed concern about the long-term compliance implications of this TMDL and the costs associated with it. He cited a costly and ineffective treatment plan used by the City of Encinitas to comply with its bacterial indicators TMDL for a water body that flowed to a beach and into the ocean. He expressed concern that similar costly and ineffective measures might be required for the CVSC. He also noted that treating the full range of stormwater flows that could occur would be costly and infeasible. Finally, he objected to having received the final version of the proposed TMDL that morning, stating that as a result, the permittees did not have adequate time to review the proposed amendments. Accordingly, he requested the Board to continue the hearing to give the permittees time to review these changes, to direct Board staff to meet with the permittees so that all issues could be timely addressed, and to have the Board attend a stakeholder meeting for educational purposes. In closing, Mr. Shetler requested the Board: (1) to commit to providing an open public review process prior to implementation of Phase 2 of the TMDL, and (2) to provide the permittees with a 7-year time period (by 2014) to achieve compliance with the waste load allocations.

Jason Uhley, Senior Civil Engineer, Riverside County Flood Control and Water Conservation District, spoke on behalf of several permittees and made two requests: (1) to amend Section 2.3 of the TMDL Basin Plan (described in a handout he gave the Board) to require further amendment of the Basin Plan following completion of Phase One and prior to implementation of Phase Two; and (2) to be allowed 7 years (to 2014) to determine a method of compliance for the TMDL allocations. He explained that since there were a lot of unknowns about the sources of the bacteria impairment of the CVSC, management plans and methods of compliance could not be developed until monitoring information was obtained. He suggested that in order to have alternative methods of compliance be considered, such as group trading plans and allocation time

schedules for TMDL compliance, EPA Guidance made clear that such alternatives could not be considered unless they were expressly allowed in the Basin Plan. Since the Region 7 Basin Plan did not provide for such alternatives, the permittees were concerned that these alternatives might not be available to them. As a result, he requested that the Basin Plan Amendment for the TMDL be revised to include these items so that they would not be foreclosed to the permittees.

Board Member Way questioned whether existing legal requirements are in place to stop this type of discharge from known sources. Jose Angel, Assistant Executive Officer, replied in the affirmative, explaining that the existing MS4 permit requires the permittees to monitor, to comply with the Basin Plan, and to implement additional management practices as necessary to ensure compliance. He added that the TMDL just asks them to do monitoring, which is also a requirement under their existing MS4 permits.

Mr. Uhley commented that the MS4 permit, which regulates stormwater discharges, differs from typical NPDES permits for wastewater treatment facilities, due to source control, flow rate variability, and drainage area differences. As a result, Mr. Uhley indicated that the permittees were concerned with the TMDL's requirements to comply with the specified waste load allocations immediately, and that was the reason for requesting the Basin Plan Amendments be revised to give the permittees sufficient time to evaluate the sources and to develop possible alternative methods of compliance. He indicated that the permittee's proposed amendments were aimed at giving the permittees time to evaluate the monitoring results and develop methods of compliance.

Tom Vandenberg, counsel for the Board, commented on the due process stakeholder involvement issue raised by the previous speakers. He read into the record Board staff correspondence that directly addressed this due process issue. Mr. Uhley acknowledged that the District was invited to attend 303(d) listing meetings and one TMDL CEQA scoping meeting on the TMDL, but declined to attend. He explained that since the District agreed with the listing decision, there was no purpose served by attending those listing meetings. Mr. Angel added that subsequent to the correspondence Mr. Vandenberg read into the record, Board staff held meetings with the permittees regarding the proposed TMDL.

In response to a question from Robert Perdue, Executive Officer, Mr. Kozelka, USEPA, discussed the Clean Water Act requirements as they apply to point sources, and the Board's authority to amend the Basin Plan to address the flow and uncontrollable natural background source issues raised. He also noted that the TMDL approval process takes up to a year since it must be approved by the State Water Board, Office of Administrative Law, and finally, the US EPA. Thus, he indicated that there would be time to hold additional stakeholder meetings to work out some of the monitoring and other issues raised at the meeting.

Steve Bigley, Water Quality Manager, CVWD, commented: (1) the CVSC is impaired only for the REC-1 use and the TMDL addressed just that impairment; (2) the TMDL applies only to the CVSC, not the Salton Sea; (3) CVWD is not a principal permittee; (4) no monitoring results were presented at the February 2004 workshop that the CVWD attended, so that made it difficult for the CVWD to comment on the draft TMDL provided at that time; and (5) agriculture has no discharge permit, and all of the meeting's discussions were related to items in existing permits.

Board Member Way asked about who is recreating in the CVSC, given its small size and access prohibitions. Mr. Bigley replied that CVWD staff has not observed anybody recreating, but that it was possible that some might be trespassing to recreate in the CVSC. Mr. Angel, Assistant Executive Officer, explained that that was the basis for designating the beneficial use for CVSC as REC-1 and REC-2 due to identified existing uses.

Mr. Bigley also expressed concern about the impact the TMDL would have on agricultural stakeholders in the Coachella Valley, noting that an earlier version of the TMDL did not include them as responsible dischargers, but the March 2007 version did. Since about 30,000 acres of ag land now come under the TMDL, he explained, the March 2007 revision made ag stakeholders the largest stakeholder for this TMDL. He added that some entities, such as the Riverside County Farm Bureau, were unaware of the TMDL until the end of the public comment period. Since ag has not been regulated to date, he suggested that Board staff conduct outreach meetings with the ag community similar to what was successfully done by the Board staff for the sediment TMDL for the Imperial Valley ag interests.

Mr. Bigley also commented that the TMDL implementation plan fails to identify any measures or management practices to control bacteria entering the CVSC, in contrast to other TMDLs that do specify management practices and associated cost estimates. Without this information, he indicated that CVWD would be unable to evaluate the impact the TMDL would have on responsible dischargers.

Mr. Bigley also supported the revision to the Basin Plan Amendment proposed by Mr. Uhley—to allow for a further amendment following receipt of the results of the Phase One monitoring and prior to implementing Phase Two, and to allow the permittees 7 years to comply with the TMDL numeric targets specified.

Steve Pastor, Executive Director, Riverside County Farm Bureau, commented that he agreed with the previous speakers and noted that his office did not get a copy of the proposed MDL until April 24, 2007. As a result of the late receipt of the TMDL, he requested the Board to continue the item to give the farmers time to sufficient review the TMDL and to buy into the program.

In response to Mr. Pastor's comments, the Board Chair questioned why Board staff did not include ag as a responsible discharger in the TMDL. Mr. Angel,

Assistant Executive Officer, replied that the farmers are responsible parties under the proposed TMDL and they are required to form groups so they could provide monitoring data. He said that currently, they are supposed to be implementing management practices, so that the Board was not asking them to do anything not already required, besides the monitoring. He added that the Board has options regarding regulating the ag community to comply with Porter-Cologne and the waiver program in Section 13269: to monitor bacteria via permits issued, or to monitor for a variety of pollutants in addition to bacteria via permit, permit waiver, or conditional prohibition. Also, the Board could prohibit the ag discharge altogether. Mr. Angel also noted that Board records show that the Riverside County Farm Bureau, along with all other potentially affected parties, were given due notice through a mailing of the subject proposed TMDL for a 45-day public review and comment period that began March 12, 2007 and through a Public Notice about the proposed Basin Plan amendment.

Steve Stump, Riverside County Flood Control (Jason Uhley's supervisor), commented that previous testimony incorrectly suggested that the RCFC was not involved in the 303(d) listing process or other elements of the TMDL planning. He explained that RCFC did not attend the 303(d) listing meetings held by the Board staff since it was involved in that process through its statewide association. Also, he commented that RCFC was not informed until later that it was going to be identified as a responsible party, another reason for its non-involvement. Finally, he noted that TMDLs developed by other Regional Boards formed stakeholder groups when TMDLs were being developed, so he expected to be involved at the point when the Regional Board formed such a group.

Tom Vandenberg, counsel to the Board, noted that stakeholder meetings were held in August 2006 and thereafter. Mr. Stump agreed, but objected to being told at the time that the meetings would not consider policy issues. Mr. Angel replied that Board staff did not refuse to talk about policy issues, but that the meetings were scheduled to discuss technical issues, and that staff was prepared accordingly. The Board Chair commented that since TMDLs have been around for awhile, RCFC knew that they were coming to the Colorado River Basin Region and thus, should have become more involved in the process to have already addressed the issues they were raising now.

Greg Schwartz, Kent Sea Tech, commented that he felt that their fish farm facility was being penalized due to birds, an uncontrollable source, contributing fecal coliforms in the water used by the fish. Thus, he said that Kent Sea Tech was against the TMDL as proposed because it didn't distinguish between the bacterial loading sources (i.e., mammalian versus non-mammalian). He also objected to the cost of the monitoring required.

In response to a request from Robert Perdue, Executive Officer, Tom Vandenberg, counsel to the Board, discussed the Clean Water Act and Porter-Cologne's requirements to take into consideration economics when developing water quality objectives in Basin Plans. Since economics were already

considered when those objectives were established, he explained, they did not need to be reconsidered when developing a TMDL that incorporates those previously established objectives. Mr. Vandenberg also noted that the Executive Officer has the authority to revise monitoring requirements without having to obtain Board approval in a public hearing process.

Board Member Way asked why recreational water quality objectives were established for the CVSC, noting the lack of any real recreational business there. Mr. Vandenberg and Mr. Angel replied that the objectives were based on existing recreational uses, and that existing uses are defined in the federal regulations as those uses actually attained on or after November 1975. Mr. Vandenberg added that a use could be de-designated by conducting a use attainability analysis process, which EPA would have to approve.

Marcus Fuller, Assistant Public Works Director, City of Palm Springs, voiced his support for the second Basin Plan Amendment concept previously mentioned—to allow for the stakeholders to amend the Basin Plan again following completion of Phase One monitoring data collection and prior to Phase Two implementation. He also complained that it was bad public policy to require the City to expend finite public resources to meet water quality objectives for the impaired portions of the CVSC based on the currently designated REC-1 and REC-2 uses, and the limited and illegal uses by transients that prompted those designations. He suggested that a better public policy would be for the Board to consider more appropriate water quality standards for the CVSC.

To address the stakeholder involvement issues raised by some of the speakers, Board Member Hays suggested Board staff meet with the stakeholders to provide clarification and understanding on the TMDL requirements and process itself and report back to the Board regularly on progress made. The Board agreed. Accordingly, the Board Chair directed Board staff to implement Member Hays' suggestion.

After hearing all speakers, the Board Chair closed the public hearing to allow the Board members to deliberate.

MOTION:
Jeff Hays moved, Red Martinez seconded, and motion carried by Roll Call vote 4 to 1 that Board Order No. R7-2007-0039 with Errata items be adopted. Ellen Way opposed and would like to discuss this subject further in another meeting.

9. Other Business

Informational Update on Salton Sea Restoration

Julia Levin, Policy Director for California Audobon Society, made a presentation on the Salton Sea Restoration efforts and Audobon's preferred restoration components.

Informational Update on Municipal Separate Storm Sewer System (MS4)

This item was moved to a future Board meeting.

Informational Update on State Water Resources Control Board Activities

Nothing to report.

Colorado River Basin Water Board Executive Officer's Report – RP

The Executive Officer (EO) had nothing to report.

Colorado River Basin Water Board Member Comments

Jeff Hays requested power point presentations be part of their agenda package.

Colorado River Basin Water Board Chair's Report – NW

Nancy reported she was selected by Commissioner Carlos Marin to participate in the Citizens for the Colorado River Citizen Forum Board. Jose Angel, Assistant Executive Officer, represented Ms. Wright at May 2007 Forum's meeting in Yuma, Az. She also asked Board Members to think about topics of interest for a future workshop.

10. Closed Session

There was no Closed Session.

11. Arrangements for Next Board Meeting

Date: June 26, 2007

12. Adjournment

Time: 2:45 p.m.