



California Regional Water Quality Control Board Lahontan Region



Linda S. Adams
Secretary of
Environmental Protection

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Arnold Schwarzenegger
Governor

MINUTES July 8-9, 2009

Regular Meeting

Lake Tahoe Community College
Board and Aspen Rooms
One College Drive
South Lake Tahoe, CA 96150

Mr. Clarke, Chair, called the meeting to order at 3:00 p.m. on July 8, 2009.

Board Members Present

James W. M. Charlton, Palmdale
Jack Clarke, Apple Valley
Mike Dispenza, Palmdale
Keith Dyas, Rosamond (left @ 10:25 a.m. on 7-9-09)
Don Jardine, Markleeville
Eric Sandel, Truckee

Board Member Absent

Amy Horne, Ph.D., Truckee

Legal Counsel

David Coupe, Office of Chief Counsel, State Water Resources Control Board
David Boyers, Office of Enforcement, State Water Resources Control Board

Staff Present

Harold Singer, Executive Officer	George Cella, Engineering Geologist
Bob Dodds, Assistant Executive Officer	Doug Cushman, Senior WRCE
Charles Curtis, Supervising WRCE	Lisa Dernbach, Senior Engineering Geologist
Lauri Kemper, Supervising WRCE	Eric Shay, Assoc. Governmental Program Analyst
Laurie Applegate, Executive Assistant	Doug Smith, Senior Engineering Geologist
Richard Booth, Senior Engineering Geologist	Tom Suk, Staff Environmental Scientist
James Brathovde, Engineering Geologist	Judith Unsicker, Staff Environmental Scientist
	Taylor Zentner, Environmental Scientist

Addressing the Board

Jack Landy, U.S. EPA Region 9

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2. CLOSED SESSION

The Board met in closed session from 3:05 p.m. to 4:00 p.m. to discuss Items h., i., and j. The Board reconvened in open session at 4:02 p.m.

OTHER BUSINESS**1. Executive Officer's Report**

Mr. Singer noted that Art Baggett, State Water Board liaison to the Lahontan Water Board, was unable to attend the Board's meeting. Mr. Singer discussed items being considered by the State Water Board on behalf of Mr. Baggett.

Mr. Singer discussed items from the July 2009 Executive Officer's report and answered questions from the Board. Mr. Singer participated in the July 7 Chair's conference call on behalf of Mr. Clarke and gave a report regarding information discussed.

Mr. Singer handed out and discussed three documents: Performance Measures Requiring FY 2009-10 Targets; a draft agenda for the Water Quality Coordinating Committee meeting to be held on October 26-27, 2009 in Sacramento; and a draft sample of a State Water Board internet page entitled "The California Water Boards' Performance Report – Fiscal Year 2008-09".

Note: See page 4 for continuation of Executive Officer's Report

The Board recessed for dinner at 5:10 p.m.

Regular Meeting, continued
7:00 p.m., July 8, 2009

Mr. Clarke, Chair, called the meeting to order at 7:00 p.m.

Board members present: James W. M. Charlton, Jack Clarke, Mike Dispenza, Keith Dyas, Don Jardine, and Eric Sandel. Board member absent: Amy Horne.

3. PUBLIC FORUM

No one addressed the Board during the Public Forum.

4. MINUTES**Minutes of the Regular Meeting of June 10-11, 2009 in Victorville**

- **Motion:** Moved by Mr. Dyas, seconded by Mr. Dispenza and **unanimously carried** to adopt the June 10-11, 2009 minutes as written.

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5. **ADOPTION OF THE UNCONTESTED CALENDAR**

Note: An (*) appears next to items adopted by the Board on the uncontested calendar.

Mr. Singer recommended the Board adopt Items 8 (with late revision sheet) and 9 (with late revision sheet) on the uncontested calendar.

OTHER BUSINESS

*8. **U.S. Forest Service, Lake Tahoe Basin Management Unit, Blackwood Creek Stream and Floodplain Restoration Project, El Dorado County**

*9. **U.S. Forest Service, Lake Tahoe Basin Management Unit, High Meadow Restoration Project, El Dorado County**

- **Motion:** Moved by Mr. Sandel, seconded by Mr. Dispenza and **unanimously carried** to adopt Items 8 (with late revision sheet) and 9 (with late revision sheet) on the uncontested calendar.

PLANS AND POLICIES

6. **Public Hearing – Recommendations to the State Water Resources Control Board Regarding the Clean Water Act Section 303(d) List of Impaired Surface Water Bodies**

Mr. Clarke opened the public hearing.

Judith Unsicker, Ph.D., gave the staff report and answered questions from the Board. Dr. Unsicker noted quality assurance/quality control problems were discovered with the phosphorus data that supported two of the four new listings recommended in the staff late revision sheet for Attachment C. She noted staff now recommends that the Board not list the Carson River, East Fork (phosphorus) or the West Walker River (phosphorus).

Dr. Unsicker asked the Board to adopt the Resolution with the changes to the late revision sheet for Attachment C removing the two phosphorus listings for the Carson River, East Fork and the West Walker River and keeping the remaining two additional Section 303(d) listings recommended by staff: Mojave River (Mojave Forks Reservoir outlet to Upper Narrows)(fluoride); and Mojave River (Upper Narrows to Lower Narrows)(fluoride).

Addressing the Board: Jack Landy, U.S. EPA Region 9 representative to the Lake Tahoe Basin and TMDL liaison to the Lahontan Water Board. Mr. Landy provided a copy of his presentation to the Board and answered questions from Mr. Singer.



There being no further testimony, Mr. Clarke closed the public hearing followed by Board member discussion.

- **Motion:** Moved by Mr. Sandel, seconded by Mr. Jardine and **unanimously carried** to adopt the Resolution with the modified late revisions to Attachment C as discussed by Dr. Unsicker during the presentation removing the proposed phosphorus listings for the Carson River, East Fork, and the West Walker River.

Note: Item 7 was heard by the Board on July 9, 2009. See pages 5 through 9.

OTHER BUSINESS

1. Executive Officer's Report, continued

Note: See page 2 for the first portion of the Executive Officer's Report.

Mr. Clarke disclosed that Harold Singer decided to take the Assistant Executive Officer position. Mr. Clarke noted that the Board decided to appoint Mr. Singer as the Interim Executive Officer. The Board will be reviewing the Executive Officer job description.

Mr. Singer noted that he enjoyed serving as the Executive Officer and working with the current and previous Board members. He thanked the Board for their support. Mr. Clarke thanked Mr. Singer for his years of service as the Board's Executive Officer.

Mr. Singer discussed Truckee-Donner Public Utility District's (TDPUD) application for a 401 water quality certification and Mr. Singer's subsequent denial of that application. He noted TDPUD petitioned Mr. Singer's denial to the State Water Board and the petition will be held in abeyance for 30 days. A meeting, including a site visit, has been scheduled with Water Board staff and TDPUD staff later in the month.

Mr. Singer noted the Tahoe Forum will be held on August 20 at Round Hill Pines, Nevada. Senator John Ensign (NV) will be hosting the event. Attendance is by invitation only. Board members who would like to attend can contact Mr. Singer.

Mr. Singer discussed an issue related to the Victor Valley Wastewater Reclamation Authority's rate increase.



OTHER BUSINESS

10. Reports by Chair and Board Members

Mr. Dyas thanked Mr. Singer for his years of service as Executive Officer and for assisting the Board during the change in leadership.

Note: The evening meeting recessed at 8:20 p.m.

Regular Meeting, continued **July 9, 2009 – 8:30 a.m.**

Mr. Clarke called the meeting to order at 8:30 a.m.

Board members present: James W. M. Charlton, Jack Clarke, Mike Dispenza, Keith Dyas, Don Jardine, and Eric Sandel. Board member absent: Amy Horne.

ENFORCEMENT ACTION

7. Consideration of an Administrative Civil Liability Order for Sarbjit S. Kang and Kang Property, Incorporated for Violations of (1) California Water Code Section 13267 and (2) California Water Code Section 13304 – Swiss Mart Gas Station, El Dorado County

Mr. Clarke, Chair, opened the public hearing, read a statement outlining the procedures to be followed during the hearing, and administered the oath. Mr. Clarke noted the functions of Water Board staff for this matter as follows:

Advisory Team

Harold Singer, Executive Officer
David Coupe, Attorney, State Water
Board's Office of Chief Counsel

Prosecution Team

Robert Dodds, Assistant Executive Officer
Chuck Curtis, Supervising Water
Resources Control Engineer
Lisa Dernbach, Senior Engineering
Geologist
Scott Ferguson, Senior Water Resources
Control Engineer
David Boyers, Attorney, State Water
Board's Office of Enforcement

Mr. Singer disclosed that he serves as a Board member for a nonprofit organization with Mr. Scott Brooke, attorney representing Kang Property, Inc. and Mr. Sarbjit Kang and one of the potential witnesses for the discharger, Mr. Weber. He noted all parties had been advised and no objections were raised. He also noted he has no financial affiliation with the nonprofit organization and that his ability to advise the Board in the matter would not be affected.



Mr. Jardine disclosed that he serves as a volunteer on a water company board and noted that Mr. Brooke had given advice and information to that board. Mr. Jardine noted he discussed the matter with legal counsel and did not have a conflict in the matter.

Mr. Coupe discussed two preliminary matters. In the first matter, Chair Clarke ruled that Mr. Javaherian would not be allowed to testify as an expert witness; however, he would be allowed to provide oral rebuttal testimony. In the second matter, Mr. Brooke requested a continuance of the hearing due to issues involving the service of documents and to attempt to resolve the matter without a hearing. Chair Clarke denied Mr. Brooke's request for a continuance of the hearing.

Testimony by Lahontan Water Board Prosecution Team

David Boyers gave an opening statement. Lisa Dernbach gave the prosecution team's presentation, answered questions from the Board and members of the advisory team, and recommended the Board adopt the Administrative Civil Liability Order (ACL Order) as proposed for \$460,300 (handout – copy of PowerPoint presentation).

Cross-examination of Lisa Dernbach by Scott Brooke

Scott Brooke, attorney representing Kang Property, Inc. and Mr. Sarbjit Kang cross-examined Lisa Dernbach. Mr. Brooke answered questions from the Board.

Redirect of Lisa Dernbach by David Boyers

Mr. Brooke objected that there was no mention of redirect in the Chair's opening statement. Mr. Coupe noted the Board Chair had discretion to allow redirect. Chair Clarke ruled to allow redirect and noted it would be counted against the prosecution team's time allotment. David Boyers asked three additional questions of Lisa Dernbach.

Note: The Board took a break. Board member Keith Dyas left the meeting at 10:25 a.m. and was not present for the remainder of the meeting. A quorum of the Board remained.

Testimony by Kang Property, Inc., and Mr. Sarbjit Kang

No direct testimony was given by Kang Property, Inc., and Mr. Sarbjit Kang.

Comments by Interested Persons

John Cefalu, South Lake Tahoe resident and owner and operator of Fox Service Station and Car Wash, addressed the Board.



Rebuttal Testimony by Kang Property, Inc., and Mr. Sarbjit Kang

Scott Brooke asked questions of Mr. Sarbjit Kang. Mr. Kang answered questions from Mr. Singer and Board Member Charlton.

Scott Brooke asked questions of Mr. Azad Amiri, president of Kang Properties, Inc.

The Board took a break.

Cross-examination of Mr. Kang and Mr. Amiri by David Boyers

David Boyers cross examined Mr. Kang and Mr. Amiri.

Questions from Harold Singer, Advisory Team, to Members of the Prosecution Team

David Boyers, Chuck Curtis and Lisa Dernbach answered questions from Mr. Singer regarding the proposed order.

Closing Statement by Kang Property, Inc., and Mr. Sarbjit Kang

Scott Brooke gave closing arguments on behalf of the discharger. Mr. Brooke asked the Board to be reasonable when levying a fine. He suggested that the Board administer a fine of \$100 a day for the period from December 14, 2007 when the Order was issued through June 9, 2008 when the monitoring report was received. Mr. Brooke noted he was authorized to advise the Board that the amount he suggested would be acceptable and would be paid. In addition, the outstanding fines in the approximate amount of \$55,000 would be paid too. Mr. Brooke noted Mr. Amiri indicated he could afford to pay the suggested amount on a payment plan and asked the Board to accept the offer.

Closing Statement by Lahontan Water Board Prosecution Team

David Boyers gave closing arguments on behalf of the prosecution team. He noted that even though there was no significant environmental harm and the discharger is currently in compliance, there was persistent, chronic disregard for the order requirements. He noted there was an unacceptable risk to water quality. Mr. Boyers commented that Mr. Brooke's statement that the 1999 ACL Orders were at the rate of \$100 a day was incorrect and that the rate was actually \$1,000 a day. He noted that staff's recommended fine of 460,300 was 10% of the maximum liability allowed by law and that if the Board wanted Mr. Kang's pattern of noncompliance to end, a significant liability must be imposed. Mr. Boyers recommended the Board levy staff's recommended fine or higher in this case.

There being no further testimony, Mr. Clarke closed the public hearing and called for Board discussion.



Board Discussion

Mr. Singer discussed factors for the Board to consider when deliberating.

Mr. Charlton suggested the Board levy the fine suggested by staff. Mr. Dispenza asked Mr. Singer how the Board could be more conservative when calculating the days of violation. Mr. Singer distributed advisory team proposed revisions to the order under consideration to Board members, the prosecution team, the dischargers and the public. He noted the advisory team used a more conservative approach when recalculating the days of violation thereby reducing the maximum potential liability to 2.222 million dollars.

Mr. Sandel thanked Mr. Singer for recalculating the days of violation more conservatively and recommended a fine of \$222,000 or 10% of the reassessed maximum fine of 2.222 million dollars. Mr. Dispenza, Mr. Jardine and Chair Clarke concurred.

In response to a question from the Board regarding Order No. 3, Mr. Singer clarified that a portion of the fine would go into the State Board's Cleanup and Abatement Account and a portion would go into the Waste Discharge Permit Fund. He commented that the Board could put half of the fine in each fund if so desired.

Mr. Singer noted that testimony was given in the hearing indicating that Kang Property, Inc. no longer owned properties mentioned in the ACL Order and suggested the following properties be removed from page 10, finding d of the Order: 1140 Emerald Bay Road, South Lake Tahoe, CA (APN 023-181-191& APN 032-141-3510); 4949 County Road 89, Yolo County, CA (APN 052-020-04-1) and 4300 Watt Avenue, Sacramento, CA (APN 240-0232-058-0).

- **Motion:** Moved by Mr. Sandel to assess administrative civil liability in the amount of \$222,000 with \$111,000 of the fine to be placed in the State Board's Cleanup and Abatement Account and \$111,000 of the fine to be placed in the State Board's Waste Discharge Permit Fund, and to remove from the ACL Order the three properties no longer owned by Kang Properties, Inc. as suggested by Mr. Singer.

Mr. Clarke reopened the public hearing and gave each party an additional two minutes to comment.

Mr. Brooke commented that it would be helpful to have a revised proposed order to review.

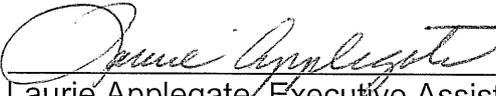
There being no further comment, Mr. Clarke closed the hearing and called for the vote.



- Mr. Dispenza seconded the motion made by Mr. Sandel. **Motion**
unanimously carried.

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned at 12:25 p.m. on July 9, 2009.

Prepared by:  Adopted: September 9, 2009
Laurie Applegate, Executive Assistant

