

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

MINUTES OF MEETING
DECEMBER 12, 2007

At 9:00 a.m. Chairwoman Ritschel 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.

Chairwomen Ritschel introduced and welcomed two new members on the Board, Wayne Rayfield and Kris Weber. She also congratulated Mr. Anderson on his reappointment.

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

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, John Odermatt, Brian Kelley, Mark Alpert, John Anderson, Julie Chan, Bob Morris, Jimmy Smith, Chiara Clemente, Craig Carlisle, Dave Gibson, DiAnne Broussard, Michelle Mata, Kristin Schwall, Frank Melbourn, Rebecca Stewart, Anthony Felix, Ben Neill, Chris Means, Christina Arias, Tom Alo, Mike Porter, Phil Hammer, Ben Tobler, Wayne Chiu, Jeremy Haas, Amy Mecklenborg, Jody Ebsen, Ben James, Helen Yu, Robert Pierce, Amy Grove, Carol Tamaki, Pete Peuron, Lynn Berlad, Linda Halabi, and Marleen Carvajal. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine George, Jorge Leon, and Frances Spivy-Weber. Kennedy Court Reporters: Lori Anzalone.

Public Attendance: Paul Cline – self; Dick Runge – South Coast Water District; Sue Kalena – Hunsaker; Tara Michie – Hulo Source; Kevin Carr, Pat Dennis, Patrick Owen – SeaWorld; Daniel Johnson, Harry Bishop, Ryan Marcos, Cristobal Ramirez, Andy Zahurack, Tracy Thompson – SCS Engineers; Don Trueblood, Anthony Kouzen – Brown & Caldwell; Robert Mooney – Merkel & Assoc. Glenn Pruim – Carlsbad; James O'Day, Joseph DeStefano, Sara Agahi, Barry Pulver, Jason Forat, Chris Hanger – County of San Diego; Mark Gold – Heal the Bay; Cora Long – City of Lemon Grove; Jerry Marcotte, Gian Villarreal, Laurie Berman, Susanne Glasgow, Con Kontast – Caltrans; Elaine Lukey – City of Carlsbad; Patrick Millich – Lee & Assoc.; Mayor Paul Glaab, Nancy Palmer – City of Laguna Niguel; Khosro Aminpour, Dave Meyer – City of Chula Vista; Stefanie Warren – San Diego Unified School District; Bob Jordan – SMWD; Jayne Joy – EMWD; Cindy Lin – USEPA; Jaime Campos – City of El Cajon; Susan Given, Mary Anne Skorpanich, Chris Crompton, Amanda Carr – County of Orange; Ruth Kolb, Drew Kleis, Fritz Orlieb – City of San Diego; Patti Krebs – IEA; Peggy Strand – Best, Best & Krieger; Erik Steenblock – City of Encinitas; Will Holoman – City of

Laguna Beach; Greg Hulsizer, Lorenzo Garrido – South Bay Expressway; Jacqueline Dompe – EDWA; Terry Rodgers – San Diego Union Tribune; Cheryl Filar – City of Escondido; Jayne Strommer – City of Vista; Mo. Lahsaie, Cynthia Mallett – City of Oceanside; Lisa Zawaski, Brad Fowler – City of Dana Point; Gabriel Solmer, Livia Borak – San Diego Coastkeeper; Marco Gonzalez – Coast Law Group; Ariadna Wall – self; Ed Kimura – Sierra Club; Peter Olah, John Bergin – Ashby; Linda Mitrovich – Solution Strategies; Don Bullock – North County Transit District; Ann McCann – self.

Item 2 – Public Forum

Sara Agahi, Country of San Diego, invited the Board to a copermittes meeting on December 13 to hear State Board Member Gary Wolff give a presentation on Low Impact Development and Watershed Management.

Gabriel Solmer, San Diego Coastkeeper, welcomed the new Board Members. Ms. Solmer also congratulated Mr. Wright on being awarded the Ronald F. Abler Honors for Distinguished Service of the Association of American Geographers for 2008.

Chairwoman Ritschel announced that Items 13, 16, and 17 were postponed.

Item 5 – Recognition: Resolution of Appreciation for Daniel Johnson (tentative Resolution No. R9-2007-0220) (*John Robertus*)

Ms. Schneider made a motion to adopt Resolution R9-2007-0220. The motion was seconded by Mr. Wright and approved by unanimous vote.

Chairwoman Ritschel presented the Resolution of Appreciation to Mr. Johnson.

Board Member King arrived at 9:15 a.m.

Item 3 – Minutes of Board Meeting of November 14, 2007

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. Robertus noted three corrections included in an errata:

- 1) Page 3, Item 7, the acronym “SDR” should be corrected to read “WDR.”
- 2) Page 6, Item 11, the sentence “This Closed Session was held” should be added at the end of the item.
- 3) Page 6, Items 12-14, the words “The Closed Sessions, Items 12-14, were not held” should be added at the end of Item 14.

Mr. Anderson moved approval of the November 14, 2007 minutes with errata. The motion was seconded by Mr. King and approved with abstention by Ms. Schneider, Mr. Weber, and Mr. Rayfield.

Consent Calendar: Items 6 through 11 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 10 was removed from the consent calendar due to public request.

Staff Counsel, Catherine George, said that Item 6 was a rescission of a Cease and Desist Order therefore needed a roll call vote.

Item 7 – New Waste Discharge Requirements: California Department of Transportation (Caltrans), Tecate Truck Inspection Station. The San Diego Regional Board will consider adoption of a tentative Order which would establish waste discharge requirements for the discharge of up to 500 gallons per day of waste from a conventional septic tank and leach field at the Tecate Truck Inspection Station, San Diego County. (Tentative Order No. R9-2007-0148) (*Michelle Mata*)

Item 8 – Administrative Assessment of Civil Liability against the San Diego Unified School District for violations of Statewide General Construction Storm Water Permit, at the Scripps Ranch Middle School, San Diego, California. The Regional Board will consider comments received during the public review period and decide on an order accepting the discharger's waiver of hearing and payment in full of the \$128,000 recommended liability. (Tentative Order No. R9-2007-0210) (*Pete Peuron*)

Item 9 – Administrative Assessment of Civil Liability against Eastern Municipal Water District, for violation of the Statewide General WDR for Sanitary Sewer Systems for the discharge of 1.07 million gallons of untreated sewage to Murrieta Creek, Temecula, Calif. The Regional Board will consider comments received during the public review period and decide on an order accepting the discharger's waiver of hearing and payment in full of the \$53,500 recommended liability. (Tentative Order No. R9-2007-0217) (*Charles Cheng*)

Item 11 – NPDES Permit Addendum: The Regional Board will consider adoption of Tentative Addendum No. 1 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. 1 to Order No. R9-2007-0001 will extend the deadlines of certain permit requirements by 60 days. The extension of the deadlines is necessitated by the recent wildfires of October 2007 and the unforeseeable delays in previously scheduled work required by Order No. R9-2007-0001 that has resulted from the wildfires. (*Christina Arias*)

Ms. Schneider made a motion to approve Items 7,8,9, and 11. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Item 6 – Rescission of Cease and Desist Order No. 98-39 and addenda thereto: San Marcos Landfill, San Diego County (tentative Order No. R9-2007-0206) (*Amy Grove*)

Ms. Schneider made a motion to approve Item 6. The motion was seconded by Mr. Anderson and approved by a 7-0 vote.

Remainder of the Agenda (Non-Consent Items):

Item 10 – NPDES Permit Revision: SeaWorld San Diego. The Regional Board will consider amending SeaWorld's existing NPDES permit to establish waste discharge requirements for discharges of waste from SeaWorld's aerial fireworks displays to Mission Bay, San Diego. (Tentative Addendum No. 1 to Order No. 2005-0091, NPDES No. CA0107336) (*Michelle Mata*)

Staff member Michelle Mata gave the presentation.

Other speakers included:

- Cindy Lin – US EPA
- Marco Gonzalez – Coast Law Group
- Ariadna Wall
- Pat Dennis – represented SeaWorld

Board Members asked questions of staff.

Ms. Schneider made a motion to approve the Order with errata adding language explaining the special circumstances as to why WDRs for aerial fireworks displays were being required. The motion did not have a second therefore the motion failed.

Mr. Rayfield made a motion to approve the Order with errata to require testing within 24 hours after the fireworks display and require a third test within 24 hours of the Labor Day holiday display. In his motion, Mr. Rayfield also included the language suggested by Ms. Schneider in her previous motion. The motion was seconded by Mr. Wright.

Ms. George asked staff to write the revised language for Board Members to review before a vote was taken.

After a brief recess, senior staff member Brian Kelley read the errata to the Board:

Finding 2, end of first paragraph: "Mission Bay is unique due to the restricted circulation of waters within the Bay, the shallow depth of the Bay in the vicinity of the fireworks events, and because of the high frequency of fireworks events discharged by SeaWorld in that area."

The motion was then approved with opposition by Ms. Schneider.

Item 12 – Total Maximum Daily Loads for Indicator Bacteria, Project I - Beaches and Creeks in the San Diego Region. The Regional Board will deliberate and consider adopting and amendment incorporating the TMDLs into the Basin Plan. (Tentative Resolution No. R9-2007-0044) (*Benjamin Tobler*)

Staff member Ben Tobler gave the presentation.

Board Members asked questions of staff. Mr. Robertus, Mr. Tobler, Ms. Julie Chan, and Mr. David Barker addressed their questions.

Other speakers included:

Mayor Paul Glaab – City of Laguna Niguel

Nancy Palmer – City of Laguna Niguel

Cindy Lin – US EPA

Drew Kleis – City of San Diego

Mark Gold – Heal the Bay

Marco Gonzalez – Coast Law Group

Gabriel Solmer – San Diego Coastkeeper

Livia Borak – San Diego Coastkeeper

Will Holoman – City of Laguna Beach

Lisa Zawaski – City of Dana Point

Brad Fowler – City of Dana Point

Ed Kimura – Sierra Club

Chris Crompton – County of Orange

Mary Anne Skorpanich – County of Orange

Ms. Chan made closing comments.

The meeting was recessed for Closed Session and lunch at 12:27 p.m.

Item 20 – *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

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 for Breach of Contract. San Diego County Superior Court, Case No. GIC 822750 (filed December 2003). (John Anderson)

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 for Breach of Contract. San Diego County Superior Court, Case No. GIC 824706 (filed January 2004). (*John Anderson*)

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*)

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). (*John Odermatt*)

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

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting 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*)

This Closed Session was held.

The meeting reconvened at 1:40 p.m.

Item 12 - Continued

Board Members asked questions of staff.

Ruth Kolb, City of San Diego, responded to a Board Member question.

After further questions of staff, Chairwoman Ritschel closed the Public Hearing then moved to Board Member deliberation.

After Board Member deliberation and discussions with staff, Ms. George requested that the item be continued after a brief break to allow staff to discuss changes to the language. Board Members concurred.

Item 18 – STATUS REPORT: State Route 125 Toll Road - Caltrans and South Bay Expressway; the Toll Road, scheduled to open on November 19, 2007, lacks fully vegetated post-construction Best Management Practices (BMPs) to prevent erosion and manage sediment and achieve an 80% removal efficiency for total metals and suspended solids. Such BMPs are required pursuant to Resolution No. 2001-51, Clean Water Act Section 401 Water Quality Certification for the State Route 125 South Toll Road Project, which was adopted by the Regional Board on April 23, 2001. The Regional Board will hear a report on the status of the implementation of the post-construction BMPs.
(Christina Arias)

Staff member Christina Arias gave the presentation.

Laurie Berman, Caltrans, and Greg Hulsizer, South Bay Expressway, also gave a presentation.

Jacqueline Dompe, EDWA, gave an update on the South Bay Expressway.

Lorenzo Garrido, South Bay Expressway, answered a question asked by Mr. Wright about the use of reclaimed water.

Mr. Rayfield expressed his concern with them being so far out of compliance with the permit. Mr. Robertus made comments.

Mr. Wright asked that monthly status reports be included in the Executive Officer's Report and for a status report by staff approximately every third meeting.

Item 19 – Approval of Year 2008 Board Meeting Schedule (John Robertus)

Chairwoman Ritschel made a motion to approve the schedule. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

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. Robertus reported that State Board Member Gary Wolff would be visiting Regional Board staff to discuss various issues such as once through cooling and the regulation of storm water.

Mr. McCann reported on the fire recovery efforts in San Diego County.

Mr. Robertus briefly spoke about the 303d List of Impaired Waters and the San Diego Bay Shipyard Sediment Site Cleanup Status.

Chairwoman Ritschel asked about a spill listed on the SSO Report by the Naval Station Palmer Hall Barracks. Senior staff member Mark Alpert responded.

Mr. King asked a question about Poseidon Resources' proposed Carlsbad Desalinization Project. Mr. Robertus and staff member Eric Becker responded.

Mr. Wright reported that he, Mr. Anderson, Mr. King, and Mr. Robertus attended the WQCC on December 10 & 11 in Sacramento. He said they all spoke on regional issues. The three members reported on some of the other issues discussed at the meeting.

Item 12 – Continued

Ms. George provided the Board with the recommended changes. Board Members were in agreement with the changes.

Chairwoman Ritschel reopened the Public Hearing to allow the public to comment on the proposed changes.

Speakers included:

Chris Hanger – County of San Diego
Gabriel Solmer – San Diego Coastkeeper
Nancy Palmer – City of Laguna Niguel

Mr. Tobler recommended closing the Public Hearing, adopting the Resolution with errata, adding new Finding No. 23, and replacing Resolution Paragraph No. 2.

Ms. Schneider made a motion to adopt Resolution No. R9-2007-0044 with the errata and amendment recommended by staff. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 13 – Reissuance of Waste Discharge Requirements and NPDES Permit CAG919002 for discharge from Groundwater Extraction waste to Surface Waters within the San Diego Region Except for San Diego Bay. If adopted, Tentative Order No. R9-2007-0071, would supersede the current SDR Order No. R9-2001-0096. (Tentative Order No. R9-2007-0071) (*Vicente Rodriguez*)

This item was postponed.

Item 14 – PUBLIC HEARING: Administrative Assessment of Civil Liability against Ashby USA, LLC for violation of its Clean Water Act Section 401 Water Quality Certification for the Roripaugh Ranch Residential Development, Temecula, California. The Regional Board will consider whether to raise, lower, or reject assessment of

\$546,250 civil liability recommended in Complaint No. R9-2007-0064. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0221)
(Rebecca Stewart)

Mr. Weber recused himself from the item.

Assistant Executive Officer, Michael McCann, explained the split functions of staff on enforcement items.

Other speakers included:

Peter Olah Ashby USA

Linda Mitrovich – Solution Strategies, Inc., requested a continuance.

Staff member Rebecca Stewart explained why staff felt the item should not be continued to a later date.

Mr. Robertus recommended that the Board proceed with the Public Hearing.

Board Members asked questions of staff.

Jorge Leon, State Board, recommended the Board move forward with a decision as to whether or not to hold the Public Hearing.

Chairwoman Ritschel ruled that the Public Hearing would be held. Ms. Stewart then proceeded with her presentation.

Other speakers included:

John Bergin – Ashby USA

Linda Mitrovich – Solution Strategies, Inc.

Peter Olah – Ashby USA

Ms. Stewart made closing comments.

Mr. Olah and Mr. Bergin made additional comments.

Jorge Leon, State Board enforcement attorney, made closing comments and recommended to the Board that they approve the order.

Mr. Olah made additional comments.

Mr. Robertus concurred with staff on the reductions in number of days and gave details of his recommendation for each allegation. He recommended imposing a fine of \$434,561.

Ms. Ritschel closed the Public Hearing and moved to Board Member deliberation.

After Board Member discussion, Ms. Schneider made a motion to impose the fine of \$434,561 but to allow them to pay \$46,411 within 30 days and defer the remaining balance due until August 30, 2008.

Ms. George drafted revised language for Board consideration that would impose the full liability making it payable within 30 days but directed the Executive Officer to defer attempts to collect to remaining \$388, 150 until after August 30, 2008.

Ms. Schneider amended her motion to include the errata recommended by Ms. George. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 15 – PUBLIC HEARING: Administrative Assessment of Civil Liability against North County Transit District, violations of Statewide General Construction Storm Water Permit at the Sprinter Rail Project Site, San Diego County. The Regional Board will consider whether to raise, lower, or reject assessment of \$160,000 civil liability recommended in Complaint No. R9-2007-0093. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0219) (*Ben Neill*)

Mr. McCann announced that the North County Transit District waived their right to a hearing and paid the full amount of the civil liability. Staff member Ben Neill gave a brief presentation and recommended adopting the Order accepting the \$160,000 payment.

Other speakers included:

Paul Cline – resident near project

Mo. Lahsaie – City of Oceanside

Peggy Strand – North County Transit District

Mr. King asked Ms. Strand why they agreed to pay the maximum fine. Ms. Strand responded.

Ms. Schneider made a motion to approve Order No. R9-2007-0219. The motion was seconded by Chairwoman Ritschel and approved with opposition by Mr. King.

Item 16 – PUBLIC HEARING: Administrative Assessment of Civil Liability against the Cities of Vista and Carlsbad, for violation of the Statewide General WDR for Sanitary Sewer Systems for the discharge of 7.3 million gallons of untreated sewage to Buena Vista Lagoon. The Regional Board will consider whether to raise, lower, or reject assessment of \$1,095,000 civil liability recommended in Complaint No. R9-2007-0099. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0215) (*Eric Becker*)

This item was postponed.

Item 17 – PUBLIC HEARING: Administrative Assessment of Civil Liability against Fallbrook Public Utility District, for violation of Regional Board General WDR for Sanitary Sewer Systems for the discharge of 146,000 gallons of untreated sewage to Fallbrook Creek, San Diego County. The Regional Board will consider whether to raise, lower, or reject assessment of \$29,300 civil liability recommended in Complaint No. R9-2007-0101. If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2007-0216) (*Joann Cofrancesco*)

This item was postponed.

Item 21 – *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*)

Item 22 – *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)]

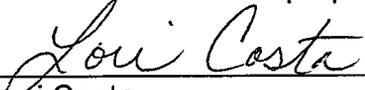
Item 23 – *Closed Session* - Personnel
The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)]

The Closed Sessions, Items 21-23, were not held,

Item 24 – Arrangements for Next Meeting and Adjournment
Wednesday, February 13, 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 5:45 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer