

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
Board Meeting Room
2375 Northside Drive, Suite 108
San Diego, California

MINUTES OF MEETING
MARCH 9, 2016

At 9:00 a.m., Chairman Abarbanel called to order the meeting of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) at the Board Meeting Room, 2375 Northside Drive, Suite 108, San Diego, California.

Item 1 – Roll Call and Introductions:

Board Members present: Henry Abarbanel, Eric Anderson, Tomas Morales, Betty Olson, and Stefanie Warren. Gary Strawn was unable to attend.

Staff Present: David Gibson, James Smith, Chris Blank, Julie Chan, Carey Nagoda, Christina Arias, Brian McDaniel, John Anderson, Deborah Jayne, Barry Pulver, Dat Quach, Chiara Clemente, Jeremy Haas, Betty Fetscher, Kristin Schwall, Michelle Mata, John Odermatt, Amy Grove, Cynthia Gorham, David Barker, Fisayo Osibodu, Helen Yu, Bruce Posthumus, Alex Cali, Rebecca Stewart, Alan Monji, Eric Becker, Lalitha Thotakura, Tom Alo, Kelly Dorsey, Frank Melbourn, Sarah Mearon, Wayne Chiu, Laurie Walsh, Lucas Lima, Nicole Gergans, Debbie Woodward, Rachel O'Donovan, Erica Ryan, Kimberly McMurray-Cathcart, Chad Loflen, Joann Lim. Christopher Means, Lisa Honma, and Mike Porter attended remotely.

Others present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Adriana Nuñez, Anna Kathryn Benedict, David Boyers, Laura Drabandt, and Fran Spivy-Weber. California Court Reporting – Marlee Nelson.

Public Attendance: S. Wayne Rosenbaum, Opper & Varco (representing San Altos, LLC); Jesus Torres, Republic Services, Sycamore Landfill; Ruby Teague, Republic Services, Sycamore Landfill; Brian Hitchens, Geosyntec Consultants; Josh Rosenbaum, San Altos, LLC; Kelly Ogawa, MUE; James Wood, City of Carlsbad; Dustin Harrison, San Diego River Conservancy; Shelby Hill, Contech; Scot Sandstrom, New Pointe; Len Sinfield, U.S. Navy; Kyehee Kin, County of San Diego; Michael R. Welch; Michael McSweeney, BIA; Ernest Grabbe, Koloa Pacific Construction; David Dearborn, Koloa Pacific Construction; Jo Ann Weber, County of San Diego; Karen Holman, Port of San Diego; Jack Monger, IEA; Ben Anderson, Valencia; Jennifer Castor-Goncalves, Latham & Watkins; Mark Russell, Grand Dynamics; Steve Steinberg, SCCWRP; Jessica Palmer, U.S. Navy; Marc Ozarski, Guardian Coastal; Raquel Maden, Senator Ben Hueso's Office; Sandor Halvax, BAE Systems; Erica Martin, SDG&E; Ruth Kolb, City of San Diego; Gary Harper, City of Lemon Grove; Malik Tamimi, City of Lemon Grove; John Quenzer, D-Max Engineering; John Draminski, D-Max Engineering; Tad Nakatani, D-Max Engineering; Linda Beresford, Opper & Varco (representing San Altos, LLC); Kelly Richardson, Latham & Watkins; Josh Rosenbaum, Opper & Varco.

Item 2 – Public Forum

There were no public forum items.

Item 3 – Minutes of Board Meeting: February 10, 2016:

Mr. Anderson moved to approve the minutes, and Dr. Olson seconded the motion. A roll call vote was taken, and Board Members Abarbanel, Anderson, Morales, Olson, and Warren voted “aye.” The motion passed.

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.

Fran Spivy-Weber provided an update on State Board activities and upcoming items that are relevant to Region 9.

Mr. Gibson gave a summary of the joint Border 2020 and Tijuana River Valley Recovery Team Meeting that took place on February 25, 2016.

Item 5 – Future Agenda Items: Board members may discuss items for possible inclusion on future agendas. *(David Gibson)*

The Board Members did not identify any Future Agenda Items.

Consent Calendar: Items 6 and 7 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 6 – WDR Addendum: Discharge of Solid Waste to Land, Sycamore Landfill, Republic Services, Inc., San Diego County (Tentative Addendum No. 4 to Order No. 99-74). *(Amy Grove)*

Item 7 – WDR Rescission: Rescission of WDRs for County of San Diego Heise Park Water Pollution Control Facility and Pine Valley Water Pollution Control Facility (Tentative Order No. R90-2016-0015). *(Alex Cali)*

Item 8 – Cabrillo Power I LLC, Encina Power Station. *(Kristin Schwall)* **THIS ITEM HAS BEEN POSTPONED.**

- a. NPDES Permit Reissuance: Discharge to the Pacific Ocean (Tentative Order No. R9-2016-0002, NPDES No. CA0001350).
- b. Time Schedule Order: A Time Schedule Order Requiring Cabrillo Power I LLC to Comply with Requirements Prescribed in Tentative Order No. R9-2016-0002, NPDES No. CA0001350 (Tentative Order No. R9-2016-0007).

Mr. Morales moved to approve the Consent Calendar, and Mr. Anderson seconded the motion. A roll call vote was taken, and Board Members Abarbanel, Anderson, Morales, Olson, and Warren voted "aye." The motion passed.

Remainder of the Agenda (Non-Consent Items)

Item 9 – Tentative Resolution: Tentative Resolution Supporting the Allocation of Resources to Implement the Practical Vision and Operational Plan (Tentative Resolution No. R9-2016-0063). (*David Gibson*)

Mr. Gibson provided the staff presentation and responded to Board Member questions.

Chair Abarbanel asked that Item 6 of the tentative resolution be revised to reflect the fact that the Executive Director of the State Water Resources Control Board works under the direction of the Board Members. Adoption of the Tentative Resolution was postponed until later in the meeting, so that it could be revised as requested.

Item 10 – Information Item: Innovative Cleanup and Abatement of PCB Contaminated Sediment in San Diego Bay at the Laurel/Hawthorn Embayment: A Case Study. (*Brian McDaniel*)

Brian McDaniel gave the staff presentation and responded to Board Member questions.

Mr. Gibson and Mr. Smith also responded to Board Member questions.

Karen Holman from the Port of San Diego and Matt O'Malley with San Diego Coastkeeper both made remarks regarding this item.

Chair Abarbanel called a recess at 10:18 a.m. and reconvened the meeting at 10:40 a.m.

Item 11 – Information Item: Preliminary Data from the San Diego Bay Fish Consumption Study. (*Tom Alo*)

Tom Alo gave the staff presentation and responded to Board Member questions. He then introduced Steve Steinberg from the Southern California Coastal Water Research Project (SCCWRP).

Steve Steinberg gave the SCCWRP presentation and responded to Board Member questions. Ms. Holman from the Port of San Diego also responded to Board Member questions.

Chair Abarbanel called a recess at 11:03 a.m. and reconvened the meeting at 11:13 a.m.

Item 9 continued – Mr. Gibson reintroduced Item 9 and read the Tentative Resolution, with the revisions requested by Chair Abarbanel, into the record.

Mr. Morales moved to approve Tentative Order No. R9-2016-0063 as revised, and Ms. Warren seconded the motion. A roll call vote was taken, and Board Members Abarbanel, Anderson, Morales, Olson, and Warren voted “aye.” The motion passed.

Item 12 – ACL Hearing: Complaint No. R9-2015-0110 for Administrative Civil Liability against San Altos-Lemon Grove, LLC, for \$848,374 for violations of State Water Resources Control Board Order No. 2009-0009-DWQ, as amended. The San Diego Water Board may meet in closed session to consider evidence received in an adjudicative hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]. This item is subject to previously issued hearing procedures and deadlines. *(Deborah Jayne)*

Chair Abarbanel gave the gavel to Mr. Morales to chair this hearing.

Mr. Gibson provided an introduction for the item.

Mr. Morales provided an overview of the procedure, and administered the oath. Ms. Warren disclosed that she had been co-counsel with Ms. Beresford, an attorney for San Altos, LLC, on another matter, and that this past association would not affect her decision on this matter.

Frank Melbourn introduced the Prosecution Team, and Mr. Melbourn, Wayne Chiu, and Chiara Clemente gave the staff presentation and responded to Board Member questions.

Mr. Morales recessed for lunch at 12:42 p.m. and reconvened the meeting at 1:27 p.m. There were no Closed Session items during lunch.

Linda Beresford, an attorney for San Altos-Lemon Grove conducted cross examination. Wayne Rosenbaum made a presentation.

Mr. Morales recessed at 3:06 p.m. and reconvened the meeting at 3:15 p.m.

Michael McSweeney, Senior Public Policy Advisor for BIA, and Jon Shardlow, an attorney for Cal West General Engineering, spoke as interested persons.

Mr. Rosenbaum made closing arguments for San Altos, LLC.

Laura Drabandt and Mr. Smith made closing arguments for the Prosecution Team.

Mr. Morales closed the public hearing at 3:58 p.m., and the Board recessed for Closed Session at that time.

Item 13 – *Closed Session*—Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]. The San Diego Water Board may meet in closed session to discuss ongoing litigation for the following cases:

Civil Actions (Judicial and Administrative, other than Petitions for Review filed with the State Water Board)

- a. *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)*
- b. *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), pending at Court of Appeal. (Catherine George Hagan)*
- c. *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)*
- d. *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). (Catherine George Hagan)*
- e. *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) (Inactive per Test Claimants' request pending outcome of related litigation). (Catherine George Hagan)*
- f. *Coastal Environmental Rights Foundation, a CA non-profit public benefit corporation v. California Regional Water Quality Control Board, San Diego Region. Petition for Writ of Administrative Mandamus. San Diego County Superior Court, Case No. 37-2014-00038672-CU-WM-CTL (filed November 2014) (Challenging NPDES General Permit for Residual Firework Pollutant Waste Discharges to Waters of the United States, San Diego Region, Order No R9-2011-0022). (Ben Neill)*

- g. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001 (Regional MS4 Permit) filed with Commission on State Mandates by County of San Diego. (San Diego Region Water Permit – County of San Diego, Test Claim No. 14-TC-03 (filed June 2015). (Inactive per Test Claimants' request pending outcome of related litigation). (Catherine George Hagan)*
- h. *San Diego Gas & Electric Company v. San Diego Regional Water Quality Control Board. Petition for Writ of Administrative Mandamus. San Diego County Superior Court Case No. 37-2015-00032608-CU-WM-CTL (filed September 2015) (Challenging Cleanup and Abatement Order No. R9-2012-0024 for San Diego Bay Shipyard Sediment Site). (Catherine George Hagan)*

Petitions for Review Pending Before State Water Resources Control Board¹

- i. *Petitions for review of Order No. R9-2015-0100 amending the Regional MS4 Permit to incorporate Riverside County Copermittees, adopted November 18, 2015, filed by San Diego Coastkeeper/Coastal Environmental Rights Foundation, Rancho Santa Margarita, City of Laguna Hills, County of Orange and Orange County Flood Control District, City of Mission Viejo, City of Laguna Niguel, Riverside County Flood Control and Water Conservation District, the County of Riverside and the Cities of Murrieta, Temecula, Wildomar, (SWRCB/OCC File A-2456(a) through (i)) and Cities of Aliso Viejo, Dana Point, Laguna Beach, San Clemente, San Juan Capistrano (SWRCB/OCC File A-XXXX) (filed December 2015). (Wayne Chiu)*

This Closed Session was not held.

Item 14 – *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 concerning matters within its jurisdiction or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]. (David Gibson)

This Closed Session was not held.

Item 15 – *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 adjudicative 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 concerning Item 12; deliberations were continued to a subsequent closed session.

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 generally not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at Catherine.Hagan@waterboards.ca.gov or 619-521-3012 for more information.

Item 16 – 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.

A quorum of the Board consisting of Chair Abarbanel, Mr. Anderson, Dr. Olson, and Ms. Warren reconvened the public meeting. There being no further business, the meeting was adjourned at 5:02 p.m..

These minutes were prepared by:

Signed by:

Christina Blank
Executive Assistant

David Gibson
Executive Officer

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