



**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**Wednesday, October 10, 2018 – 9:00 a.m.
Board Hearing Room – Suite 108
San Diego Regional Water Quality Control Board
2375 Northside Drive, San Diego, California 92108**

MEETING NOTICE AND AGENDA¹

DECLARATION OF A QUORUM

Tomas Morales, Chair; Henry Abarbanel, Ph.D., Vice Chair; Eric Anderson, Board Member; Betty H. Olson, Ph.D., Board Member; Gary Strawn, Board Member; Stefanie Warren, Board Member.

BOARD MEETING

Public comments on agenda items will be limited to 3 minutes or otherwise at the discretion of the Board Chair

PUBLIC FORUM

Any member of the public may address and ask questions of the Board relating to any matter within the San Diego Water Board's jurisdiction provided the matter is not on the agenda, or pending before the San Diego Water Board.

BOARD BUSINESS

1. The Board will consider adoption of the September 12, 2018 Board Meeting minutes.
2. Chair's, Board Members', State Board Liaison's, and Executive Officer's Reports.
3. Future Agenda Items: Recommended Course of Action and Estimated Staff Hours to address Action Items from the September 2018 Board Meeting. *(James Smith)*

CONSENT CALENDAR

4. NPDES Permit Reissuance: Waste Discharge Requirements for the San Diego Gas and Electric Company, Palomar Energy Center, Discharge to the San Elijo Ocean Outfall (Tentative Order No. R9-2018-0062, NPDES No. CA0109215). *(Joann Lim)*
5. NPDES Permit Reissuance: Stone Brewing Company, San Elijo Ocean Outfall (Tentative Order No. R9-2018-0063, NPDES No. CA0109258). *(Joann Lim)*

INFORMATIONAL ITEM

6. State of the Ocean Report by the City of San Diego on Status and Trends of Water Quality Conditions in the Vicinity of Point Loma and South Bay Ocean Outfalls. *(Keith Yaeger)*

¹ Versión en español disponible en https://www.waterboards.ca.gov/sandiego/board_info/agendas/

ACTION ITEM

7. Tentative Resolution Adopting the Triennial Review of the Basin Plan (Tentative Resolution No. R9-2018-0123). (*Jody Ebsen*)

CLOSED SESSIONS

Closed Sessions are not open to the Public

8. Discussion of Ongoing Litigation [Authorized under Government Code §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). (Catherine George Hagan)*
- c. *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)*
- d. *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)*
- e. *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). (Catherine George Hagan)*

- f. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100 (Regional MS4 Permit) filed with the Commission on State Mandates by Orange County Copermittees, Test Claim No. 15-TC-02 (filed June 2016). (Catherine George Hagan)*
- g. *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)*
- h. *San Altos-Lemon Grove, LLC. v. California Regional Water Quality Control Board, San Diego Region, a State of California Agency, David Gibson, Executive Officer, California Regional Water Quality Control Board, San Diego Region. Petition for Writ of Mandate. San Diego County Superior Court Case No. 37-2017-00012461-CU-WM-CTL (filed April 2017) (challenging Administrative Civil Liability Order No. R9-2016-0064). (Catherine George Hagan)*
- i. *People of the State of California, ex. rel. The San Diego Regional Water Quality Control Board v. Paul Lee Warren, et al., Complaint for Declaratory and Injunctive Relief Based on Violations of the California Water Code. San Diego County Superior Court, North County Division, Case No. 37-2017-00024906-CU-TT-NC (filed July 10, 2017). (Catherine George Hagan)*
- j. *San Diego Regional Water Quality Control Board, et al., v. Paul Warren, San Diego County Superior Court, Central Division, Case No. 37-201740038307-CU-PT-CTL (filed October 13, 2017). (Catherine George Hagan)*
- k. *Ecology Auto Parts, Inc. v. California Regional Water Quality Control Board, San Diego Region, and State Water Resources Control Board, Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, San Diego County Superior Court, Case No. 37-2017-00047177-CU-MC-CTL (filed December 8, 2017) (challenging July 14, 2017, amendment to Cleanup and Abatement Order No. R9-2013-0122). (Catherine George Hagan)*
- l. *Burrtec Waste Industries, Inc. v. California Regional Water Quality Control Board, San Diego Region, and David W. Gibson, Executive Officer. Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, San Diego County Superior Court, Case No. 37-2017-00047432-CU-MC-CTL (filed December 8, 2017) (challenging July 14, 2017, amendment to Cleanup and Abatement Order No. R9-2013-0122). (Catherine George Hagan)*
- m. *People of the State of California, Ex. Rel. the Regional Water Quality Control Board, San Diego Region v. International Boundary and Water Commission, United States Section, Jose Nunez, in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section. Complaint for Declaratory and Injunctive Relief (Clean Water Act 33 U.S.C. §1251 et seq.), United States District Court for the Southern District of California, Case No. [not yet assigned], filed September 4, 2018. (David Gibson)*

Petitions for Review Pending Before the State Water Board²

None at this time other than those being held in abeyance.

9. 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*)
10. 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 §11126(c)(3)].
11. 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 §11126(a)].

² 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.

IMPORTANT INFORMATION!!

Unless otherwise specified, submittal of written comments **must be received by 5:00 p.m. on Tuesday, October 2, 2018 and should indicate the agenda item to which it is applicable.** If the submitted written material is more than 5 pages or contains foldouts, color graphics, and/or maps, two copies must be submitted. **Written material submitted after 5:00 p.m. on Tuesday, October 2, 2018 will not be provided to the Board members and may not be considered by the San Diego Regional Water Quality Control Board (See Note D, attached to this Notice).**

Agenda and items will be available electronically at: https://www.waterboards.ca.gov/sandiego/board_info/agendas/

*Items on the uncontested items calendar may be removed at the request of any Board member or person. If an item is removed from the uncontested items calendar, it will only be voted on at this meeting if the Board accepts the staff recommendation for the agenda item. Otherwise, the item will be continued to a subsequent board meeting to allow input by interested persons.

Video broadcast of meetings will be available at: <https://video.calepa.ca.gov/>

The San Diego Water Board's use of video broadcast is a courtesy and is for informational purposes only. It is not always reliable and is not a substitute for personal attendance at a Board meeting.

Follow the Board Meeting on Twitter: <https://www.twitter.com/SDWaterBoard/>

The San Diego Water Board's use of Twitter is a courtesy and is for informational purposes only. It is not always reliable, and is not a substitute for personal attendance at a Board meeting.

DIRECTIONS TO MEETING

From Downtown: Green Line light rail towards Santee to Fenton Parkway Station. Walk to 2375 Northside Drive (about 9 minutes). Head northwest on Fenton Parkway to Northside Drive. Right on Northside Drive.

I-15 north – take the Friars Road West exit (toward Qualcomm Stadium) – follow signs to stay on Friars Road. Turn left onto Northside Drive. Turn left at first signal (Fenton Marketplace Drwy). Our building is located at the end of the court – veer to the left into the parking structure. Parking will be validated for the parking structure.

From the North: Pacific Surfliner Train 572 towards San Diego Santa Fe Depot. Walk to San Diego Old Town Transit Center (about 1 minute). Green Line light rail towards Santee to Fenton Parkway Station. Walk to 2375 Northside Drive (about 9 minutes). Head northwest on Fenton Parkway to Northside Drive. Right on Northside Drive.

I-15 south – take the Friars Road West exit – follow signs to stay on Friars Road. Turn left onto Northside Drive. Turn left at first signal (Fenton Marketplace Drwy). Our building is located at the end of the court – veer to the left into the parking structure. Parking will be validated for the parking structure.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
Summary of Board Actions and Proceedings
At the September 12, 2018 Board Meeting

MINUTES

REGIONAL BOARD ACTIONS

Minutes of the August 8, 2018 Board Meeting.

NON- CONSENT ITEMS

Item 4 – Update by the City of San Diego on Construction Management Program. (*Laurie Walsh*)

Informational Item only; no action taken.

Item 5 – Water Board Cannabis Program – Implementation Status in Southern California Regions 4, 8, and 9. (*Eric Lindberg*)

Informational Item only; no action taken.

Item 6 – NPDES Permit Reissuance: Waste Discharge Requirements for the Encina Wastewater Authority, Encina Water Pollution Control Facility and Satellite Wastewater Treatment Plants Discharge to the Pacific Ocean Outfall (Tentative Order No. R9-2018-0059, NPDES No. CA 0107395). (*Joann Lim*)

NOTES:

- A. GENERAL STATEMENT. The primary duty of the San Diego Water Board is to protect the quality of the waters within the region for all beneficial uses. This duty is implemented by formulation and adoption of water quality plans for specific ground or surface water basins and by prescribing and enforcing requirements on all domestic and industrial waste discharges. Responsibilities and procedures of the Regional Water Quality Control Board come from the State's Porter-Cologne Water Quality Act and the Nation's Clean Water Act.

The purpose of the meeting is for the Board to obtain testimony and information from concerned and affected parties and make decisions after considering the recommendations made by the Executive Officer.

All interested persons may speak at the San Diego Water Board meeting and are expected to orally summarize their written submittals. Testimony should be presented in writing prior to the meeting and only a summary of pertinent points presented orally. Oral testimony (i.e., direct testimony or comment) will be limited in time by the Board Chair (typically 3 minutes for interested persons and no more than 10 minutes for designated parties). A timer may be used and speakers are expected to honor the time limits.

- B. PROCEDURE FOR CONSENT (UNCONTESTED) CALENDAR (see also Title 23, Cal. Code of Regs., § 647.2) Consent or uncontested agenda items are items for which there appears to be no controversy and which can be acted upon by the San Diego Water Board with no discussion. Such items have been properly noticed and all interested parties consent to the staff recommendation. The San Diego Water Board Chair will recognize late revisions submitted by staff and will then call for a motion and vote on all of the consent calendar items by the San Diego Water Board.

If any San Diego Water Board member or member of the public raises a question or issue regarding an item that requires San Diego Water Board discussion, the item may be removed from the consent calendar and considered separately in an order determined by the Chair. Anyone wishing to contest a consent item on the agenda is expected to appear in person at the San Diego Water Board meeting and explain to the San Diego Water Board the reason that it is contested.

- C. PROCEDURE FOR INFORMATION ITEMS (see also Title 23, Cal. Code of Regs., §649, et. seq.). Information items are items presented to the San Diego Water Board for discussion only and for which no San Diego Water Board action or vote is normally taken. The San Diego Water Board usually will hear a presentation by staff, but may hear presentations by others. Comments by interested persons shall also be allowed. Members of the public wishing to address the San Diego Water Board on the topic under discussion should submit a speaker card beforehand indicating their request to speak to the San Diego Water Board. Comment from the public should be for clarification or to add to the San Diego Water Board's understanding of the item; such comment must not be testimonial in nature or argumentative, as speakers are not under oath and the proceeding is not adversarial. Time limits may be imposed on interested persons.
- D. PROCEDURES FOR NON-CONSENT (CONTESTED) AGENDA ITEMS. Non-consent or contested agenda items are items to which the parties involved have not consented and the staff recommendation is in dispute. The procedure that applies to such items depends on the nature of the matter. Matters before the San Diego Water Board may be quasi-legislative or quasi-judicial (adjudicative proceedings). Such items may require a public hearing and all interested persons will be provided an opportunity to make comments.

Contested Adjudicative Matters

Contested agenda items that are adjudicative, not quasi-legislative, are governed by the rules for adjudicative proceedings. State Water Resources Control Board (State Water Board) regulations setting forth the procedures for adjudicative proceedings before the State and Regional Water Boards are codified in Title 23, California Code of Regs., Division 3. Adjudicative proceedings before the State and Regional Water Boards are governed by State Water Board regulations as authorized by Chapter 4.5 of the Administrative Procedures Act (commencing with §11400 of the Government Code). State Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with §800-805 of the Evidence Code and §11513 of Chapter 5 of the Government Code. (Other provisions of Chapter 5 of the Government Code do not apply to adjudicative proceedings before the State and Regional Water Boards). A copy of those regulations and Chapter 4.5 of the Administrative Procedures Act, §11513 of the Government Code and §801-805 of the Evidence Code can be found at https://www.waterboards.ca.gov/laws_regulations/.

An adjudicative proceeding is a hearing to receive evidence for determination of facts pursuant to which the State or Regional Water Board formulates and issues a decision. A decision determines a legal right, duty, privilege, immunity or other legal interest of a particular person or persons. Examples of adjudicative proceedings include hearings to receive evidence concerning the issuance of waste discharge requirements or National Pollutant Discharge Elimination System (NPDES) permits, concerning cease and desist orders, and concerning orders imposing administrative civil liability. Adjudicative proceedings are not conducted according to the technical rules of evidence, and the San Diego Water Board will accept testimony and comments that are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded.

In some adjudicative matters, most frequently administrative civil liability matters, a separate Hearing Procedures Document has been issued. In those cases, the procedures set forth in that Document will apply, subject to discretionary modification by the Chairman. For other adjudicatory matters, the Chair may establish specific procedures for each item, and consistent with Title 23, Cal. Code of Regs., §648, subd. (d) may waive nonstatutory provisions of the regulations. Generally, all witnesses testifying before the San Diego Water Board must affirm the truth of their testimony and are subject to questioning by the Board Members.

Absent a separate Hearing Procedures Document, the Board normally conducts adjudicative proceedings in an informal manner. That is, the Board does not, generally, require the designation of parties, the prior identification of witnesses, prior submission of written testimony, or the cross examination of witnesses. Any requests for an alternate hearing process should be directed to the Executive Officer and must be received by the San Diego Water Board by the deadline set forth on pages 1-2 of the Agenda.

When the San Diego Water Board determines that a hearing will be formal (as opposed to informal, as described above), participants in a contested agenda item are either “designated parties” or “interested persons.” Only designated parties will have the right to cross-examination, and may be subject to cross-examination. Interested persons (i.e., nondesignated parties) do not have a right to cross-examination, but may ask the San Diego Water Board to clarify testimony. Interested persons may also be asked to clarify their statements at the discretion of the San Diego Water Board.

Designated parties include:

- Discharger or Responsible Party
- Persons directly affected by the discharge
- Staff of the San Diego Water Board (if specified in the applicable hearing procedures)

All other persons wishing to testify or provide comments for a formal hearing are “interested persons” and not “designated parties.” Such interested persons may request status as a designated party for purposes of the formal hearing by submitting such request in writing to the San Diego Water Board no later than the date specified at the beginning of the Agenda Notice or in the applicable Notice of Public Hearing or Hearing Procedures Document. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for formal hearings generally will be as follows, unless modified by the San Diego Water Board Chair:

- Testimony and cross-examination of San Diego Water Board staff
- Testimony and cross-examination of discharger
- Testimony and cross-examination of other designated parties
- Testimony by interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close hearing
- Deliberation and voting by San Diego Water Board

Closing statements shall be for the purpose of summarization and rebuttal and are not to be used to introduce new evidence or testimony. After considering evidence, testimony, and comments, the San Diego Water Board may choose to adopt an order regarding a proposed agenda item.

Quasi-legislative Matters

Quasi-legislative matters include rulemaking and some informational proceedings. These matters may include hearings for the adoption or amendment of regulations, water quality control plans, and hearings to gather information to assist the State and Regional Water Boards in formulating policy for future action. They are not adjudicative proceedings and are subject to different procedures. (See PROCEDURE FOR INFORMATION ITEMS, above, and Title 23, Cal. Code of Regs., §649, et seq.)

- E. **CONTRIBUTIONS TO SAN DIEGO WATER BOARD MEMBERS.** Persons applying for or actively supporting or opposing waste discharge requirements or other San Diego Water Board orders must comply with legal requirements if they or their agents have contributed or proposed to contribute \$250 or more to the campaign of a San Diego Water Board member for elected office. Contact the San Diego Water Board for details if you fall into this category.
- F. **PROCEDURAL INFORMATION.** The San Diego Water Board may meet in closed session to discuss matters in litigation, including discussion of initiated litigation, significant exposure to litigation, or decisions to initiate litigation [Authority: Government Code § 11126(e)]; deliberate on a decision to be reached based upon evidence introduced in an adjudicatory hearing [Authority: Government Code § 11126(d)]; or to consider the appointment, employment or dismissal of a public employee to hear complaints or charges brought against a public employee [Authority: Government Code §11126(a)].

The San Diego Water Board may break for lunch at approximately noon at the discretion of the Chairman. During the lunch break San Diego Water Board members may have lunch together. Other than properly noticed closed session items, San Diego Water Board business will not be discussed.

Agenda items are subject to postponement. A listing of postponed items will be posted in the meeting room. You may contact the designated staff contact person in advance of the meeting day for information on the status of any agenda item.

Speaker Cards. All persons desiring to address the San Diego Water Board are required to fill out a speaker card. Cards are normally provided near the entrance to the meeting room. San Diego Water Board staff can assist you in locating the cards.

Please fill out a separate card for each item you plan to speak on. All relevant sections, including the oath, must be completed. Please use the appropriate color card, as indicated below:

- Blue: Public Comments (for items requiring no San Diego Water Board action—Public Forum, status reports, etc.).
- Green: Public Testimony, in support of the tentative action.
- Pink: Public Testimony, opposed to the tentative action.

- G. AVAILABILITY OF EXECUTIVE OFFICER'S REPORT AND AGENDA MATERIAL. Visit our website at <https://www.waterboards.ca.gov/sandiego/> to view the Executive Officer's Report over the internet two days prior to the San Diego Water Board meeting. A copy can also be obtained by contacting the staff office. A limited number of copies are available at the meeting.

Copies of most agenda items to be considered by the San Diego Water Board are posted as available on the San Diego Water Board's website at https://www.waterboards.ca.gov/sandiego/board_info/agendas/.

Details concerning other agenda items are available for public reference during normal working hours at the San Diego Water Board's office. The appropriate staff contact person, indicated with the specific agenda item, can answer questions and provide additional information. For additional information about the Board, please see the attached sheet.

- H. PETITION OF SAN DIEGO WATER BOARD ACTION. In accordance with California Water Code §13320 and Title 23, Cal. Code of Regs., §2050 et seq., any person affected adversely by most decisions of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may petition the State Water Resources Control Board (State Board) to review the decision. The petition must be received by the State Board within 30 days of the San Diego Water Board's meeting at which the adverse action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.
- I. HEARING RECORD. Material presented to the Board as part of testimony (e.g. photographs, slides, charts, diagrams etc.) that is to be made part of the record must be left with the Board. Photographs or slides of large exhibits are acceptable.

All Board files, exhibits, and agenda material pertaining to items on this agenda are hereby made a part of the record.

- J. ACCESSIBILITY. The facility is accessible to people with disabilities. Individuals who have special accommodation or language needs, please contact Ms. Chris Blank at (619) 521-3382 or Christina.Blank@waterboards.ca.gov at least 5 working days prior to the meeting. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

- K. PRESENTATION EQUIPMENT. Providing and operating projectors and other presentation aids are the responsibilities of the speakers. Some equipment may be available at the Board Meeting; however, the type of equipment available will vary dependent on the meeting location. Because of compatibility issues, provision and operation of laptop computers and projectors for Power Point presentations will generally be the responsibility of the individual speakers. To ascertain the availability of presentation equipment please contact Ms. Chris Blank at (619) 521-3382 or Christina.Blank@waterboards.ca.gov at least 5 working days prior to the meeting.