

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

MINUTES OF MEETING
NOVEMBER 8, 2006

At 9:00 a.m. Chairman Minan called to order the regular 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.

Item 1 – Roll Call and Introductions: Board Members Present: John Minan, Richard Wright, Eric Anderson and Daniel Johnson.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, Mark Alpert, John Anderson, Brian Kelley, Chiara Clemente, David Gibson, James Smith, Julie Chan, Pete Michael, Craig Carlisle, John Odermatt, Bruce Posthumus, Frank Melbourn, Melissa Valdovinos, Alan Monji, Lisa Honma, Mike Porter, Jody Ebsen, Chris Means, Wayne Chiu, Ben Neill, Jeremy Haas, Robert Pierce, and Michelle Mata.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards and Gerald Secundy. Jan White & Associates Reporting: Janet White. Public Attendance: Alan Langworthy, Tim Stebbees – City of San Diego; Geoffrey Smith – Escondido Creek Conservancy; Wayne Rosenbaum – Foley & Lardner; Laura Hunter – Environmental Health Coalition; Jim Peugh – SD Audubon Society; Megan Johnson – Southern California Wetlands Recovery Project; Tershia d’Elgin – Canyon Task Force; Kathleen Flannery, Cecilia Padres – County of San Diego; Gabriel Solmer – San Diego Coastkeeper; Malik Tamimi – City of La Mesa; Jane Ledford – Rick Engineering Corp.; Weutzelee Bother – Daley & Heft; Edgard Bertaut – TDY Industries; Larry Dees – Moulton Niguel Water; Sandor Halvax – BAB Systems; and Sarah Ortolf Diessner – Thomas Jefferson Law School.

Chairman Minan announced that he filed an application for reappointment.

Board Member Susan Ritschel arrived at 9:05 a.m.

Item 2 – Public Forum

Wayne Rosenbaum, Foley & Lardner, thanked Chairman Minan for his service on the Board.

Laura Hunter, Environmental Health Coalition, thanked Mr. Robertus for his comments on Environmental Justice issues at the Port Environmental Advisory Committee meeting. Ms. Hunter also talked about the importance of the Regional Board to

evaluate and weigh in on draft environmental impact reports and spoke specifically about the current Chula Vista Bay Front master plan.

Mr. Robertus said he would have staff review the water quality aspects of the plan.

Staff participation in CEQA reviews was also discussed by Board Members and Mr. Robertus.

Item 3 – Minutes of Board Meeting of October 11, 2006

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. Wright moved approval of the October 11, 2006 minutes. The motion was seconded by Ms. Ritschel 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.

Ms. Ritschel, Mr. Wright, and Chairman Minan reported on issues that were discussed at the Water Quality Coordinating Committee meeting they attended on October 30 and 31 in Sacramento.

Chairman Minan reported that he spoke at the San Diego Environmental Professionals organization on Past Reflections and Future Predictions.

Gerald Secundy, State Board Liaison, reported on the WQCC, 303(d) List, Compliance Schedule for the San Diego Regional Board's Basin Plan, atmospheric depositions, and CIWICS.

Chairman Minan asked senior staff member Michael McCann to report on the San Diego River Conservancy meeting he attended in October. Mr. McCann announced that Michael Nelson of Point Loma was named the new Executive Officer of the Conservancy.

Chairman Minan presented Ms. Julie Chan, supervisor of the Water Quality Standards Unit, with a Customer Service Award.

Mr. Robertus reported that Mr. Wright would be attending the November 14 Wetlands Recovery Project meeting in Los Angeles, and Ms. Kraus would be speaking at the November 14 Industrial Environmental Association meeting in San Diego. He also reported on the Port District Environmental Fund, his presentation at the November 15 State Board meeting, and his attendance at the November 17 conference on Cross Media Pollution in Ontario.

Mr. Robertus also reported on the Pulte Homes Enforcement Settlement. Chairman Minan asked Mr. Robertus to contact U.S. EPA and remind them that the Regional Board deferred its own action against Pulte Homes at the request of U.S. EPA and to determine if there was any remaining claim the Regional Board might have in U.S. EPA's pending multi-state settlement.

Board Members, Jerry Secundy, and staff discussed the Grants Update item and the Regional Board's roll in the Grants Program.

Mr. Robertus reported that the \$1,000 civil liability imposed against Excellent Coatings, Inc. at the October 11, 2006 Board meeting could not be reduced as requested. He said that Water Code Section 13399.31 established the Mandatory Minimum Penalty as an amount that was "not less than" one thousand dollars.

Chairman Minan announced that Items 5, 7 and 9 were postponed.

Consent Items 5-7, and 13a:

Item 5 – Waste Discharge Requirements: Sewage Collections Agencies in the San Diego Region. The Regional Board will consider adoption of an Order that will augment State Water Board Order No. R9-2006-003-DWQ and supersede current Regional Board Order No. 1996-004 reaffirming the Regional Board's prohibition of sanitary sewer overflows. (Tentative Order No. R9-2006-0121) (*Joann Cofrancesco*)

Item 5 was postponed.

Item 6 – Approval of ACL Settlement: Poway Unified School District, Garden Road Elementary School, San Diego County (tentative Order No. R9-2006-0127) (*Chiara Clemente*)

Senior staff member Chiara Clemente explained the supplemental materials.

Item 7 – New NPDES Permit: San Diego State University Research Foundation Coastal Waters Laboratory discharge to San Diego Bay, San Diego County (tentative Order No. R9-2006-0088, NPDES No. CA0109231) (*Victor Vasquez*)

Item 7 was postponed.

Item 13a – Proposed Settlement of Litigation: The Regional Board will consider accepting a settlement agreement resolving litigation brought by WILLIAM P. JOHNSON, and VAIL LAKE USA, LLC, to challenge administrative assessment of civil liability for alleged violations of the statewide NPDES requirements for storm water discharges associated with construction activity. [*WILLIAM P. JOHNSON, an individual, and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER*

QUALITY CONTROL BOARD - SAN DIEGO, a State of California board and DOES 1-50; Case No. GIC815227, Superior Court of the State of California for the County of San Diego; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027.] (Frank Melbourn)

Ms. Ritschel made a motion to approve Consent Items 6 and 13a. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 8 – NPDES Permit Reissuance: Waste Discharge Requirements for the City of San Diego South Bay Water Reclamation Plant Discharge to the Pacific Ocean via the South Bay Ocean Outfall (tentative Order No. R9-2006-0067, NPDES Permit No. CA0109045) (*Melissa Valdovinos*)

Mr. Johnson disclosed that the City of San Diego was a client of his firm on unrelated matters and felt his participation would not pose a conflict of interest. Mr. Richards concurred.

Mr. Robertus introduced the item and staff member Melissa Valdovinos gave the presentation.

Alan Langworthy, Deputy Director, City of San Diego Metropolitan Waste Water Department, thanked the Regional Board staff and recommended approval of the Order.

Mr. Robertus also recommended approval of the Order with errata.

Ms. Ritschel made a motion to approve Order No. R9-2006-0067 with errata. The motion was seconded by Mr. Wright and approved by unanimous vote.

Item 9 – PUBLIC HEARING: Administrative Assessment of Civil Liability against Dakota Ranch Development Co., LLC for violation of its Clean Water Act Section 401 Water Quality Certification issued on January 30, 2003 for the Dakota Ranch Subdivision, Santee, California. The Regional Board will consider whether to raise, lower, or reject assessment of \$140,000 civil liability recommended in Complaint No. R9-2005-0176. (Tentative Order No. R9-2006-0010) (*Frank Melbourn*)

Item 9 was postponed.

Item 10 – PUBLIC HEARING: Addendum to Cleanup and Abatement Order (CAO) to TDY Industries, Inc (f/k/a Teledyne Industries, Inc.), TDY Holdings, LLC, and Teledyne Ryan Aeronautical Company, which establishes a March 31, 2007 due date for submittal of a Remedial Investigation/Feasibility Study (RI/FS) report. (Tentative Addendum No. 2 to Order No. R9-2004-0258) (*John Anderson*)

Mr. Robertus introduced the item and senior staff member John Anderson gave the presentation.

Mr. Robertus made comments and recommended approval of the addendum to the Order.

Mr. Johnson made a motion to approve Addendum No. 2 to Order No. R9-2004-0258. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Item 11 – Supplemental Environmental Projects (SEPs): The Regional Board will review current practices for allowing, developing, selecting, funding and managing SEPs derived from the settlement of administrative civil liability (ACL) actions and other related enforcement actions. The Regional Board may provide direction to staff. (*Mark Alpert*)

Mr. Robertus introduced the item and senior staff member Mark Alpert gave the presentation.

Mr. Richards and Mr. Alpert answered questions asked by the Board. Mr. Robertus made comments.

Other speakers included:

Geoffrey Smith – Escondido Creek Conservancy

Jim Peugh – Audubon Society

Megan Johnson – Wetlands Recovery Project

Tershia d'Elgin – Coastal Canyon Task Force

Kathleen Flannery – County of San Diego, for the Regional Water Management Group

Gabriel Solmer, San Diego Coastkeeper

Board Members discussed different options which included cost recovery, maintenance of a library of projects and applicants, and management of the projects.

Mr. Robertus made comments and recommendations.

The meeting was recessed for lunch at 12:15 and reconvened at 1:05 p.m.

Item 11 – Continued

Board Members continued their discussion on SEPs. SEP funding options were discussed.

Item 12 – Approval of Year 2007 Board Meeting Schedule (*John Robertus*)

Mr. Johnson made a motion to approve the Year 2007 Board Meeting schedule. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Item 13 – *Executive Session* - Discussion of Ongoing Litigation

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

WILLIAM P. JOHNSON, an individual; and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD – SAN DIEGO, a State of California board and DOES 1-50. Superior Court of the State of California for the County of San Diego, Case No. GIC815227; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027 for violations of the statewide Construction Storm Water Permit, Order No. 99-08-DWQ.

Divers' Environmental Conservation Organization v. State Water Resources Control Board, San Diego Superior Court, Case No. GIC819689. Petition for Writ of Mandate challenging waste discharge requirements for U.S. Navy, Naval Station San Diego based on absence of numeric effluent limits for toxic pollutants in discharges of storm water.

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 822750. Verified Petition for Writ of Mandate for Breach of Contract.

Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region. San Diego Superior Court, Case No. GIC 824706. Verified Petition for Writ of Mandate for Breach of Contract.

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.. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61

San Diego Unified School District, a public school district, Plaintiff v. County of San Diego, a public entity, San Diego Regional Water Quality Control Board, a public entity and DOES 1 through 25, inclusive, Defendants. Superior Court of the State of California for the County of San Diego, Case No. GIC840390; First Amended Complaint for: 1) Breach of Contract-Lease Agreement, 2) Breach of Contract-Sharing Agreement, 3) Quantum Meruit; 4) Express Indemnity; 5) Implied Indemnity and Contribution; 6) Equitable Indemnity Contribution; 7) Nuisance; 8) Trespass; 9) Inverse Condemnation; 10) Preliminary and Permanent Injunction; 11) Declaration of

Relief Against the County of San Diego; and 12) Declaration of Relief Against the Regional Water Board and County.

Item 14 – *Executive Session* - Consideration of Initiation of Litigation (*John Robertus*)

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.

Item 15 – *Executive Session* - Discussion of Pending Litigation

The Regional Board may meet in closed session to discuss pending litigation:

Item 16 – *Executive 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 Executive Sessions, Items 13-16, were not held.

Item 17 - Arrangements for Next Meeting and Adjournment

Wednesday, December 13, 2006 - 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 2:00 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus