

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

MINUTES OF MEETING  
MAY 12, 2010

At 9:10 a.m. Chairman King called to order the meeting of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

**Item 1** – Roll Call and Introductions: Board Members Present: David King, Eric Anderson, Wayne Rayfield, Grant Destache, and Marc Luker.

Staff Present: James Smith, Julie Chan, David Barker, Lori Costa, Brian Kelley, Chiara Clemente, Eric Becker, Jeremy Haas, John Odermatt, Deborah Jayne, Craig Carlisle, DiAnne Broussard, Michelle Mata, Alan Monji, Sean McClain, Barry Pulver, Chris Means, Ben Neill, Amy Grove, Deborah Woodward, Chad Loflen, Cheryl Prowell, Kristin Schwall, Sue Pease, Rebecca Stewart, Frank Melbourn, Laurie Walsh, Christina Arias, Joann Cofrancesco, Lynn Berlad, Robert Pierce, Amy Mecklenborg, Mike Porter, and Helen Yu. Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, Fran Spivy-Weber, and Mayumi Okamoto. Kennedy Court Reporters – Brenda Martinez.

Public Attendance: Meg Rosegay, Randall Hickok, Larry Randel, David Byford, Brian Theaker, Dan Thompson, Monique Cornejo – Dynegy; Gabriel Solmer, Jill Witkowski, Jennifer Kovecses, Bruce Reznik – San Diego Coastkeeper; Andre Monette, Jack Adam, Don Thomson, Rick Aurenmdr – Sweetwater Authority; Tom Bosworth, Cid Tesoro – County of San Diego; Linda Wagner, Cheryl Cox, Steve Castaneda, Pamela Bensoussan – City of Chula Vista; David Mayer – Tenera Environmental; Laura Hunter – Environmental Heath Coalition; Andew Ulmer, Gregory Van Pelt, Ali Chowdhury, Dennis Peters – California ISO; Gerry Braun – self; Sharon Floyd – Chula Vista resident; Steve Peace – self; Jim Peugh – San Diego Audubon Society; David Alvarez – Representative for Senator Ducheny; Theresa Acerro – Southwest Civic Association; Robert Hoffman – National Marine Fisheries Service; Andrew Entingh, Scott Tewhoff, Marielle Coquia – Camp Pendleton; Mike Shelter, Dave Burchem – County of Riverside; Steve Freucel – Navy; Amy Comte – Caltrop; Ron Kemp, Glen Van Peski – City of Carlsbad; Nick Buttbe – Nautilus Environmental; Del Ross – EOAC; Lauren White, David Zoutendyk – US Fish & Wildlife Service; Lisa O’Neal – Brown and Winters; Con Kontaxis – Caltrans.

**Item 2** – Public Forum

Jerry Braun expressed his concern with the quality of water in Lake Hodges.

Mr. James Smith reported that the lake was on the 303(d) list. Staff member Alan Monji reported on the status of the 303(d) list.

Mr. Smith said he would include a report on the issue in the next EO Report.

Bruce Reznik, San Diego Coastkeeper, expressed their concerns about the continuing formalization of some of the processes involved in hearings; particularly cross examinations, depositions, and preparing formal written documents.

Mr. Rayfield suggested holding a workshop to address the procedural issues.

Ms. Catherine Hagan recommended that the Board include Mr. Reznik's comments in the Dynegy South Bay (*Item 13*) record as he referenced that item in his comments.

**Item 3** – Minutes of Board Meeting: February 10, 2010 and April 14, 2010  
*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 San Diego Water Board office for assistance.*

Mr. Anderson moved approval of the minutes of February 10, 2010 and April 14, 2010. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

**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.

Mr. Anderson reported that he attended the grand opening of the La Morita sewage facility in Tijuana. He said they made a lot of progress in the past ten years. Mr. Anderson said they also had a grand opening of a greenhouse facility for the production of one million trees per year.

Fran Spivy-Weber, State Board Member Liaison, reported on the budget situation, the 303(d) & 305(b) lists up for adoption, the construction general storm water permit training, the adoption of the Statewide Policy on Once-through Cooling, and the draft report on constituents of emerging concern. She also mentioned that due to the Governor's race, Board member confirmations would be slow.

Chairman King presented three Sustained Superior Accomplishment Awards to staff members Jeremy Haas, Chad Loflen, and Ben Neill.

***Consent Calendar:***

**Item 5** – Waste Discharge Requirements Revision: Barrett Lake Mobile Home Park, San Diego County (Ownership change) (Tentative Addendum No. 2 to Order No. 94-142) (*Cathryn Henning*)

**Item 6** – NPDES Permit Recission: Mountain Water Ice Company, Oceanside, San Diego County - An Order Rescinding Order No. R9-2005-0015, NPDES Permit No. CA0108391 and Time Schedule Order No. R9-2009-0047 (Tentative Order No. R9-2010-0028) (*Joann Cofrancesco*)

**Item 7** – NPDES Permit Reissuance: Waste Discharge Requirements for the Sweetwater Authority, Richard A. Reynolds Desalination Facility, discharge to the Lower Sweetwater Basin, San Diego County. (Tentative Order No. R9-2010-0012, NPDES Permit No. CA0108952) (*Michelle Mata*)

**Item 8** – Administrative Civil Liability against the County of San Diego Municipal Storm Water Program. The San Diego Water Board will consider adoption of a tentative Order that would accept an offer to settle administrative civil liability proposed in Complaint No. R9-2009-0089 for violation of construction storm water “wet season” requirements within the San Diego Municipal Storm Water Permit, Order No. R9-2007-0001. The proposed settlement supports the assessment of \$57,350. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony and consider assessment of liability. (Tentative Order R9-2010-0025) (*Frank Melbourn*)

**Item 9** – Administrative Civil Liability against the San Diego Unified School District, Bell Jr. High Landfill. The San Diego Water Board will consider adoption of a tentative Order that would accept an offer to settle administrative civil liability proposed in Complaint No. R9-2009-0175 for failure to submit semi-annual monitoring reports required by Order No. 97-11, General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills within the San Diego Region. The proposed settlement supports the assessment of \$155,000. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony and consider assessment of liability. (Tentative Order R9-2010-0020) (*Rebecca Stewart*)

**Item 10** – Administrative Civil Liability against the City of Carlsbad, Agua Hedionda Creek Emergency Dredge Project. The San Diego Water Board will consider adoption of a tentative Order that would accept a settlement reached in response to Notice of Violation No. R9-2008-0099 for alleged violations of Water Quality Certification No. 06C-0007. The proposed settlement supports the assessment of \$47,647 and requires the purchase of 3.58 acres of habitat mitigation. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony and consider assessment of liability. (Tentative Order R9-2010-0008) (*Frank Melbourne*)

**Item 11** – Administrative Civil Liability against the County of Riverside Municipal Storm Water Program. The San Diego Water Board will consider adoption of a tentative Order that would accept an offer to settle administrative civil liability proposed in Complaint No. R9-2009-0026 for violations of Order No. R9-2004-0001. The proposed settlement supports the assessment of \$234,291. If the San Diego Water Board rejects the tentative Order, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony and consider assessment of liability. (Tentative Order R9-2010-0008) (*Christina Arias*)

**Item 12** – NPDES Permit Revision: Carlsbad Desalination Project discharge to the Pacific Ocean via the Encina Power Station Discharge Channel, transfer of responsibility of Order No. R9-2006-0065, NPDES No. CA0109223, including implementation of the Flow, Entrainment and Impingement Minimization Plan, from Poseidon Resources Corporation to Poseidon Resources (Channelside) LLC (Tentative Order No. R9-2010-0073) (*Michelle Mata*)

Mr. Rayfield moved approval of Consent Calendar Items 5-12 with errata. The motion was seconded by Mr. Anderson and approved by unanimous vote.

***Remainder of the Agenda (Non-Consent Items):***

**Item 14** - Waste Discharge Requirements: United States Marine Corps, Las Pulgas Landfill, Marine Corps Base Camp Pendleton (Update of current waste discharge requirements in response to the design report for the Phase II lateral expansion of the landfill and in response to evidence of a release from the unlined portion of the landfill) (Tentative Order No. R9-2010-0004) (*Amy Grove*)

Staff member Amy Grove gave the presentation.

Board Members asked questions of Ms. Grove.

Chairman King asked questions of Mr. Andrew Entingh, Marine Corps Base Camp Pendleton.

Acting Executive Officer Smith recommended approval of the order with errata.

Mr. Rayfield moved approval of Order No. R9-2010-0004 with errata. The motion was seconded by Mr. Destache and approved by unanimous vote

**Item 13** – NPDES Permit Termination: Dynegy South Bay LLC, South Bay Power Plant Discharge to San Diego Bay, Order No. R9-2004-00154, NPDES No. CA0001368 The San Diego Water Board will consider adoption of Tentative Order No. R9-2010-0062 as proposed by staff. Alternatively, after hearing the evidence and testimony, the Board may decide to modify the Tentative Order to terminate the NPDES permit earlier than staff recommends, or the Board may decide not to take an action. Please note that the deadline for submitting written comments on this item was April 21, 2010 at noon in accordance with the Notice of Public Hearing which can be found at [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/npdes/southbay\\_power\\_plant/docs/updates\\_032310/Final\\_Public\\_Hearing\\_Notice\\_South\\_Bay\\_Power\\_Plant\\_May\\_2010.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/npdes/southbay_power_plant/docs/updates_032310/Final_Public_Hearing_Notice_South_Bay_Power_Plant_May_2010.pdf). The designated parties will be notified in advance how much time will be allowed for presentations. Interested persons are generally permitted 3 minutes to speak, but the time allowed may be modified at the discretion of the Chair. (Tentative Order No. R9-2010-0062) (*Kristin Schwall*)

Chairman King explained the hearing procedures.

Staff member Kristin Schwall gave the presentation.

Board Members asked questions of staff.

Other speakers:

Cheryl Cox – Mayor of Chula Vista

Steve Castaneda – Chula Vista Councilmember

Pamela Bensoussan – Chula Vista Councilmember

Meg Rosegay – Pillsbury Winthrop Shaw Pittman for Dynegy

Randall Hickok – Dynegy, Inc.

Michael Meecham – City of Chula Vista, cross-examined Mr. Hickok

David Mayer – Tenera Environmental

Gabriel Solmer – San Diego Coastkeeper, cross-examined Mr. Mayer

*The meeting was recessed for lunch and Closed Session at 12:15 p.m.*

**Item 18** - *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**

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Carlos Marin, an individual in his capacity as 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). (David Gibson)
- b. *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). (Brian Kelley)
- c. *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 Melbourne)
- d. *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)
- e. *William and Lori C. Moritz v. California Regional Water Quality Control Board, San Diego Region*, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2009-00093097-CU-WM-CTL (filed June 2009) (Christopher Means)

## Petitions for Review Pending Before State Water Resources Control Board

- f. Petition of NRDC, Inc. (Waste Discharge Requirements Order No. R9-2007-001 [NPDES No. CAS0108758] for Urban Runoff Discharges from the Municipal Storm Systems in the Incorporated Cities of San Diego, San Diego Unified Port District, and San Diego Regional Airport Authority, SWRCB/OCC File A-1830(c), filed February, 2007 (in abeyance).
- g. Petition of Natural Resources Defense Council and San Diego Coastkeeper (Executive Officer Approval of Countywide Model Standard Urban Stormwater Mitigation Plan for Development Applications), SWRCB/OCC File A-2010, filed April 2009 (in abeyance). (*Eric Becker*)
- h. Petition of Department of the Navy (Waste Discharge Requirements Order No. R9-2009-0081 [NPDES No. CA0109185] for the United States Department of the Navy, Naval Base Coronado, San Diego County), SWRCB/OCC File A-2032, filed July 2009. (*Vicente Rodriguez*)
- i. Petition of South Coast Water District and South Orange County Wastewater Authority (Administrative Civil Liability Order No. R9-2009-0048 for South Orange County Wastewater Authority, South Coast Water District Groundwater Recovery Facility, San Diego County), SWRCB/OCC File A-2035, filed July 2009. (*Jeremy Haas*)
- j. Petition of La Costa Town Square, LLC (Denial of Clean Water Act section 401 Water Quality Certification, La Costa Town Square Project, Application 09C-043, San Diego County), SWRCB/OCC File A-2039, filed August 2009 (in abeyance). (*Chiara Clemente*)
- k. Petition of San Juan Capistrano (Revised Cleanup and Abatement Order No. R9-2009-0124 for Chevron USA, Inc., and the City of San Juan Capistrano at Chevron Service Station No. 9-3417, 32009 Camino Capistrano, San Juan Capistrano, Orange County), SWRCB/OCC File A-2051, filed October 2009 (in abeyance). (*Barry Pulver*)
- l. Petition of South Coast Water District and South Orange County Wastewater Authority (Failure to Act to Modify NPDES Permit for Brine Discharge and Groundwater Recovery Facility, San Diego County), SWRCB/OCC File A-2072, filed January 2010. (*Brian Kelley*)

- m. Petitions of the City of Laguna Hills, the City of Laguna Niguel, the City of San Juan Capistrano, the City of Mission Viejo, the City of San Clemente, the City of Dana Point, the City of Laguna Woods, the County of Orange and Orange County Flood Control District, the City of Aliso Viejo, the City of Lake Forest, and the City of Rancho Santa Margarita (Waste Discharge Requirements Order No. R9-2009-0002 (NPDES No. CAS0108740), Orange County Municipal Separate Storm Sewer System (MS4) Permit), SWRCB/OCC Files A-2073(a)-(j), filed January 2010 (requests to hold in abeyance). (*Ben Neill*)
- n. Petition of Chevron (Revised Cleanup and Abatement Order No. R9-2009-0124 for Chevron USA, Inc. at Chevron Service Station No. 9-3417, 32009 Camino Capistrano, San Juan Capistrano, Orange County), SWRCB/OCC File A-2074, filed January 2010. (*Barry Pulver*)
- o. Petitions of American Salvage Inc., and Consolidated Electrical Distributors (CED) and Northbrook Properties, Inc. (NPI) (Cleanup and Abatement Order No. R9-2010-007), SWRCB/OCC Files A-2084 and 2084(a), filed February 2010 (requests to hold in abeyance). (*Lynn Berlad*)
- p. Petition of Vulcan Materials Company (Reconsideration of Clean Water Act Section 401 Water Quality Certification No. 08C-051 for Poway Mining Site, Vulcan Materials, San Diego County) SWRCB/OCC File A-2088, filed March 2010 (request to hold in abeyance). (*Mike Porter*)

The Closed Session was held and items c, d, and e were discussed.

**Item 19** – *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 against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]

The Closed Session was held.

*The meeting reconvened at 1:00 p.m.*



**Item 13** - Continued

Other speakers continued:

Andrew Ulmer – California ISO

Gregory Van Pelt – California ISO

Jill Witkowski – San Diego Coastkeeper, cross-examined Mr. Van Pelt

Ali Chowdhury – California ISO

Michael Meecham – City of Chula Vista, cross-examined Mr. Chowdhury

Jill Witkowski – San Diego Coastkeeper, also cross-examined Mr. Chowdhury

Gabriel Solmer – San Diego Coastkeeper

Jill Witkowski – San Diego Coastkeeper

Jennifer Kovecses – San Diego Coastkeeper

Meg Rosegay – Dynegy, cross-examined Ms. Witkowski

Laura Hunter – Environmental Health Coalition

Michael Meecham – City of Chula Vista

Mr. Ulmer – California ISO, Ms. Witkowski – San Diego Coastkeeper, and Ms. Rosegay – Dynegy, made closing comments.

Additional speakers:

Sharon Floyd – resident of Chula Vista

Teresa Acerro – Southwest Chula Vista Civic Association

Monique Cornejo – community of Chula Vista

Robert Hoffman – National Marine Fisheries Service

Jim Peugh – resident of San Diego

Staff members David Barker and Kristin Schwall answered questions asked by the Board.

Chairman King closed the hearing.

Mr. Smith recommended that the Board either adopt the order with errata or take no action.

Board Members deliberated.

Mr. Anderson moved approval of Order No. R9-2010-0062 with errata/clarifications by Ms. Hagan. Ms. Hagan distributed the language changes to the tentative order. She explained that the changes modified the order to reflect that the current permit was not being terminated at that time.

Chairman King recommended adding the word “shall” to the 3<sup>rd</sup> line of the last paragraph (...discharges from Units 1 & 2 at SPPB “shall” terminate as of December 31, 2010...). Mr. Anderson accepted the change to the errata.

The motion was seconded by Mr. Luker and approved by a 4-1 vote, with opposition by Mr. Rayfield.

**Item 15** - Adoption of Emergency, Abandoned, and Recalcitrant Annual Priority Site List: Former Santa Ysabel Chevron Service Station (Resolution No. R9-2010-0063) (*Craig Carlisle & Susan Pease*)

Senior staff member Craig Carlisle introduced the item and staff member Sue Pease gave the presentation.

Mr. Rayfield moved approval of Resolution No. R9-2010-0083. The motion was seconded by Mr. Destache and approved by unanimous vote.

**Item 4** – Continued

Mr. Smith pointed out the new searchable format of the EO Report. He also said staff was looking in to Twitter as a way of keeping the public informed of the status of agenda items during Board meetings. The Board members liked the idea.

**Item 16** - NPDES Permit Reissuance: U.S. Navy, Naval Base Coronado, San Diego County – Amendment to Order No. R9-2009-0081 for Steam Condensate Discharges (Tentative Order No. R9-2010-0057) (*Vicente Rodriguez*)

Item 16 was postponed.

**Item 17** - Informational Item: Groundwater Cleanup Activities at Marine Corps Base Camp Pendleton. Regional Board staff will provide a summary of the cleanup programs, status update on recent progress, and an explanation of current issues impacting groundwater at the only Federal Superfund Site in Region 9. (*Cheryl Prowell*)

Item 17 was postponed.

**Item 20** – *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 adjudicatory hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]

The Closed Session was not held.

**Item 21** – *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)]

The Closed Session was not held.

**Item 22** – Arrangements for Next Meeting and Adjournment

Wednesday, June 9, 2010 - 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 4:30 p.m.

These minutes were prepared by:

  
\_\_\_\_\_  
Lori Costa  
Executive Assistant

Signed by:

  
\_\_\_\_\_  
James Smith  
Assistant Executive Officer