

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

MINUTES OF MEETING
November 9, 2005

Chairman Minan called the regular meeting of the California Regional Water Quality Control Board, San Diego Region, to order at 9:00 a.m. at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call: Board Members Present: John Minan, Jennifer Kraus, Eric Anderson, Richard Wright, Susan Ritschel, Daniel Johnson and Janet Keller.

Staff Present: John Robertus, Arthur Coe, Michael McCann, David Barker, Lori Costa, Bob Morris, Brian Kelley, Julie Chan, John Anderson, Mark Alpert, John Odermatt, Dave Gibson, Craig Carlisle, Pete Michael, Frank Melbourn, Mike Porter, Phil Hammer, Chris Means, Laurie Walsh, Alan Monji, Deborah Woodward, Shuza Chavez, Dinh Son, Kristin Schwall, Jeremy Haas, Eric Becker, Pauline Lamphere, Cindy Warner, Sue Pease, Pete Peuron, Megan Quigley, Victor Vasquez and Jody Ebsen.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Jan White & Associates Reporting: Aimee Moore. Public Attendance: Graham Mitchell, Cora Long – City of Lemon Grove; Steven Jepsen, Mo. Lahsaie – City of Oceanside; Rebecca Pearl, Laura Hunter – Environmental Health Coalition; Richard Runge – SCWD; Malik Tamimi – City of La Mesa; David Hogan – Center for Biological Diversity; Jack Anderson – City of Escondido; Stephen Neudecker – Helix; Danis Bechter, Roger Morrison – City of Poway; Doris Chan, Peter Fagrell – Lennar; John Lormon, Bob Russell – Procopio Cory; Dave Seymour – SMWD; Kathy Flannery, Joseph DeStefano, Kelly Barker, Kevin Healn , Jon Van Rhyn, Tony Sawyer – County of San Diego; Geoffrey Smith – Escondido Creek Conservancy; John Nabors, David Shepherd – KB Home; Stan Johnson – Skyline Ranch; Alan Lebel – Invirotreat; Rosanna Lacarra – City of Del Mar; John Aloenzer – D-Max; Van Collinsworth – Preserve Wild Santee; John Phillips – El Cajon; Mary Borevitz – Neighbors of Aqua Hedionda; Joyce Clark – MWD; Kathy Weldon – City of Encinitas; Sandra Farrell, Mary Clarke – Friends of Hedionda Creek; Tom Guidugli – Resident of San Marcos; Michelle White – Port of San Diego; Barry Pulver – Dept. of Public Works; Jayne

Strammer – City of Carlsbad; Jason Uhley, Steve Stump – Riverside County Flood Control; Farida Naceem – City of Murrieta; Aldo Licitra – City of Temecula; Dan Diehr – San Diego CWA; Garret Williams – Weston Solutions; Larry McKenney – County of Orange; Erik Steenblock – City of Chula Vista; Kirk Ammermen; Alex Gann – County of Riverside; Lynne Baker, Michael Beck – Endangered Habitats League; Geoffrey Smith – Escondido Creek Conservancy; James Lough – City Attorney of Lemon Grove, Imperial Beach and Solana Beach; Isabel Kay – UC San Diego; Lisa Holley – Citizen; Gil Jemmott – Twinoaks Valley Community Sponsor Group; Martha Bertles – Sierra Club; Tom Guidugli – San Marcos; Richard Borevitz – Neighbors of San Marcos Highlands; Danny Oliver – Environmental Services; Chris Zirkle – City of San Diego; Jerry Livingston – attorney.

Item 2 – Public Forum

Geoffrey Smith, Escondido Creek Conservancy, said they were working with staff on a number of proposals for Supplemental Environmental Projects as part of the JRMC Real Estate, Inc. Administrative Civil Liability order.

Chairman Minan announced that Item 8 was postponed to a future meeting.

Item 3 – Minutes of Board Meeting of October 12, 2005

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 12, 2005 minutes. The motion was seconded by Ms. Kraus 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. Johnson reported that he attended the National Brownfields Conference in Denver. Mr. Johnson also reported on an environmental issues forum he attended and is a member of.

Chairman Minan reported that staff had been working on gathering information on past and present Board Members that would be put on a plaque and displayed in the Board meeting room. Chairman Minan stated he would be sending a letter to past and present Board Members soliciting contributions to pay for the plaque.

Chairman Minan spoke about the November 7, 2005 Chair's conference call and reported on two of the items that were discussed which were the roll and responsibilities of the State Board liaisons and State and Regional Board Member appointments.

Chairman Minan also spoke about the September 26th Pre-hearing Conference and said there would be another pre-hearing conference in the future. He pointed out that a correction needed to be made to a date in item B-6 in the Executive Officer's Report – October 26 should read September 26.

Mr. Robertus said he received a letter from the County of San Diego that included a recommended draft permit for the Municipal Storm Water Permit. He notified the Board Members that they would receive a copy before the permit renewal item was brought before the Board.

Mr. Robertus asked Mr. Rob Rundle, SANDAG, to give a presentation on the TransNet Extension Funds.

Consent Items

Item 5 – Update of Waste Discharge Requirements: Skyline Ranch Country Club Wastewater Treatment Plant, Valley Center, San Diego County (tentative Order No. R9-2005-0258) (*Victor Vasquez*)

Item 6 – Basin Plan Amendment: Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to add unnamed or unidentified waterbodies to the beneficial use tables and make water quality objective table corrections (Basin Plan Issue No. 3). *The Board previously received public comments on the Basin Plan amendment. This item is for Board adoption only.* (Tentative Resolution No. R9-2005-0239) (*Linda Pardy*)

Item 7 – Basin Plan Amendment: Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to incorporate authorization for compliance time schedules in National Pollutant Discharge Elimination System requirements (Basin Plan Issue No. 6). *The Board previously received public comments on the Basin*

Plan amendment. This item is for Board adoption only. (Tentative Resolution R9-2005-0238) (Linda Pardy)

Consent Item 5, with errata, was approved by unanimous vote. Consent Items 6 and 7, with a correction requested by Mr. Anderson, were approved with abstention by Ms. Keller.

Remainder of the Agenda (Non-Consent Items):

Item 8 – Supplemental Environmental Project (SEP): JRMC Real Estate, Inc., Escondido, CA. The Regional Board will consider a \$200,000 SEP proposal titled "Invasive Species/Erosion Control Program (ISECP) - Stormwater SEP" located in the upper and middle Escondido Creek watershed (HSU 4.62 and 4.63). Proposal of a SEP is part of the settlement of the \$1.2 million Administrative Civil Liability Order (ACL) No. R9-2005-0237 adopted by the Regional Board on September 14, 2005, which allows the Discharger to satisfy up to \$200,000 of the liability to fund SEPs that are acceptable to the Regional Board. If the Regional Board does not approve the discharger's proposal by December 14, 2005, then JRMC will be required to direct the \$200,000 to the State Board's Cleanup and Abatement Account. (Tentative Resolution R9-2005-0262) (*Frank Melbourn*)

This item was postponed.

Item 9 – Notices of Violations Issued to San Diego County Municipal Storm Water Copermittees: The Regional Board will review and discuss alleged noncompliance by the copermittees in the implementation of the required Watershed Urban Runoff Management Plan of Municipal Storm Water Permit No. 2001-01 (NPDES Permit No. CAS 0108758). The Regional Board may act to affirm, modify, or rescind the Notices of Violation and may direct other actions as appropriate. (*John Robertus*)

Public speakers included:

Steven Jepsen – City Manager, Oceanside

Graham Mitchell – City Manager, Lemon Grove

James Lough – attorney for City of Lemon Grove

Mr. Robertus recommended that the Board not rescind the Notices of Violation as the copermittees had requested.

After Board Member discussion, Ms. Ritschel made a motion to rescind the Notices of Violation. The motion was seconded by Mr. Johnson.

Mr. Wright made a motion not to take any action. The motion was seconded by Ms. Keller. The motion did not carry.

The motion made by Ms. Ritschel to rescind the Notices of Violation was approved by a 4-3 vote.

Item 10 – Section 401 Water Quality Certification: Greystone Homes, Sky Ranch Project in Santee, San Diego County. (*Mike Porter*)

Mr. Robertus introduced the item and staff member Mike Porter gave the presentation.

Other speakers included:

Peter Fagrell – Lennar

Stephen Neudecker – Helix Environmental Planning

John Lormon – Procopio, Cory, Hargreaves and Savitch

David Hogan – Center for Biological Diversity

Van Collinsworth – Preserve Wild Santee

Mr. Neudecker and Mr. Lormon made closing comments.

After Board Member discussion, Chairman Minan proposed that the following language be added to paragraph three of the proposed resolution: “Whereas the validity of the final EIR has been challenged in lawsuit, this 401 Certification is contingent on a determination of the continued validity of the final EIR.” There were no objections to the proposed language.

Ms. Ritschel made a motion to approve the 401 Certification, Resolution No. R9-2005-0273, as amended by Chairman Minan. The motion was seconded by Ms. Keller and approved by unanimous vote.

Item 11 – Section 401 Water Quality Certification: KB Home, San Marcos Highlands Residential Project, County of San Diego. The Regional Board will consider the issuance of a technically conditioned Section 401 certification for impacts from the discharge of fill material to Agua Hedionda Creek. (Tentative Resolution No. R9-2005-0272) (*Christopher Means*)

Mr. Robertus introduced the item and staff member Chris Means gave the presentation.

Other speakers included:

David Shepherd – KB Home

Isabel Kay – UC San Diego

Mary Clarke – Friends of Hedionda Creek

Michael Beck – Endangered Habitats League

The meeting was recessed for lunch and Executive Session at 12:30 p.m.

Item 16 – *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. (Frank Melbourn)

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. (Paul Richter)

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.

The Executive Session was held.

The meeting reconvened at 1:15 p.m.

Item 11 – Continued

Additional Speakers:

Sandra Farrell – Friends of Hedionda Creek

Gil Jemmott – Twin Oaks Valley Community Sponsor Group

Martha Bertles – Sierra Club

Tom Guidugli – San Marcos resident

Richard Borevitz – Neighbors of San Marcos Highlands

Mary Borevitz – Neighbors of Agua Hedionda

Lynne Baker – Endangered Habitats League

Mr. Shepherd made closing comments.

Board Members asked questions of Mr. Shepherd and Mr. Means.

Mr. Robertus recommended approving the certification.

Board Members had concerns about approving the certification and requested additional information. Chairman Minan asked staff to submit the additional information requested by the Board. Mr. Robertus stated that the EIR, permit update package and the Stormwater Management Plan would be provided.

Chairman Minan closed the public comment period and continued the item to a future meeting.

Item 12 – Consideration of a Resolution Delegating Certain Authorities to the Executive Officer and Subordinate Staff. The Board will consider renewing its previous delegations of authorities pursuant to California Water Code Section 13223. (*Art Coe*)

Mr. Robertus introduced the item and Assistant Executive Officer, Art Coe gave the presentation.

Mr. Wright made a motion to adopt Resolution No. R9-2005-0271. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

Item 15 – Approval of Year 2006 Board Meeting Schedule (*John Robertus*)

Laura Hunter, Environmental Health Coalition, asked that the public have more time to comment on items on the agenda after the agenda notice is sent out.

Mr. Johnson made a motion to approve the 2006 schedule. The motion was seconded by Ms. Kraus and approved by unanimous vote.

Item 13 – PUBLIC HEARING: Executive Officer issuance of Cleanup and Abatement Order No. R9-2005-0017 to the Bulen Family Trust for discharges of chlorinated waste to waters of the state in violation of the Porter-Cologne Water Quality Control Act. (*Laurie Walsh*)

Mr. Johnson disclosed that he and his firm had worked with Procopio, Cory, Hargreaves and Savitch on past matters but felt it would not be a conflict of interest to participate in this item.

Speakers included:

Bob Russell – Procopio, Cory, Hargreaves and Savitch

Danny Oliver – Environmental Services, Solana Beach

Tony Sawyer – County of San Diego

Laura Hunter – Environmental Health Coalition

Dan Diehr – San Diego County Water Authority

Staff member Laurie Walsh and senior staff member John Anderson gave the presentation.

Mr. Russell made closing comments.

Board Members asked questions of Mr. Anderson.

Mr. Robertus recommended that the Board affirm the Cleanup and Abatement Order.

After Board member discussion, Ms. Ritschel made a motion to affirm Order No. R9-2005-0017. The motion was seconded by Mr. Wright and approved by unanimous vote.

Mr. Wright asked staff to meet with the County of San Diego to see why they disagreed. Mr. Johnson agreed.

Item 14 – Workshop: A review of the requirement for fiscal assurances as required in the Municipal Stormwater Permits in the San Diego Region. The Regional Board will review and discuss compliance with the regulatory requirement to establish sustained funding for the copermittee stormwater program. Participation by dischargers and the public is encouraged. (*John Robertus*)

This item was postponed to a future meeting.

Item 17 – *Executive Session* - Consideration of Initiation of 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.

The Executive Session was not held.

Item 18 – *Executive Session* - Discussion of Pending Litigation
The Regional Board may meet in closed session to discuss pending litigation:

The Executive Session was not held.

Item 19 – *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 Session was not held.

Item 20 - Arrangements for Next Meeting and Adjournment
Wednesday, December 14, 2005 - 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 5:30 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus