



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

**Monday, January 10, 2022 – 9:00 a.m.,
Wednesday, January 12, 2022 – 9:00 a.m., and
Thursday, January 13, 2022 – 9:00 a.m.
No Physical Meeting Location – Webcast Only
(Authorized by Government Code section 11133.)**

Video and Teleconference Meeting During COVID-19 Pandemic: As a result of the COVID-19 pandemic and Government Code section 11133, this meeting will occur solely via remote presence.

For those who only wish to watch the meeting, the webcast is available at <https://www.cal-span.org>, and should be used UNLESS you intend to comment.

Additional information about participating telephonically or via the remote meeting solution is available here:

https://www.waterboards.ca.gov/sandiego/board_info/remote_meeting/.

For those who wish to comment on an agenda item or present to the Board, please register to participate here: [Webinar Registration - Zoom](#)

NOTICE OF SPECIAL MEETING AND AGENDA¹

BOARD MEETING

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

DECLARATION OF A QUORUM

Celeste Cantú, Chair; Betty H. Olson, Ph.D., Vice Chair; Henry Abarbanel, Ph.D., Board Member; Eric Anderson, Board Member; Megan Blair, Board Member; Gary Strawn, Board Member; Stefanie Warren, Board Member.

There will not be a public forum at this meeting for items not on the agenda. Interested Persons may comment on the agenda item(s) below during the item(s).

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

ACTION ITEMS

1. Hearing – Administrative Civil Liability Complaint against Baldwin & Sons, Inc. et al. Portola Center South Construction Site, Complaint No. R9-2020-0006. *(Frank Melbourn)*

This hearing will be conducted by a hearing panel pursuant to Water Code §13228.14 if only three Board Members are present.

CLOSED SESSIONS

Closed Sessions are not open to the Public

2. 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. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2015-0100, Provisions A.4, B.2, B.3.a, B.3.b, B.4, B.6, D.1.c(6), D.2.a(2), D.3, D.4, E.3.c(2), E.3.c(3), E.3.d, E.5.a, E.5.c(1)(a), E.5.c(2)(a), E.5.c(3), E.5.e, E.6, F.1.a, F.2.a, F.2.b, F.2.c, F.3.b(3), and F.3.c. 16-TC-05, 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, (June 2017). (Catherine George Hagan)*
- h. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2017-0077, Sections A.1, A.3, and A.5, 17-TC-05, City of San Juan Capistrano and County of San Diego, Claimants, filed with the Commission on State Mandates, (June 2017). (Catherine George Hagan)*
- i. *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; Jayne Harkins, in her 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. 3:18-cv-02050-JM-LL, filed September 4, 2018. (David Gibson)*

6. 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)].

IMPORTANT INFORMATION

Agenda and items will be available electronically at:

https://www.waterboards.ca.gov/sandiego/board_info/agendas/.

Video broadcast of meetings will be available at:

<https://www.cal-span.org/>.

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.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Summary of Board Actions and Proceedings
At the December 8, 2021 Board Meeting

MINUTES

Minutes of the September 8, 2021 Board Meeting.

REGIONAL BOARD ACTIONS

The Minutes were approved.

CONSENT ITEMS

ITEM 3 – Addendum No. 1 to Order No. 87-54, Waste Discharge Requirements for the City of San Diego, West Miramar Solid Waste Disposal Facility, San Diego County. (*Amy Grove*)

Addendum No. 1 to Order No. 87-54 was approved.

ITEM 4 – Rescission of Order No. R9-2009-0072, Waste Discharge Requirements for County of San Diego, San Pasqual Academy, San Diego County (Tentative Order No. R9-2021-0173). (*Sherrie Komeylyan*)

Order No. R9-2021-0173 was approved.

ITEM 5 – NPDES Permit Rescission: An Order Rescinding Order No. R9-2020-0005, NPDES No. CA0001350, Waste Discharge Requirements for Cabrillo Power I LLC, Encina Power Station, San Diego County, Discharge to the Pacific Ocean (Tentative Order No. R9-2021-0197). (*Debbie Phan*)

Order No. R9-2021-0197 was approved.

ITEM 6 – Waste Discharge Requirements for Temecula West Village LLC, Western Bypass and Altair Project, Riverside County (Tentative Order No. R9-2021-0177). (*Darren Bradford*)

Order No. R9-2021-0177 was approved.

ITEM 7 – Rescission of Order No. 94-02, Waste Discharge Requirements for Cowboy Country LLC, Mr. Terry Mathis and Mr. Paul Price, Cowboy Country RV Park, San Diego County (Tentative Order No. R9-2021-0185). (*Sherrie Komeylyan*)

Order No. R9-2021-0185 was approved.

ITEM 8 – Amendment to Cease and Desist Order No. R9-2021-0107, United States Section of the International Boundary and Water Commission South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean through the South Bay Ocean Outfall (Tentative Order No. R9-2021-0220). (*Keith Yaeger*)

Order No. R9-2021-0220 was approved.

NON-CONSENT ITEMS

ITEM 9 – Tentative Resolution: Adoption of 2022 Meeting Schedule (Tentative Resolution No. R9-2021-0221). (*David Gibson*)

Resolution No. R9-2021-0221 was approved.

ITEM 10 – Approval of 2021 Triennial Basin Plan Review 3-year Workplan (Tentative Resolution No. R9-2021-0116). (*Michelle Santillan*)

Resolution No. R9-2021-0116 was approved.

ITEM 11 – Waste Discharge Requirements for the City of Oceanside Indirect Potable Reuse Project via Groundwater Injection in the Mission Basin (Tentative Order No. R9-2021-0100). (*Brandon Bushnell*)

Order No. R9-2021-0100 was approved.

ITEM 12 – NPDES Permit Amendment of Order No. R9-2019-0166, NPDES No. CA0107433, Waste Discharge Requirements for the City of Oceanside, San Luis Rey Water Reclamation Facility, La Salina Wastewater Treatment Plant, and Mission Basin Groundwater Purification Facility Discharge to the Pacific Ocean through the Oceanside Ocean Outfall (Tentative Order No. R9-2021-0199). (*Joann Lim and Keith Yaeger*)

Order No. R9-2021-0199 was approved.

ITEM 13 – NPDES Permit Amendment of Order No. R9-2019-0169, NPDES No. CA0108031, Waste Discharge Requirements for the Fallbrook Public Utility District, Fallbrook Water Reclamation Plant, and Santa Margarita Groundwater Treatment Plant Discharge to the Pacific Ocean through the Oceanside Ocean Outfall (Tentative Order No. Tentative Order No. R9-2021-0204). (*Joann Lim and Keith Yaeger*)

Order No. R9-2021-0204 was approved.

ITEM 14 – NPDES Permit Amendment of Order No. R9-2019-0167, NPDES No. CA0109347, Waste Discharge Requirements for the Marine Corps Base, Camp Pendleton Southern Regional Tertiary Treatment Plant and Advanced Water Treatment Plant at Haybarn Canyon Discharge to the Pacific Ocean through the Oceanside Ocean Outfall (Tentative Order No. R9-2021-0205). (*Joann Lim and Keith Yaeger*)

Order No. R9-2021-0205 was approved.

ITEM 15 – NPDES Permit Amendment of Order No. R9-2019-0168, NPDES No. CA0109193, Waste Discharge Requirements for Genentech, Inc. Discharge to the Pacific Ocean through the Oceanside Ocean Outfall (Tentative Order No. R9-2021-0206). (*Joann Lim and Keith Yaeger*)

Order No. R9-2021-0206 was approved.

ITEM 16 – Resolution in Support of the Unified Assessment and Strategic Monitoring Approach for San Diego Bay (Tentative Resolution No. R9-2021-0151). (*Wayne Chiu*)

This item was postponed.

ITEM 17 – Update on the Clean Water Act Section 401 Program for Dredge and Fill Material Discharges to Waters of the State. (*Eric Becker*)

Informational item only; no action taken.

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 Cal. Code of Regs., tit. 23, § 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 at the San Diego Water Board meeting telephonically or via the remote meeting solution and explain to the San Diego Water Board the reason that it is contested.

- C. PROCEDURE FOR INFORMATION ITEMS (see also Cal. Code of Regs., tit. 23, § 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 notify the clerk beforehand and indicate their request to speak to the San Diego Water Board. Comments from the public should be for clarification or to add to the San Diego Water Board's understanding of the item; such comment should

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 Division 3 of Title 23 of the California Code of Regulations. 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 Gov. Code, § 11400). State Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with Evidence Code sections 800 through 805 and Government Code section 11513. Other provisions of Chapter 5 of the Government Code do not apply to adjudicative proceedings before the State and Regional Water Boards. For more information about laws and regulations relevant to adjudicative proceedings, please visit 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 may 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 may be issued. In those cases, the procedures set forth therein will apply, subject to discretionary modification by the Chair of the San Diego Water Board. For other adjudicatory matters, the Chair may establish specific procedures for each item and, consistent with subdivision (d) of section 648 of title 23 of the California Code of

Regulations, 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 in 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; and
- 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, 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; and
- 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 Cal. Code of Regs., tit. 23, § 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 (Gov. Code, § 11126, subd. (e)); deliberate on a decision to be reached based upon evidence introduced in an adjudicatory hearing (Gov. Code, § 11126, subd. (c)(3)); or to consider the appointment, employment or dismissal of a public employee to hear complaints or charges brought against a public employee (Gov. Code, § 11126, subd. (a)).

The San Diego Water Board may break for lunch at approximately noon at the discretion of the Chair. 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.

- 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, which will be available two days prior to the San Diego Water Board meeting. A copy can also be obtained by contacting Ms. Chris Blank at (619) 521-3382 or Christina.Blank@waterboards.ca.gov.

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. 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 Water Code section 13320 and section 2050 et seq. of title 23 of the California Code of Regulations, 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 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 provided to 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. Individuals who have special accommodation needs, please contact Ms. Chris Blank at (619) 521-3382 or Christina.Blank@waterboards.ca.gov at least 5 business days prior to the meeting. If interpreter services are required, please contact Ms. Blank at least 10 business 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.