

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

MINUTES OF MEETING  
October 13, 2004

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: Chairman John Minan, Gary Stephany, Richard Wright, Terese Ghio, Vickie Butcher and Janet Keller.

Staff Present: John Robertus, Michael McCann, David Barker, Lori Costa, Pete Michael, Julie Chan, Bob Morris, John Anderson, Mark Alpert, Bruce Posthumus, John Phillips, John Odermatt, Stacey Baczkowski, Brian Kelley, David Hanson, Bryan Ott, Brian McDaniel, Dat Quach, Tom Alo, Mike Porter, Eric Becker, Frank Melbourn and Souhayla Maronesy.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Pete Silva. Public Attendance: Dick Dietmeier – South Coast Water District; David Merk, Paul Fanfera, Darlene Ereneva – San Diego Port District; Tom Wierosma – HSOCC; Sandra Farrell – Friends of Hedionda Creek; Dave Seymour – SMWD; Barry Pulver – County of San Diego; Laura Hunter – Environmental Health Coalition; Larry Wasserman – City of San Diego; Mike Chee – NASSCO; Jerry Butkiewicz – San Diego Labor Council; Scott Sobiech – US Fish & Wildlife Service; Molly Rhodes – HERE Local 30; Terry Rodgers – Union-Tribune; Omer Kadaster – Brown & Caldwell; Steve Beck – Ninyo & Moore; Marco Gonzalez – San Diego BayKeeper.

**Item 2** – Public Forum

Sandra Farrell, Friends of Hedionda Creek, talked about a 401 Certification that Regional Board staff was currently processing. Ms. Farrell requested a public hearing to consider the cumulative impacts of the proposed project on Hedionda Creek in San Marcos.

Board Members discussed Ms. Farrell's concerns with Mr. Robertus. Chairman Minan asked Ms. Farrell to work with staff on policy issues and to report back to the Board if she had additional concerns. Mr. Robertus asked Ms. Farrell to contact him if she was not satisfied with the draft permit and if needed, he would bring it to the Board for action.

**Item 3** – Minutes of Board Meeting of September 8, 2004

*This record of the minutes of the meeting on this date is not intended for 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.*

Ms. Butcher moved approval of the September 8, 2004 minutes. The motion was seconded by Mr. Wright and approved by unanimous vote.

**Item 4** – Chairman's, Board Member's, State Board Liaison's and Executive Officer's (EO) Reports.

Chairman Minan read a tribute to Dr. Richard Wright that was published in the Alumni Association magazine for his work in helping to make San Diego State University a national leader in geographic information systems.

Chairman Minan also spoke briefly about the Water Quality Coordinating Committee meeting on October 25<sup>th</sup>, the BIA litigation, a deposition for the International Boundary & Water Commission litigation, his invitation to speak to the County Bar Association, and World Water Monitoring Day.

Ms. Ghio said she participated in the American Assembly program, which was the reuse study for reclaimed water for the City of San Diego. The forum was made up of community partners trying to give direction to the City of San Diego to stop wasting water and to recycle and reuse.

Executive Officer Robertus talked about the details of the Water Quality Coordinating Committee meeting being held on October 25<sup>th</sup>.

Pete Silva, State Board Liaison, said the State Board adopted the policy for TMDL implementation. He briefly spoke about the California Performance Review and the Board Member appointment process.

Mr. Robertus explained to the Board why there wasn't an item in the Executive Officer's Report on Senate Bill 885.

Mr. Robertus asked senior staff member Bruce Posthumus to give a report on the Wetlands Recovery Project Governing Board meeting he attended on October 5<sup>th</sup>.

Mr. Robertus also talked about bacteriological and epidemiological studies on Mission Bay, the San Diego Municipal Storm Water Permit Re-Issuance, and City of Escondido, Hale Avenue Resource Recovery Facility.

Mr. Robertus answered questions asked by Chairman Minan on the Mission Valley Terminal issue. Chairman Minan said he hoped that Mr. Robertus would be able to get the staff and resources needed to move forward on it.

Chairman Minan commented positively about the statistics in the Sanitary Sewer Overflows monthly report.

**Item 5** – Revision of Waste Discharge Requirements: City of San Diego, South Bay Water Reclamation Plant, San Diego County (tentative Addendum No. 1 to Order No. R9-2000-0203) (*David Hanson*)

**Item 6** – Revision of Master Reclamation Permit: City of San Clemente Water Reclamation Plant, Orange County (tentative Addendum No. 1 to Order No. R9-2003-0123) (*Bryan Ott*)

Mr. Stephany moved approval of Consent Items 5 and 6. The motion was seconded by Ms. Butcher and approved by unanimous vote.

**Item 7** – Issuance of Waste Discharge Requirements: Port of San Diego, Campbell Shipyard Bay Sediment Cap for Closure and Post-closure Maintenance, San Diego Bay (tentative Order No. R9-2004-0295) (*Brian McDaniel and Dat Quach*)

Mr. Robertus introduced the item and staff members Brian McDaniel and Dat Quach gave the presentation.

David Merk, Port of San Diego, also gave a presentation.

Paul Brown answered questions asked by Ms. Ghio about protective measures to be used when dredging and the composition of the Geotextile layer.

Board Members made comments and asked questions of Mr. Merk and Mr. Brown.

Other speakers included:

Marco Gonzalez, San Diego BayKeeper

Mr. Merk made closing statements.

Mr. Quach recommended that the Board approve Order No. R9-2004-0295 with errata.

Mr. Stephany moved approval of Order No. R9-2004-0295 with errata. The motion was seconded by Ms. Keller and approved by unanimous vote.

**Item 8** – Status Report: Enforcement Summary Report on Violations and Enforcement Actions (*Mark Alpert*)

Senior staff member Mark Alpert gave the presentation. Board Members asked questions of Mr. Alpert and complimented him on his presentation.

John Richards, State Board Staff Counsel, said the Cal/EPA recommended that we do more criminal enforcement. Board Members made comments and asked questions of Mr. Richards.

**Item 9** – Delegation of authority to the Chair or a subcommittee of the Regional Board to address certain matters in the absence of a quorum. The Board will consider appointing a subcommittee authorized to act as a hearing panel or designate hearing officers for the purpose of conducting hearings and forwarding recommendations to the appropriate decision making body. (*Resolution No. R9-2004-0384*) (*John Robertus*)

After Board Member discussion, Ms. Ghio made a motion to continue the item to the next Board Meeting. The motion was seconded by Chairman Minan and approved by unanimous vote.

**Item 10** – *Executive Session* - Discussion of Ongoing Litigation

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

*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 (*David Hanson*); and the related “Surfrider” case:

*Surfrider Foundation, San Diego Chapter v. Robert Ortega, et al.*, Case No. 99-CV-2441-BTM(JFS) (*David Hanson*)

*People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. City of San Diego*, U.S. District Court, Southern District of California, Case No. 03CV1381-B(POR) (*David Hanson*); and the related case:

*San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San Diego*; U.S. District Court, Southern District of California; Case No. 01-CV-0550-B (POR) (*David Hanson*)

*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*)

*Building Industry Association of San Diego County, et al. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego*; In the Court of Appeal of the State of California, Case No. GIC 780263 (*Phil Hammer*)

*Fallbrook Public Utilities District v. State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*, Case No. GIC 819771 (referred to as “MMP case”); Petition for Writ of Mandate challenging administrative assessment of civil liability based on mandatory minimum penalties for violation of effluent limits in NPDES waste discharge requirements. (*Frank Melbourn*)

*Fallbrook Public Utilities District v. State Water Resources Control Board ,et al.*, San Diego County Superior Court Case No. GIC822179 (referred to as “Permit Modification case”); Regional Board failure to act on a request by Fallbrook PUD to amend certain permit conditions contained in NPDES waste discharge requirements. (*Victor Vasquez*)

*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.

*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 824707. Complaint for Breach of Contract, Specific Performance, Intentional Misrepresentation, Bad Faith Denial of Existence of Contract, Compensatory Damages, Exemplary Damages and for Declaratory Judgment, Request for Jury Trial.

The Executive Session was held.

**Item 11** – *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 12** – *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 13** – *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 14** - Arrangements for Next Meeting and Adjournment

Wednesday, November 10, 2004 - 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 1:45 p.m.

These minutes were prepared by:

Signature of Executive Officer:

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Lori Costa  
Executive Assistant

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John H. Robertus