

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

MINUTES OF MEETING
DECEMBER 10, 2008

At 9:00 a.m. Chairman Wright called to order the 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: Richard Wright, Eric Anderson, David King, Kris Weber, Wayne Rayfield, Grant Destache, Gary Thompson, and George Loveland.

Staff Present: John Robertus, Michael McCann, Lori Costa, David Barker, Julie Chan, Bob Morris, John Anderson, Craig Carlisle, John Odermatt, Brian Kelley, Eric Becker, Frank Melbourn, Jeremy Haas, Cathryn Henning, Joann Cofrancesco, Melissa Valdovinos, Michelle Mata, Laurie Walsh, Kelly Dorsey, Alan Monji, Charles Cheng, Pete Peuron, Sean McClain, Chris Means, Wayne Chiu, Carol Tamaki, Ben Neill, Mike Porter, Chad Loflen. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine Hagen, Jorge León, David Boyers, and Cris Carrigan. Kennedy Court Reporters: Janet Travis.

Public Attendance: Michael Sowinski, Richard Opper – Opper & Varco; Tom Mulder – TN & Associates; Barry Pulver, James O'Day, Sid Tsoro, Vicky Gallegher – County of San Diego; Billee Calabuese – Skyline Ranch; Alan Label; Christa Zacharius, Kellyn Lupfer – Nautilus Environmental; Gary Merrill – Genentech Inc; Jim Renzi – Village Engineering Corp; Rob Van Ommering – Van Ommering Dairy; Saundra Jacobs, Daniel Ferons, John Schotz – Santa Margarita Water District; Ryan Henry – Dudek; Sharon Taylor – U.S. Fish and Wildlife Service; Fran Geneam, Terry Theilen, Margaret Kohn – Lake San Marcos; Alan Langworthy, Tony Heinrichs, Chris McFadden – City of San Diego; Erica Ryan – City of San Marcos; Livia Borak – San Diego Coastkeeper; Scott Martin – Kinder Morgan Energy Partners; U.S. EPA – John Kameron; Jeff Crooks, Oscar Romo – Tijuana River Natural Estuarine Research Reserve.

Item 2 – Public Forum

There were no requests to speak during the public forum.

Item 3 – Minutes of Board Meetings of November 12, 2008

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. King moved approval of the November 12, 2008 minutes. The motion was seconded by Mr. Rayfield and approved with abstention by Mr. Thompson and Mr. Loveland.

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.

Chairman Wright welcomed Gary Thompson and George Loveland to the Board.

Mr. King reported on the San Diego Shipyard sediment cleanup and said the second 90 day period for private mediation expired on December 7, 2009. On December 8 he issued the third and final order extending the period for private mediation for 105 days. He said if there was not a settlement on the appropriate cleanup levels by March 31, 2009, the hearing and deadlines would resume where they left off (before private mediation began).

Chairman Wright reported that he participated in the monthly Chair's conference call on December 1.

Mr. Anderson reported that there was meeting in Escondido with the agriculture community at which they started the enrollment for the Irrigated Lands Program.

Mr. Robertus reported that a report was due to the Legislator in January on the status of the San Diego Shipyard sediment cleanup project.

Mr. Robertus also briefly reported on two items in his Executive Officer's Report: "Public Complaint: Armstrong Farms, Valley Center" and "North County Transit District Sprinter Rail Update."

Mr. Robertus reported that he attended an Imperial Beach City Council meeting on December 3. At the meeting they recognized Councilmember Mayda Winters for her many years of service on the Council.

Consent Calendar: Items 5 through 8 are considered non-controversial issues. (NOTE: If there is public interest, concern or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed.)

Chairman Wright announced that Item 8 was postponed.

Item 5 – Negative Declaration: Skyline Ranch Country Club LLC., Recycled Water Project, San Diego County (Tentative Resolution No. R9-2008-0128) (Bob Morris)

Item 6 – Modification of Waste Discharge Requirements: Skyline Ranch Country Club LLC, Recycled Water Project, San Diego County (Tentative Addendum No. 1 to Order No. R9-2005-0258) (*Bob Morris*)

Item 7 – NPDES Permit Reissuance: Waste Discharge Requirements for Genentech, Inc. discharge to the Pacific Ocean via the Oceanside Ocean Outfall, San Diego County. (Tentative Order No. R9-2008-0082, NPDES Permit No. CA0109193) (*Michelle Mata*)

Mr. Thompson noted that in Item 6, in finding number 10 of the tentative addendum, the date should be changed to December 10.

Mr. King made a motion to approve Items 5, 6 w/errata, and 7. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 8 – NPDES Permit Rescissions: (*Michelle Mata*)

a) An Order rescinding Waste Discharge Requirements for Van Ommering Dairy, San Diego County, Order No. R9-2004-0065, NPDES No. CA0109207 (Tentative Order No. R9-2008-0124);

b) An Order rescinding Waste Discharge Requirements for S & S Farms Swine Raising Facility, San Diego County, Order No. R9-2002-0067, NPDES No. CA0109371 (Tentative Order No. R9-2008-0123);

c) An Order rescinding Waste Discharge Requirements for the Tom Van Tol T.D. Dairy, San Diego County, Order No. 2001-28, NPDES No. CA0109339 (Tentative Order No. R9-2008-0122); and,

d) An Order rescinding Waste Discharge Requirements for Frank J. Konyon Dairy, San Diego County, Order No. 2000-163, NPDES No. CA0109053 (Tentative Order No. R9-2008-0117)

Item 8 was postponed.

Remainder of the Agenda (Non-Consent Items):

Chairman Wright announced that Item 12 would be heard before Item 11.

Item 9 – Mitigated Negative Declaration: General Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region. (Tentative Resolution No. R9-2008-0129) (*Cathryn Henning*)

Item 10 – Waste Discharge Requirements: General Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region. (Tentative Order No. R9-2008-0130) (*Cathryn Henning*)

Mr. Robertus introduced the items, and staff member Cathryn Henning gave the presentation for Items 9 and 10.

Mr. Anderson disclosed that he served on the Farm Bureau Board with several of the dairies but felt he could make an impartial decision.

Other speakers included:

Robert Van Ommering – Van Ommering Dairy

Jim Renzi – Village Engineering Corp.

Livia Borak – San Diego Coastkeeper

Ms. Henning made closing comments.

Mr. Robertus recommended approval of the Resolution and Order.

Mr. Anderson made a motion to approve Resolution No. R9-2008-0129. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Mr. Anderson made a motion to approve Order No. R9-2008-0130 w/errata. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 12 – Administrative Assessment of Civil Liability: SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P., Mission Valley Terminal Remediation Dewatering Project. The Regional Board will consider a Tentative Order that would impose a \$222,000 penalty, including \$93,000 in mandatory minimum penalties, based on Complaint No. R9-2008-0046 for violations of Order No. R9-2001-0096, NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay. The Regional Board may approve, modify, or reject the Tentative Order. If the Tentative Order is rejected, a hearing will be scheduled to be held at a future Board meeting. (Tentative Order No. R9-2008-0134) (*Jeremy Haas*).

Mr. McCann introduced the item, and staff member Jeremy Haas gave the presentation.

Other speakers included:

Scott Martin – Kinder Morgan Energy Partners

Richard Opper – Opper & Varco

Jorge Leon – counsel, State Water Board

Mr. Rayfield made a motion to approve Order No. R9-2008-0134 w/errata. The motion was seconded by Mr. Destache and approved by unanimous vote.

Item 11 – Administrative Assessment of Civil Liability: City of San Marcos, Bradley Park Landfill. The Regional Board will consider whether to approve, raise, lower, or reject assessment of the \$59,975 civil liability recommended in Complaint No. R9-2008-0080

for the alleged violation of Water Code section 13267 and Water Quality Investigative Order No. R9-2006-0044 by the City of San Marcos for failing to submit a complete Report of Waste Discharge for implementation of an investigation and corrective action program at the Bradley Park Landfill. The deadline for the submission of evidence and legal argument pertaining to the Complaint was Friday, November 21, 2008. (Tentative Order No. R9-2008-0155) *(Amy Grove/Bob Morris)*

Mr. King recused himself from participating in the item.

Chairman Wright explained the hearing procedures. Senior staff member Julie Chan gave the presentation.

Other speakers included:

David Boyers – counsel, State Water Board

Richard Opper – Opper & Varco

Tom Mulder – TN & Associates

Mr. Boyers and senior staff members Robert Morris, John Odermatt, and Julie Chan provided rebuttal comments.

Mr. Opper made rebuttal comments and answered questions asked by the Board.

Additional speakers:

Terry Thielen – Lake San Marcos resident

Margaret Kohn – Lake San Marcos resident

James O'Day – County of San Diego

Mr. Opper made a closing statement.

Mr. Boyers also made a closing statement. Ms. Chan answered questions asked by the Board.

Chairman Wright closed the hearing.

Board Members made comments and discussed raising the amount of civil liability.

Mr. Rayfield made a motion to approve Order No. R9-2008-0155 with an amendment to raise the civil liability to \$119,950. The motion was seconded by Mr. Thompson and approved by unanimous vote.

The meeting was recessed for Closed Session and lunch at 12:25 p.m.

Item 16 – *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]. The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

Litigation Filed against the Regional Water Board

- 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). (*John Robertus*)
- 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 Melbourn*)
- 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. *Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region, (Poseidon Resources, Real Party-in-Interest)*, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2008-00091983-CU-WM-CTL (filed September 2008). (*Michelle Mata*)

The Closed Session was held. No action was taken by the Board. The meeting reconvened at 1:20 p.m.

Item 14 – Information Item: City of San Diego Point Loma Ocean Outfall 301(h) Waiver Public Participation/NPDES Permit Approval Process. The current NPDES permit and waste discharge requirements for the City of San Diego E. W. Blom Point Loma Metropolitan Wastewater Treatment Plant discharge to the Pacific Ocean through the

Point Loma Ocean Outfall are based on a variance from federal secondary treatment standards at Title 40 of the Code of Federal Regulations Part 133 (40 CFR 30), as provided for improved discharges under Clean Water Act section 301(h) and 40 CFR 125, Subpart G. The United States Environmental Protection Agency, Region IX (USEPA) will discuss the integrated administrative and public participation processes USEPA and the Regional Board will use in considering permit reissuance at a future board meeting. (NPDES Permit No. CA0107409) (*Melissa Valdovinos*)

Staff member Melissa Valdovinos gave the presentation.

Mr. John Kamerer, U.S. EPA, also spoke.

Item 13 – PUBLIC HEARING: Administrative Assessment of Civil Liability, Santa Margarita Water District, Sewage Collection System: The Regional Board will consider adoption of a tentative Order that would impose \$133,190 in civil liability recommended in Complaint No. R9-2008-0057 for violations of Regional Board Order No. R9-2007-0005, Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region. The Regional Board may approve, raise, lower, or reject assessment of the recommended penalty. (Tentative Order No. R9-2008-0159) (*Joann Cofrancesco*)

Chairman Wright explained the hearing procedures. Cris Carrigan, counsel, State Water Board, also spoke.

Staff member Joann Cofrancesco gave the presentation.

Mr. Carrigan and Mr. Jeremy Haas answered questions asked by the Board.

Other speakers included:

Saundra Jacobs – Santa Margarita Water District

Daniel Ferons – Santa Margarita Water District

Ryan Henry – Dudek

Sharon Taylor – U.S. Fish and Wildlife Service

John Schotz, Santa Margarita Water District, made closing statements. Mr. Carrigan also made closing statements.

Mr. Robertus made comments.

Chairman Wright closed the Public Hearing.

Board Members made comments.

Mr. King made a motion to approve Order No. R9-2008-0159. The motion was seconded by Mr. Loveland and approved with a 6-2 vote. Mr. Weber and Mr. Thompson were opposed.

Item 15 – Information Item: Tijuana River Watershed – Abatement of Trash and Sediment Discharges (*John Robertus*)

Mr. Robertus gave the presentation. Mr. Carl Nettleton, Nettleton Strategies, also spoke.

Other speakers included:

Tony Heinrichs – City of San Diego

Sid Tsoro – County of San Diego

Jeff Crooks – Tijuana River Natural Estuarine Research Reserve

Oscar Romo – Tijuana River Natural Estuarine Research Reserve

Mr. Robertus said the Regional Board wasn't funded for staff to work on addressing the discharges of waste from Mexico. Although limited resources from the TMDL program are being utilized. Mr. Robertus recommended that Chairman Wright send a letter to local elected officials with an invitation to participate.

Board Members made comments and asked questions.

Chris McFadden, City of San Diego, answered questions asked by the Board.

Item 17 – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to 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 or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)] (*John Robertus*)

The Closed Session was not held.

Item 18 – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing.

The Regional 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 19 – *Closed 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 Closed Session was not held,

Item 20 – Arrangements for Next Meeting and Adjournment

Wednesday, January 21, 2009 - 9:00 a.m.

Water Quality Control Board


Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

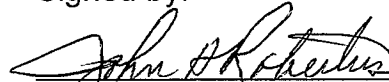
With there being no further business, the meeting was adjourned at 4:20 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer