

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

MINUTES OF MEETING  
FEBRUARY 9, 2011

At 9:00 a.m. Acting Chairman Destache 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: Grant Destache, Eric Anderson, George Loveland, William Green, Gary Strawn, and Don Higginson.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Lori Costa, Jeremy Haas, Bob Morris, John Odermatt, John Anderson, Chiara Clemente, Eric Becker, Deborah Jayne, Craig Carlisle, Cynthia Gorham, Pete Peuron, Frank Melbourn, Rebecca Stewart, Dat Quach, Alan Monji, Lisa Honma, Kristin Schwall, Fisayo Osibodu, Chad Loflen, Tony Felix, Deborah Woodward, Laurie Walsh, Vicente Rodriguez, Charles Cheng, Chris Means, Ben Neill, Cathryn Henning, Wayne Chiu, Paige Boyd, and Lucas Johnson.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, David Boyers, and Cris Carrigan. Kennedy Court Reporters – Hope Goldsmith.

Public Attendance: Kathleen Thuner – self; Michael Welch – consultant; Mike Palmer – de maximis; Kristin Reyra – Gordon & Rees; Ruth Kolb – City of San Diego; Sara Agahi – County of San Diego; John Ward – Lite Stone Concrete; Gabriel Solmer – San Diego Coastkeeper.

**Item 2** – Public Forum

There were no requests to speak during the Public Forum.

**Item 3** – Minutes of Board Meeting: January 12, 2011

*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. Higginson moved approval of the January 12, 2011 minutes. The motion was seconded by Mr. Strawn 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. Gibson pointed out, for the new members, the Board Member plaque hanging in the Board room that was paid for by the San Diego Environmental Professionals Association. Their contribution also paid for updates to the plaque.

Mr. Gibson also reported on the Lake San Marcos matter (no. 7) and the Brine Waste Discharges (no. 8) items in his report.

***Consent Calendar: Items 5 and 6 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.)***

**Item 5** – Rescission of Waste Discharge Requirements: U.S. Navy Milcon Project P-326, Milcon Project P-700, and Homeporting Project, San Diego County; and San Diego Unified Port District Tenth Avenue Marine Terminal Maintenance Dredging, San Diego County (Tentative Order No. R9-2011-0007) (*Fisayo Osibodu and Bob Morris*)

**Item 6** – Modification of Waste Discharge Requirements: City of Escondido, Hale Avenue Resource Recovery Facility, Expansion of the Ultraviolet Disinfection System (tentative Addendum No. 1 to Order No. R9-2010-0032 (*Fisayo Osibodu*))

Mr. Loveland moved approval of Consent Calendar Items 5 and 6. The motion was seconded by Mr. Anderson and approved by unanimous vote.

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

**Item 8** – Shipyards Sediment Cleanup and Abatement Order Status Report: The San Diego Water Board will receive a status report on the Shipyards Sediment Site Cleanup and Abatement Order, Tentative Order R9-2011-0001. The Board will receive an update on: 1) the schedule for consideration of the Tentative Order and Draft Technical Report by October 2011; 2) the progress on the programmatic Environmental Impact Report; and 3) an update on the status of

the Remedial Action Plan and the Waste Discharge Requirements that will be required to implement the clean up of contaminated sediments in the shipyards and a discussion of some key technical issues that must be surmounted to achieve the clean up objectives in a timely manner. (*David Gibson*)

Catherine Hagan, Craig Carlisle, David Gibson, and Cris Carrigan gave the status report. Board Members asked questions of staff and made comments.

Gabriel Solmer, San Diego Coastkeeper, also spoke.

**Item 7** – Information Item: Briefing on State Water Resources Control Board's Enforcement Policy, the Compliance Oversight program, and Use of Expedited Payment Letters by the Regional Board (*Jeremy Haas/Catherine Hagan*)

Senior staff member, Jeremy Haas, gave the presentation. Mr. Gibson provided additional information. Board Members asked questions of staff.

**Item 9** – Administrative Assessment of Civil Liability, Lite Stone Concrete, Inc., Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$3,766 penalty recommended in Complaint R9-2010-0127 for failing to submit the Fiscal Year 2008-09 Annual Report and failing to pay the Fiscal Year 2009-10 annual fee required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for the annual report violation. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2011-0015) (*Laurie Walsh*)

Acting Chair Destache read the hearing procedures.

Staff member, Laurie Walsh, introduced the item. Staff member, Rebecca Stewart, gave the presentation.

John Ward, owner of Lite Stone Concrete, spoke regarding his inability to pay the recommended penalty.

Acting Chair Destache closed the public comment period.

Board Members asked questions of staff.

Acting Chair Destache reopened the public hearing to allow Mr. Ward to make a comment. After commenting, Acting Chair Destache closed the public hearing.

The public hearing was reopened again to allow Mr. David Boyers to make a comment. Mr. Ward also commented.

The public hearing was again closed.

Ms. Walsh recommended that the Board adopt the Order as presented.

Mr. Anderson moved adoption of Order R9-2011-0015. The motion was seconded by Mr. Green and approved by unanimous vote.

**Item 10** – Resolution proposing a Basin Plan amendment to include a definition of "agricultural and nursery operations" in Conditional Waiver No. 4. The San Diego Water Board will consider adoption of a resolution to amend Conditional Waiver No. 4 for Agricultural and Nursery Operations (one of 11 conditional waivers in the Basin Plan) to define the term "agricultural and nursery operations" as it appears in the waiver. The proposed definition specifies that only commercial operations that generate gross sales of at least \$1,000 per year, as an average, are subject to the waiver's requirements. The San Diego Water Board may approve, modify, or reject the proposed Basin Plan amendment. (Tentative Resolution No. R9-2011-0020) (*Peter Peuron*)

Ms. Jessica Newman reported that because two of the Board Members had commercial agricultural operations, she looked in to the potential conflict of interest, but felt there was no conflict as the amendment would not affect them.

Both Mr. Anderson and Mr. Green concurred with Ms. Newman.

Staff member, Pete Peuron, gave the presentation.

Board Members asked questions of staff.

Kathleen Thuner, Fallbrook resident, spoke regarding her concerns with the proposed amendment.

Mr. Peuron made closing comments.

Board Members made comments and asked questions of staff.

Mr. Anderson recommended changing the language for the three year average sales from "post" enrollment to "prior" enrollment.

Mr. Loveland moved adoption of Resolution No. R9-2011-0020 with errata recommended by Mr. Anderson. The motion was seconded by Mr. Green and approved by unanimous vote.

**Item 11** – Election of Regional Board Chair and Vice Chair for 2011. (*David Gibson*)

Mr. Green made a motion to nominate and elect Mr. Destache as Chair. Mr. Destache accepted the nomination. The motion was seconded by Mr. Loveland and approved with abstention by Mr. Destache.

Mr. Loveland made a motion to nominate and elect Mr. Anderson as Vice Chair. Mr. Anderson accepted the nomination. The motion was seconded by Mr. Higginson and approved with abstention by Mr. Anderson.

*The meeting recessed for lunch and to discuss Closed Session items a – f at 12:30 p.m.*

**Item 12** - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

**Civil Actions**

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, 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. *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)*
- c. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate [re: San Diego Water Board's adoption of Order No. R9-2009-0038 amending Order No. R9-2006-0065 for Poseidon Resources (Channelside), LLC, NPDES Permit No. CA0109223, approval of a Flow, Entrainment and Impingement Minimization Plan under the California Water Code]. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*

- d. *South Orange County Wastewater Authority and South Coast Water District, Petition for Writ of Mandate. Orange County Superior Court, Case No. 30-2010-00364016-CU-WM-CXC (filed April 2010) (Joann Cofrancesco)*
- e. *California Regional Water Quality Control Board, San Diego Region v. Bill and Heidi Dickerson, Larry and Penelope Gunning and Perry & Papenhausen, Inc. Complaint for Damages for Breach of Contract and for Specific Performance. San Diego County Superior Court, Case No. 37-2010-00096011-CU-CO-CTL (filed July 2010) (Jeremy Haas)*
- f. *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)*

*The meeting reconvened at 1:15 p.m.*

**Item 13** – *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 not held.

**Item 14** – *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 15** – *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 16** – Arrangements for Next Meeting and Adjournment

Wednesday, March 9, 2011 - 9:00 a.m.

Water Quality Control Board

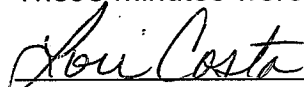
Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

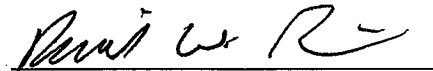
With there being no further business, the meeting was adjourned at 1:25 p.m.

These minutes were prepared by:



Lori Costa  
Executive Assistant

Signed by:



David Gibson  
Executive Officer