

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

MINUTES OF MEETING  
February 5, 2003

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Chairman Minan 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, Janet Keller, Richard Wright, Laurie Black, Vickie Butcher and Terese Ghio.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Bob Morris, Julie Chan, Brian Kelley, John Phillips, Mark Alpert, Stacey Baczkowski, Sue Pease, Vicente Rodriguez, Bryan Ott, Paul Richter, Rebecca Stewart, Christina Arias, Eric Becker, Jeremy Hass, Kelly Dorsey, Brian McDaniel, Frank Melbourn, Jody Ebsen, Tom Alo and Sherrie Komeylyan.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Park Avenue Deposition Service: Grace Verhoeven. Public Attendance: Betty Burnett, Richard Dietmeier, L. Homscheid, Mike Dunbar, South Coast Water District; Mary Ruzmeier, Celeste Toy, Tim Callender, University of San Diego; Laura Hunter, Environmental Health Coalition; Al Carstensen, San Diego Wild Animal Park; Peter Fynn, W. Rosenbaum, Color Spot Nurseries; Dave Seymour, Santa Margarita Water District; Lorie Marvin, self; Chuck Houser, So. Cal. Soils & Testing; Jimmy Hsu, Budget Trade & Gas; Ed Kimura, Sierra Club; Larry Wasserman, Karen Henry, City of San Diego; Michael Chee, NASSCO; Patti Krebs, Industrial Environmental Association; Rilca Tobe, self; Larry Dees, Moulton Niguel Water District, Richard Gardler, self; John Hoagland, City of Escondido.

**Item 2** – Public Forum

Lorie Marvin talked about Judge Peterson's tentative ruling in the Rakhra v. San Diego Regional Board lawsuit. A few points she addressed were process manure, CEQA and the liability increase.

Staff Counsel Richards discussed the issue with Board Members.

Chairman Minan asked Lori Costa to prepare a transcript of what Ms. Marvin said for Mr. Richards.

Karen Henry, City of San Diego, said they submitted the annual report required under the Municipal Stormwater Permit to Regional Board staff. Ms. Henry then talked about significant accomplishments by the City.

Mr. Stephany thanked the City of San Diego for taking a leadership role.

Laura Hunter, Environmental Health Coalition, also thanked the City and the Port District for not joining the Building Industry Association lawsuit and trying to help clean up the water. She then talked about fees that were owed to the Regional Board by federal facilities.

Board Members briefly discussed the unpaid fees issue. Mr. Robertus said the State and Regional Board's were working on the problem very aggressively.

**Item 3** – Minutes of Board Meeting of December 11, 2002

*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 December 11, 2002 minutes. The motion was seconded by Mr. Stephany and approved with abstention by Ms. Ghio.

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

Chairman Minan talked about the City of San Diego and the Regional Board's national leadership role in stormwater regulation. He also reminded Board Members to comply with the requirement to submit to the State Board the Form 700 and Ethics Training certification.

Mr. Stephany spoke briefly about the 10-15% budget cut.

Ms. Ghio talked about a bill introduced by Assemblymember Pat Bates that would automatically keep 75% of administrative fines levied by the Regional Board in our Region.

Chairman Minan announced that Item 18 was postponed due to a legal issue as to the correct application of the mandatory minimum penalty law.

John Robertus briefly talked about water quality certifications, the March 7, 2003 Southern California Coastal Water Research Project meeting, the WQCC, the Chairs' meeting in March and a strategic assessment of the Board.

Board Members and Mr. Robertus talked about the Strategic Plan.

Mr. Robertus said the State Board adopted the 303(d) list.

Mr. Wright said he appreciated the additional data that was provided in the sanitary sewer overflows report.

Mr. Stephany pointed out the number of sewage spills by the City of Laguna Beach. Mr. Robertus said he met with the City and said they were working on the problem.

Consent Items 5 through 14:

**Item 5** – Revision of Waste Discharge Requirements: Zoological Society of San Diego, San Diego Wild Animal Park, San Diego County (tentative Addendum No. 1 to Order No. 99-04) (*Bryan Ott*)

**Item 6** – Revision of Waste Discharge Requirements: General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills within the San Diego Region (tentative Addendum No. 3 to Order 97-11) (*Brian McDaniel*)

**Item 7** – Modification of Waste Discharge Requirements: CHP Ventures, LLC, Oak Springs RV Resort/Pointxcamp, Riverside County (tentative Addendum No. 2 to Order No. 94-68) (*Eric Becker*)

**Item 8** – Rescission of Cease and Desist Order No. 98- 25, Color Spot Foliage, Inc., Color Spot Fallbrook Nursery, San Diego County (tentative Order No. R9-2003-0036) (*Eric Becker*)

**Item 9** – Modification (facility name and ownership change) to Waste Discharge Requirements: Cowboy Country LLC, Mr. Terry Mathis and Mr. Paul Price; Cowboy Country RV and Resort, Riverside County (tentative Addendum No. 1 to Order No. 94-02) (*Eric Becker*)

**Item 10** – Waste Discharge Requirements and Master Reclamation Permit: Olivenhain Municipal Water District, 4-S Ranch Wastewater Treatment Plant, San Diego County (tentative Order No. R9-2003-0007) (*Bryan Ott*)

**Item 11** – Administrative Assessment of Civil Liability with Mandatory Minimum Penalties against America Plaza Owners Association for violation of effluent limits established by Order No. 2000-90, for the discharge from sub-grade parking structure groundwater dewatering from the One America Plaza facility to San Diego Bay. (Tentative Order No. R9-2003-0010) (*Vicente Rodriguez*)

**Item 12** – Administrative Assessment of Civil Liability against KB Homes Coastal, Inc. for failure to pay annual construction storm water fees for the facility located at Frazee Road and Old Grove Road, Oceanside in San Diego County. (Tentative Order No. R9-2003-0011) (*Vicente Rodriguez*)

**Item 13** – Administrative Assessment of Civil Liability against Lincoln Property Company for failure to pay annual construction storm water fees for the facility located at Puerta Real, Mission Viejo in Orange County. (Tentative Order No. R9-2003-0012) (*Vicente Rodriguez*)

**Item 14** – Administrative Assessment of Civil Liability against Richmond American Homes for failure to pay annual construction storm water fees for the facility located at Butterfield Stage and Nighthawk Pass, Temecula in Riverside County. (Tentative Order No. R9-2003-0013) (*Vicente Rodriguez*)

Ms. Black moved approval of Consent Items 5 through 14. The motion was seconded by Ms. Butcher and approved by unanimous vote.

**Item 15** – PUBLIC HEARING (Continued): Administrative Assessment of Civil Liability against Chung Kwan and Hui Mei Hsu, owners and operators of Budget Trade & Gas, Escondido (tentative Order No. R9-2003-0047) (*Sue Pease*)

The Public Hearing opened at 10:00 a.m.

Mr. Robertus introduced the item and staff member Sue Pease gave the presentation. Ms. Pease recommended deferring action on the ACL.

Board Members expressed their concerns with the site.

Chairman Minan asked if a public health risk assessment had been done. Ms. Pease replied no.

Mr. Hsu said his consultant wouldn't take payment by credit card anymore and said he was trying hard to comply.

Chuck Houser, Southern California Soils and Testing, consultant for Mr. Hsu, answered questions asked by the Board.

Mr. Stephany said he would like to see the Department of Environmental Health do a vapor risk assessment.

The Public Hearing comment period was closed at 10:40 a.m.

Mr. Stephany made a motion to continue the item to a future meeting. The motion was seconded by Ms. Keller and approved by unanimous vote.

**Item 16** – NPDES Permit Reissuance: National Steel and Shipbuilding Co. Shipyard – San Diego Bay (tentative Order No. R9-2003-0005) (*Paul Richter*)

Mr. Robertus introduced the item and staff member Paul Richter gave the presentation.

Ms. Ghio said she was concerned about requiring additional monitoring for metals without scientific cause for it.

Michael Chee, NASSCO, talked about the permit development process and some of the concerns they had.

Ed Kimura, represented San Diego Bay Council, talked about concerns they had with the permit.

Mr. Richter, during his closing comments, addressed Mr. Kimura's concerns.

Board Members made comments and asked questions of Mr. Richter.

Mr. Robertus recommended adoption of the tentative Order with errata.

Mr. Wright made a motion to approve Order No. R9-2003-0005 with errata. The motion was seconded by Ms. Black and approved by unanimous vote.

**Item 17** – PUBLIC HEARING: Revision of Time Schedule for Cease and Desist Order, City of Escondido (NPDES Permit No. CA0107981) (tentative Addendum No. 1 to Cease and Desist Order No. 96-31) (*Bryan Ott*)

The Public Hearing began at 11:45 a.m. Mr. Robertus introduced the item and staff member Bryan Ott gave the presentation.

The Public Hearing comment period was closed at 11:47 a.m. Mr. Robertus recommended adoption of the tentative Order.

Mr. Stephany made a motion to approve Addendum No. 1 to Cease and Desist Order No. 96-31. The motion was seconded by Ms. Ghio and approved by unanimous vote.

**Item 18** – PUBLIC HEARING: Administrative Civil Liability with Mandatory Minimum Penalties against the City of San Diego, San Diego Convention Center Groundwater Dewatering Discharge to San Diego Bay, for Violation of Order No. 2000-90, NPDES Permit No. CAG919001. (Tentative Order No. R9-2003-0038) (*Rebecca Stewart*)

This item was postponed. John Richards explained the reasons for postponement. Mr. Robertus talked about when he expected the item would be brought back to the Board.

**Item 19** – PUBLIC HEARING: Administrative Civil Liability against South Coast Water District, Sewage Collection System in Orange County, for Violation of Order No. 96-04 and California Water Code Section 13267. (Tentative Order No. R9-2003-0037) (*Rebecca Stewart*)

The Public Hearing was not held. The discharger waived their right to a hearing. After Board Member discussion, Ms. Ghio made a motion to accept the settlement offer for consideration at a future meeting. The motion was seconded by Mr. Wright and approved by unanimous vote.

*The meeting was recessed for lunch and Executive Session at 12:15 p.m.*

**Item 23** – *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; and the related “Surfrider” case:

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

*Building Industry Association of San Diego County, et al. vs. State Water Resources Control Board, et al.*; San Diego County Superior Court; Case No. GIC 7890263.

*Rakhra Groups, Inc., v. San Diego Regional Water Quality Control Board* Superior Court of California, San Diego County; Case No. GIC 776251 and Case No. GIC 786516

**Item 24** – *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 meeting reconvened at 1:30 p.m.*

Chairman Minan announced that the Board discussed the International Boundary and Water Commission, the Building Industry Association and the Rakhra Groups, Inc. lawsuits during Executive Session – Item 23 and said Executive Session – Item 24 was also held.

**Item 20** – PUBLIC HEARING: Administrative Civil Liability with Mandatory Minimum Penalties against New Urban West Inc., Brookside Construction Dewatering, Escondido, San Diego County for violations of Order No. 2001-96,

NPDES Permit No. CAG919002, for Temporary Groundwater Extraction and Similar Waste Discharges to Reidy Creek. (Tentative Order No. R9-2003-0056) (*Sherrie Komeylyan*)

This item was postponed.

**Item 21** – A Resolution modifying the Regional Board’s Waiver Policy for consistency with recent modifications to the United States Environmental Protection Agency Rule for Confined Animal Feeding Operations. Based on testimony received during their September 11, 2002 Public Hearing, the Board will consider modifications to the Waiver Policy provisions for animal feeding operations to reflect the Final Rule that was signed on December 15, 2002. (Tentative Resolution No. R9-2003-0060) (*Christina Arias*)

Mr. Robertus introduced the item and staff member Christina Arias gave the presentation.

Board Members asked questions of staff.

Mr. Stephany made a motion to adopt Resolution No. R9-2003-0060. The motion was seconded by Ms. Butcher and approved by unanimous vote.

**Item 22** – Settlement of Rakhra Groups, Inc. v. San Diego Regional Water Quality Control Board; the Board will consider settlement of litigation challenging various enforcement actions including a Cleanup and Abatement Order and an order assessing Civil Liability against Rakhra Groups, Inc. for conditions at San Diego Mushroom Farm. (*John Richards*)

This item was postponed.

**Item 25** – *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 26** – *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 27** – Election of Chair and Vice Chair. Porter-Cologne Water Quality Control Act, Chapter 4, Article 2, paragraph 13220(b), Each regional board shall select one of its members as chairman at the first regular meeting held each year.

Ms. Keller nominated Mr. Minan as Chair and Mr. Stephany as Vice Chair. The nomination was seconded by Ms. Butcher.

Ms. Ghio made a motion to nominate Mr. Stephany as Chair and Mr. Minan as Vice Chair. The nomination was seconded by Mr. Wright.

Chairman Minan said he would like the voting of Chair and Vice Chair to be conducted separately.

Chairman Minan called for a vote. Ms. Ghio, Mr. Wright and Mr. Stephany voted for Mr. Stephany as Chair. Ms. Keller, Ms. Butcher, Ms. Black and Mr. Minan voted for Mr. Minan as Chair.

Mr. Wright made a motion to re-elect Mr. Minan as Chair. The motion was approved by unanimous vote.

Mr. Wright made a motion to re-elect Mr. Stephany as Vice-Chair. The motion was approved by unanimous vote.

**Item 28** - Arrangements for Next Meeting and Adjournment

Wednesday, March 12, 2003 - 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

There being no further business, the meeting was adjourned at 2:15 p.m.

These minutes were prepared by:

Signature of Executive Officer:

---

Lori Costa  
Executive Assistant

---

John H. Robertus