

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

MINUTES OF MEETING  
September 8, 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 and Terese Ghio.

Staff Present: John Robertus, Michael McCann, Arthur Coe, David Barker, Lori Costa, John Phillips, Julie Chan, Bob Morris, Brian Kelley, Stacey Baczkowski, Craig Carlisle, John Odermatt, Mark Alpert, Pete Michael, Bruce Posthumus, Paul Richter, Jeremy Haas, Phil Hammer, Chiara Clemente, Eric Becker, Laurie Walsh, Jody Ebsen, Hashim Navrozali, David Hanson and Sabine Knedlik.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Park Avenue Deposition Service: Karina Garcia. Public Attendance: Khalique Khan, Melanie Bengtson, G. (Lupe) Armas, – MCB Camp Pendleton; Dick Dietmeier – South Coast Water District; Lawrence Tobias, Sidney M. Jabisen – California ISO; Laura Hunter, Al Huang, Joy Williams, Sonia Rodriguez – Environmental Health Coalition; Barry Pulver – Dept. of Public Works; Dave Seymour – SMWD; Ed Kimura – Sierra Club; Bruce Reznik, Gabe Solmer – San Diego BayKeeper; Marco Gonzalez – Surfrider Foundation; Roger Morrison – City of Poway; Nancy Palmer – City of Laguna Niguel; Deborah Castillo, Karen Henry – City of San Diego; Jon Van Rhyn – County of San Diego; Jim Peugh – San Diego Audubon Society; Scott Sobiech – US Fish & Wildlife Service; Casey Luskin – University of San Diego; Laura Larsen – RBF Consulting; Joyce Clark – MWD; Patti Krebs – Industrial Environmental Assoc.; Pat Mullen, James White, Randall Kickok – Duke Energy; Margaret Rosegay – Pillsbury Winthrop; David Mayer – Tenera Environmental; Keith Merkel – Merkel & Assoc.; Lupita Jimenez – South Bay Greens; Pablo Macias – Citizens of San Diego; Bill Paznokas – CA Dept. of Fish & Game; Bill Hays – Port of San Diego; Wayne Rosenbaum – Foley & Lardner; Sharon Floyd – Friends of the Refuge;

Damon Rahimi, Pam Tappan, Chris Lock, Brian Lori, Josh Simmons, Sara Bierl, Sarah Poole, Susan Fuller – self.

**Item 2** – Public Forum

Deborah Castillo, City of San Diego-Stormwater Pollution Prevention Program, announced their Urban Run Off and Environmental Fair to be held October 16<sup>th</sup> on San Diego Bay.

Bruce Reznik, San Diego BayKeeper, urged the Board to hold a public hearing to set sediment remediation levels.

Board Members discussed Mr. Reznik's concerns with Mr. Robertus.

Karen Henry, City of San Diego-Stormwater Pollution Prevention Program, offered their support in the renewal process of the municipal storm water permit.

Jon Van Rhyn, County of San Diego-Watershed Protection Program, said as the copermittee they would like to be involved in the municipal storm water permit renewal process.

Mr. Robertus said staff would be working with the copermittees.

Pam Tappan, Capistrano Beach, talked about her dissatisfaction with how staff handled the Administrative Civil Liability and Cleanup and Abatement Order hearings for Pioneer Builders.

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

Ms. Ghio made comments and asked questions of Mr. Robertus about Assembly Bill 885, onsite wastewater treatment systems. Mr. Stephany and Mr. Wright also made comments about AB 885. Mr. Robertus said he would report back to the Board in the next Executive Officer's Report.

Mr. Robertus said he briefed the new members of the San Diego County Grand Jury on the mission and function of the Regional Board. Mr. Robertus also said he would be attending a meeting in Sacramento on September 20 with environmental organizations to discuss the future direction of the municipal storm water program.

He also announced that the next Water Quality Coordinating Committee meeting was going to be held in Ontario on October 25.

Mr. Robertus discussed the California Performance Review with the Board and said he would be sending a letter to Cal/EPA. He invited Board Members to also submit comments.

Chairman Minan announced that on September 30, 2004 Mr. Stephany, Ms. Ghio and Ms. Butcher's term on the Board would expire.

Chairman Minan said he and Mr. Wright were program participants at the County Water Authority Summit on July 15, 2004. Chairman Minan also moderated a panel for the Water Education Foundation on July 16.

*Board Member Butcher arrived at 10:25 a.m.*

**Item 3** – Minutes of Board Meeting of July 14, 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.*

Mr. Wright moved approval of the July 14, 2004 minutes. The motion was seconded by Ms. Ghio and approved by unanimous vote.

*Consent Calendar Items 5 - 15*

**Item 5** – Revision of Waste Discharge Requirements (change in ownership): R-Fam Investments, Inc., Tualota Springs RV Park & Campground, Riverside County (tentative Addendum No. 1 to Order No. 95-84) (*Eric Becker*)

**Item 6** – Revision of Waste Discharge Requirements (change in ownership): Outdoor World RV Park, Inc., Outdoor World Retreat & RV Park, San Diego County (tentative Addendum No. 1 to Order 95-34) (*Ben Neill*)

**Item 7** – Revision of Waste Discharge Requirements (change in ownership): Jobja Hills SKP Resort, Inc., Jobja Hills SKP Resort, Riverside County (tentative Addendum No. 1 to Order 94-48) (*Eric Becker*)

**Item 8** – Revision of Waste Discharge Requirements (change in ownership): Fredrick W. Gorman and Laura L. Prutch, Fallbrook Kamp Retreat, San Diego County (tentative Addendum No. 2 to Order No. 94-69) (*Benjamin Tobler*)

**Item 9** – Revision of Waste Discharge Requirements (addition of new treatment facility): South Orange County Wastewater Authority, Goren Wastewater Treatment Plant, Orange County (tentative Addendum No. 3 to Order No. 97-52) (*Eric Becker*)

**Item 10** – Update of Waste Discharge Requirements: Leucadia Wastewater District, Forest R. Gafner Water Reclamation Plant, San Diego County (tentative Order No. R9-2004-0223) (*David Hanson*)

**Item 11** – Revision of Master Reclamation Permit: Olivenhain Municipal Water District, 4-S Ranch Wastewater Treatment Plant, San Diego County (tentative Addendum No. 1 to Order No. R9-2003-0007) (*Bryan Ott*)

**Item 12** – Administrative Assessment of Civil Liability with Mandatory Minimum Penalties against ARB Inc., Capistrano Desalter, San Juan Capistrano for violation of effluent limitations established by Order No. R9-2002-0020, NPDES No. CAG679001, General Waste Discharge Requirements for Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or other Conveyance Systems, San Diego Region. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0281) (*Sabine Knedlik*)

**Item 13** – Administrative Assessment of Civil Liabilities against the following Dischargers for Non-Payment of Fiscal Year 2003 construction storm water permit annual fees in violation of California Water Code section 13260. The Regional Board will decide on Administrative Civil Liability Orders accepting payment of the proposed liability and waiver of the right to a public hearing. (*Frank Melbourn*)

NO	AGENCY / FACILITY NAME	LOCATION	CITY	WDID	TENTATIVE ACL
A	Beazer Homes California Inc. Tract 29442	Benton Road & Pourroy Road	Temecula	9 33C312846	R9-2004-0236
B	Kaiser Permanente Outpatient Facility	400 Craven Road	San Marcos	9 37C320134	R9-2004-0242
C	Kaiser Permanente Otay Mesa Parking Structure	4604 Palm Avenue	San Diego	9 37C320185	R9-2004-0243

D	KB Home Coastal Inc. Sierra at Eastlake Trails	N. Creekside Drive & Poplar Spring Road	Chula Vista	9 37C315264	R9-2004-0244
E	KB Home Coastal Inc. Bridlewood 2	Hunte Parkway & King Creek Drive	Chula Vista	9 37C315265	R9-2004-0245
F	Pala Rainbow LLC	SE Highway 79 & Pala Road	Temecula	9 33C312890	R9-2004-0250
G	Richmond American Homes of California, Inc. Ladera Chesapeake	26818 Oneill Drive	Mission Viejo	9 30C317504	R9-2004-0251
H	Richmond American Homes of California, Inc. Ladera Chesapeake	26478 Oneill Drive	Mission Viejo	9 30C317505	R9-2004-0252
I	Vail Lake, LLC	Vail Lake	Riverside County	9 33C315165	R9-2004-0254
J	Woodside Homes Tract 24136	Margarita Road & De Portola Road	Temecula	9 33C317493	R9-2004-0256

**Item 14** – Settlement of Potential liability against KB Home Coastal for violations of Order No. R9-2001-0096, NPDES No. CAG919002, Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within San Diego Except for San Diego Bay associated with construction project referred to as Mar Lado Pump Station in Oceanside Calif. in San Diego County. The Regional Board will consider accepting a proposed settlement for the liability in lieu of adopting an ACL. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2004-0264) (*Sabine Knedlik*)

**Item 15** - PUBLIC HEARING (if requested): Rescission of NPDES requirements and enforcement order for discharges of treated sewage at US Marine Corps Base, Camp Pendleton, to the Santa Margarita River watershed that have been terminated:

a) Rescission of NPDES Requirements for discharges from Wastewater Treatment Facilities Nos. 1, 2, 3, and 13 (Headquarters, San Luis Rey, Chappo, and Twin Lakes):

1. Order No. 99-55, NPDES No. CA0108961, *Waste Discharge Requirements for the United States Marine Corps Camp Pendleton Wastewater Treatment*

*Facility No. 1 (Headquarters Plant) Discharging Treated Waste into the Santa Margarita River Watershed San Diego County;*

2. *Order No. 99-56, NPDES No. CA0108979, Waste Discharge Requirements for the United States Marine Corps Camp Pendleton Wastewater Treatment Facility No. 2 (San Luis Rey Plant) Discharging Treated Waste into the Santa Margarita River Watershed San Diego County;*

3. *Order No. 99-57, NPDES No. CA0108987, Waste Discharge Requirements for the United States Marine Corps Camp Pendleton Wastewater Treatment Facility No. 3 (Chappo Plant) Discharging Treated Waste into the Santa Margarita River Watershed San Diego County; and*

4. *Order No. 99-59, NPDES No. CA0109002, Waste Discharge Requirements for the United States Marine Corps Camp Pendleton Wastewater Treatment Facility No. 13 (Twin Lakes Plant) Discharging Treated Waste into the Santa Margarita River Watershed San Diego County.*

b) Rescission of Order No. 99-41, Cease and Desist Order establishing interim effluent limitations and a time schedule to comply with the waste discharge requirements contained in the four (4) orders listed in subdivision a), above. (This action requires approval by a majority of the membership of the Regional Board, *i.e.*, 5 members. [W.C. 13306.]

(Tentative Order No. R9-2004-0276) (*Charles Cheng*)

Mr. Stephany moved approval of Consent Items 5 – 15 with errata. The motion was seconded by Mr. Wright and approved by unanimous vote.

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

**Item 16** – 2004 Basin Plan Triennial Review. Consideration of adoption of a Resolution approving the 2004 Basin Plan Triennial Review of the Water Quality Control Plan for the San Diego Region and adopting a Priority List of Basin Plan issues. The Board has previously received public testimony and comments on the tentative Resolution and this item is scheduled for Regional Board discussion only with adoption of the Resolution. (Tentative Resolution No. R9-2004-0156) (*Jody Ebsen and Laurie Walsh*)

Mr. Robertus introduced the item and staff members Jody Ebsen and Laurie Walsh gave the presentation.

Mr. Richards recommended deleting the second paragraph (“We disagree...”) on Page 6 of the Response to Comments Report. Board Members concurred.

Mr. Stephany moved approval of Order No. R9-2004-0156 with the amendment recommended by Mr. Richards. The motion was seconded by Mr. Wright and approved by unanimous vote.

**Item 17** – NPDES Permit Renewal: Waste Discharge Requirements for the Duke Energy, LLC, South Bay Power Plant, San Diego County (tentative Order No. R9-2004-0154, NPDES Permit No. CA0001368) (*Hashim Navrozali*)

Mr. Robertus introduced the item and staff members Hashim Navrozali and John Phillips gave the presentation.

Mr. Robertus recommended that the Board not take action until a later date.

Board Members asked questions of Mr. Phillips.

Other speakers included:

James White, Duke Energy,

Randall Hickok, Duke Energy

Margaret Rosegay, counsel to Duke Energy

David Mayer, Tenera Environmental Consultants

Keith Merkel, Merkel and Associates

*The meeting was recessed for lunch and Executive Session at 12:40 p.m.*

**Item 20** – *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.

*The meeting reconvened at 1:35 p.m.*

**Item 17** - Continued

Other speakers (continued)

Lawrence Tobias, Independent System Operations (ISO)

Bill Paznokas, CA Department of Fish and Game

Albert Huang, Environmental Health Coalition

Gabrielle Solmer, Environmental Health Coalition

Ed Kimura, Sierra Club

Jim Peugh, San Diego Audubon Society

Bruce Reznik, San Diego BayKeeper

Marco Gonzalez, Surfrider Foundation

Lupita Jimenez, Chula Vista resident  
Sharon Floyd, Friends of the Refuge  
Pablo Macias, Citizens of San Diego

Mr. White made closing statements.

Board Members asked staff why they felt the Board should not take action until a subsequent meeting.

During his closing statements, Mr. Phillips said in order to meet the administrative requirements he needed to complete the response to comments before the Board could take action. Mr. Phillips also said he needed some guidance from the Board and explained.

Board Members discussed possible changes to the permit with staff and the discharger.

Board Members discussed the point of compliance, a compliance schedule, mitigation restoration, intake credits and copper with Mr. Robertus, Mr. Richards and staff.

Ms. Ghio proposed extending the public comment period for one week, to September 15th. Chairman Minan concurred.

Chairman Minan closed the hearing.

Mr. Stephany made a motion to close the public comment period after the one-week extension. The motion was seconded by Ms. Butcher and approved by unanimous vote.

**Item 18** – 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. The Board will also consider delegating authority to the Chair to represent the Regional Board in matters involving litigation. (*John Robertus*)

Mr. Stephany made a motion to delegate authority to Chairman Minan to represent the Regional Board in matters involving litigation and to continue the issue of

appointing a subcommittee to a future meeting. The motion was seconded by Ms. Ghio and approved by unanimous vote.

**Item 19** – Rescission of Cease and Desist Order: U.S. Marine Corps Camp Pendleton, Santa Margarita River, San Diego County (tentative Order No. R9-2004-0276) (*Charles Cheng*)

This item was deleted from the agenda.

**Item 21** – *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 22** – *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 23** – *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.

Chairman Minan announced that during Item 20-Executive Session the lawsuits listed on the agenda were discussed.

**Item 24** - Arrangements for Next Meeting and Adjournment  
Wednesday, October 13, 2004 - 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 4:35 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