

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

MINUTES OF MEETING
SEPTEMBER 13, 2006

Chairman Minan called the regular meeting of the California Regional Water Quality Control Board, San Diego Region, to order at 9:00 a.m. in the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call and Introductions: Board Members Present: John Minan, Jennifer Kraus, Eric Anderson, Richard Wright, Susan Ritschel and Alan Barrett.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Mark Alpert, Bob Morris, Brian Kelley, Pete Michael, John Anderson, Julie Chan, Craig Carlisle, John Odermatt, Chiara Clemente, Jimmy Smith, Rebecca Stewart, Frank Melbourn, Jeremy Haas, Alan Monji, Wayne Chiu, Lisa Honma, Chris Means, Eric Becker, Amy Grove, Robert Pierce, Michelle Mata, Victor Vasquez, Catherine Haran and Ilham Bashir.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards, Gerald Secundy. Jan White & Associates Reporting: Rhonda Reid. Public Attendance: Richard Runge – South Coast Water District; Laura Hunter – Environmental Health Coalition; Mary Anne Mann, John Burcham, Jim Dragna – City of Escondido; Everett DeLano, Gabriel Solmer – San Diego Coastkeeper/TECC; Brian Gordon, Rob Chichester – U.S. Navy; Victor Occiano – BC; Geoffrey Smith – Escondido Creek Conservancy; Christine Sloan – County of San Diego; Jim Hogan – MACTEC; David Merk, Paul Brown – Port of San Diego; Ed Kimura – Sierra Club.

Item 2 – Public Forum

Laura Hunter, Environmental Health Coalition, reported that the Port District committed ½% of their annual budget to environmental enhancement projects. Ms. Hunter also talked about the fish warning signs that were updated and reposted on the bay and she also noted that LS Power was proposing to use dry cooling in their new plant.

David Merk, Port of San Diego, talked about the TMDL for the Shelter Island Yacht Basin.

Paul Brown, Port of San Diego, talked about under water hull cleaning, fouling release paints and zinc based anti-fouling paints.

Chairman Minan announced that Items 5 and 7 were postponed.

Item 3 – Minutes of Board Meeting of August 16, 2006

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. Wright moved approval of the August 16, 2006 minutes. The motion was seconded by Mr. Anderson and approved with abstention by Ms. Kraus.

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.

State Board Member Gerald Secundy reported that the WQCC meeting was scheduled for October 30 & 31, 2006 in Sacramento and urged Board Members to attend. He also announced that he was appointed to the steering committee of the Ocean Protection Council. Mr. Secundy said there were four issues they would be working on in the coming year which included: numeric limits for storm water, 316 (b) once through cooling, ASBSs and septic systems.

Chairman Minan asked Mr. Secundy to also look at sediment standards as they might relate to San Diego Bay issues.

Environmental Justice was discussed between Mr. Secundy and Board Members.

Mr. Robertus talked about the Significant Enforcement Actions, CIWQS, and Border issues.

Mr. Wright referred to the GIS Committee item in the EO Report and asked Mr. Robertus if a user needs assessment had been done. Mr. Robertus said he had not pursued a regional GIS system due to lack of funding. Mr. Wright urged, if funding could be found, that there be a user needs assessment done.

Chairman Minan talked about sanitary sewer overflows, conveyance systems and private laterals (*item B-1 in the EO Report*). He also reported that Seaworld was served with a notice of intent to sue regarding fireworks. Mr. Robertus said the Regional Board would be taking action and most likely would be amending their NPDES permit. Chairman Minan reported on several items that were discussed at the September 11 Chair's meeting which included the WQCC meeting, quorum problems throughout the state, the use of recycled water, and a comprehensive study with regards to SEPs.

Chairman Minan announced that his appointment would expire on September 18, 2006 but could remain on the Board for 60-days after that date if his position was not filled.

Chairman Minan appointed Mr. Wright as the Regional Board's representative on the Board of Governors of the Southern California Wetlands Recovery Project. He also noted

that when his term on the Board concluded, another member would need to serve as the Regional Board's representative on the San Diego River Conservancy Board. Chairman Minan said the policy of the Board was that the Chair would be the representative to the Conservancy and if the Chair was unable to attend, the Vice Chair would attend. If the Vice Chair was unable to attend, Mr. Robertus would ask another Board member or a staff member to attend.

Item 5 – NPDES Permit Reissuance: Waste Discharge Requirements for the City of San Diego South Bay Water Reclamation Plant Discharge to the Pacific Ocean via the South Bay Ocean Outfall (tentative Order No. R9-2006-0067, NPDES Permit No. CA0109045) (*Melissa Valdovinos*)

Item 5 was postponed.

Item 6 – SETTLEMENT OFFER: City of Escondido, Hale Avenue Resource Recovery Facility: Administrative Assessment of Civil Liability against the City of Escondido for Violations of Order No. 99-72, NPDES No. CA0107981, Waste Discharge Requirements for the City of Escondido, Hale Avenue Resources Recovery Facility, Discharge to the Pacific Ocean Via the Escondido Land Outfall and the San Elijo Ocean Outfall. The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0265. If the Regional Board rejects 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 Order No. R9-2006-0095) (*Rebecca Stewart*)

Mr. Coe introduced the item and staff member Rebecca Stewart gave the presentation.

Other speakers included:

Everett DeLano, represented San Diego Coastkeeper
Jim Dragna, represented the City of Escondido

Chairman Minan asked questions of Mr. Dragna. Board Members made comments and asked questions

Mr. Coe recommended continuing the item to a later date then when the item was brought back, staff would provide the Board with additional information that would allow them to better assess the City's available defenses and the Regional Board's arguments to those defenses.

Mr. Richards clarified that based on the recommendation made by Mr. Coe, Regional Board staff would not be renewing settlement negotiations with the City.

Ms. Ritschel made a motion to continue the item to the next regularly scheduled meeting as recommended by Mr. Coe. The motion was seconded by Ms. Kraus and approved with opposition by Mr. Wright.

Mr. Wright indicated that he wanted to have a discussion on possible SEPs, which was not in the motion.

Item 7 – PUBLIC HEARING: Excellent Coatings, Inc., 1285 Distribution Way, Vista: Administrative Assessment for Civil Liability for failure to submit the Fiscal Year 2004-05 annual storm water monitoring report required by Order No. 99-07-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (General Permit). If the discharger elects to waive their right to a hearing, the Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2006-0099) (*Rebecca Stewart*)

Item 7 was postponed.

Item 8 – Status Report on the toxicity limitation established in NPDES Permits for industrial storm water discharges to San Diego Bay from U.S. Navy facilities. The report will include a discussion of the U.S. Navy's May 2006 Report on Storm Water Toxicity Evaluation (*Michael McCann*)

Mr. Robertus introduced the item and Mr. McCann gave the presentation.

Board Members asked questions of Mr. McCann.

Other speakers included:

Gabriel Solmer, San Diego Coastkeeper

Ed Kimura, Sierra Club

The meeting was recessed for lunch and Executive Session at 12:10 p.m.

Item 9 – *Executive Session* - Discussion of Ongoing Litigation

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

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.

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.

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.

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

San Diego Unified School District, a public school district, Plaintiff v. County of San Diego, a public entity, San Diego Regional Water Quality Control Board, a public entity and DOES 1 through 25, inclusive, Defendants. Superior Court of the State of California for the County of San Diego, Case No. GIC840390; First Amended Complaint for: 1) Breach of Contract-Lease Agreement, 2) Breach of Contract-Sharing Agreement, 3) Quantum Meruit; 4) Express Indemnity; 5) Implied Indemnity and Contribution; 6) Equitable Indemnity Contribution; 7) Nuisance; 8) Trespass; 9) Inverse Condemnation; 10) Preliminary and Permanent Injunction; 11) Declaration of Relief Against the County of San Diego; and 12) Declaration of Relief Against the Regional Water Board and County.

The Executive Session was held.

Item 10 – *Executive Session* - Consideration of Initiation of Litigation (*John Robertus*)

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.

Item 11 – *Executive Session* - Discussion of Pending Litigation

The Regional Board may meet in closed session to discuss pending litigation:

Item 12 – *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 Sessions, Items 10-12, were not held.

Item 13 - Arrangements for Next Meeting and Adjournment

Wednesday, October 11, 2006 - 9:00 a.m.

Rancho California Water District

District Board Room

42135 Winchester Road

Temecula, California

With there being no further business, the meeting was adjourned at 12:45 p.m.

These minutes were prepared by:

Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus