

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

MINUTES OF MEETING  
JULY 1, 2009

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 Ocean Institute Conference Center, 24200 Dana Point Harbor Drive, Dana Point, California.

**Item 1** – Roll Call and Introductions: Board Members Present: Chairman Richard Wright, David King, Eric Anderson, Kris Weber, Wayne Rayfield, Grant Destache, Gary Thompson, George Loveland, and Marc Luker.

Staff Present: John Robertus, Michael McCann, Lori Costa, David Barker, Julie Chan, David Gibson, James Smith, Jeremy Haas, Bruce Posthumus, Chad Loflen, Ben Neill, Melissa Valdovinos, Wayne Chiu, Laurie Walsh, and Christina Arias. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine Hagan and Fran Spivy-Weber. Kennedy Court Reporters: Tracy Brown.

Public Attendance: Eric Mosolgo- Brown & Caldwell; Robert Woodings, Devin Slaven- City of Lake Forest; Andrew Entingh, Khalique Khan - Camp Pendleton; Richard Opper- Opper & Varco; Grace Lowenberg, Sara Agahi- City of San Diego; Dave Weeshoff- Algalita Marine Research; Roger von Butow- Clean Water Now; Derek Wieske, Moy Yahya, Neil Blais- City of Rancho Santa Margarita; Garry Brown- OC Coastkeeper; James Wood- City of Carlsbad; Lisa Bartlett, Richard Montevideo, Brad Fowler, Lisa Zawaski- City of Dana Point; Michael Hazzard- FOCA; Aldo Licitra- City of Temecula; Paul Lawrence, David Rocha- OC Dana Point Harbor; Noah Garrison- NRDC; Jennifer Weiland, Jenna Voss, Christy Norris, Richard Boon, Kacen Clapper, Jian Peng, Chris Crompton, Mary Anne Skorpanich, Cheryl Lynn- County of Orange; John Quenzer, Arsalan Dadkhah- D-Max Engineering; Erika Root- SAMLARC; Marc Nielson, Ziad Mazboudi, Joe Mankawich- San Juan Capistrano; Dan Nordberg- The Alliance for Successful Communities; Mack Walker- Larry Walker Assoc.; Geoff Hunt- County Counsel; Verna Rollinger, Barbara Metzger- Laguna Beach; Vaikko Allen- Contech Stormwater Solutions; Mary Vondrak- City of San Clemente; Tim Rosales, Brennon Flahive, Patricia Chen- SOCWA; Ken Schiff- SCCWRP; Barbara Picheny, Richard Gardner, Lisa Marks- Self; Deborah Carson, Joe Ames, Laura Eisenberg- City of Mission Viejo; Humza Javed- City of Laguna Hills; Robert Ming, Nancy Palmer- City of Laguna Niguel; Larry McKenney- RSF Consulting; Jim Fitzpatrick- Pronto Wash; Michael Beanan, Tom Osborne- SLCA; Ginger Osborne, Jinger Wallace- Village Laguna; Julie Millett- RWA Inc.; Mark

Grey- CICWQ; Michael Hansen- Dana Wharf Sportfishing PFMC; Celia Kutcher- OCCPNS; Mike Recupero- Recupero Assoc.; Juan Garcia- Chevron; Joseph Edwards- Irvine Company; Jim Eakin- Trabuco Highlands Comm. Assoc.; Erik Steenblock, Crystal Najera- City of Encinitas; Robert Chickering- Advanced Biocatalytics; Richard Dietmeier, Steve Dishon - South Coast Water District; Marsi Steirer- SD Public Utilities Dept.; Rick Baker- Ocean Institute; Andre Monette- Best, Best & Krieger LLP; Jerry Collamer- Save Trestles; Jack Eidt- Wild Heritage Planners; Penny Elia- Sierra Club; Roger von Butow- Clean Water Now!

**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 Fran Spivy-Weber briefly reported on the budget, the Water Quality Coordinating Committee meeting being held October 26-27, 2009 in Sacramento, the once through cooling policy that was distributed on June 30 for public comment.

On behalf of the Orange County Board of Supervisors, Mary Anne Skorpanich presented a proclamation to the State Board in recognition of appreciation for their great efforts and achievements on the Clean Beaches Program statewide. Ms. Spivy-Weber accepted the proclamation.

There was no July 1 Executive Officer's Report to discuss.

Mr. Rick Baker, Ocean Institute, gave a presentation on the Ocean Institute. Their mission is to *inspire all generations through education to become responsible stewards of our oceans.*

**Item 2** – Public Forum

Marsi Steirer, City of San Diego, addressed the contamination of petroleum products in the Mission Valley Aquifer and the cleanup process that Kinder Morgan was doing. She requested cooperation from the Regional Board to further explore re-injection of the treated water rather than discharging it to the Murphy Canyon Creek. Ms. Steirer asked for a meeting with Regional Boards staff without Kinder Morgan being present, due to their current lawsuit against Kinder Morgan.

Mr. Robertus said the status of the Mission Valley Terminal project would be reported on at the August 12, 2009 Board Meeting agenda as an information item.

Michael Hazzard, Clean Aliso Creek Association, addressed the Southern Steelhead Trout Restoration Project of Southern California. He said the trout were an endangered species and were attempting to make a comeback on Aliso Creek. Mr. Hazzard discussed the Basin Plan objectives for the creek and said they would work closely with staff so they would be on the same page when the remedial review was placed on the agenda.

Roger von Butow, Clean Water Now!, addressed the storm water permit for the Aliso Creek Ocean Outfall Pipe and said they would be asking for a cap on the number of diversions in the amount of toxicity going out of the pipe when the permit was up for renewal.

Richard Dietmeier, South Coast Water District, referred to Item 7 on the agenda and asked the Board to resolve the issue by directing staff to renegotiate the outfall permit. Ms. Catherine Hagan, Regional Board attorney, interrupted Mr. Dietmeier and said it was not appropriate for him to be discussing Item 7 in the Public Forum as it was on the agenda then reminded him that the public comment period was closed for that item.

Bob Chickering, Advanced Biocatalytics, talked about their treatment technology and a new product they were using in wastewater and outfalls. He said it was completely safe for plant, animal, human and marine life. Mr. Chickering closed by saying that biochemical solutions were safe, reduced capital expenditures, and were quick and effective.

**Item 3** – Minutes of Board Meetings of June 10, 2009

*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. Loveland moved approval of the June 10, 2009 minutes. The motion was seconded by Mr. Rayfield and approved by unanimous vote.  
This item was

**Item 5** – Recognition: Resolution of Appreciation for former Board Chair Susan Ritschel (tentative Resolution No. R9-2009-0096) *(John Robertus)*

Chairman Wright read the Resolution and thanked Ms. Ritschel for her service on the Board. Mr. Rayfield also made comments. Ms. Ritschel was not present at the meeting.

***Consent Item:***

**Item 6** – CONSIDERATION OF SETTLEMENT: Ametek Inc. - Administrative Assessment of Civil Liability against Ametek Inc. (former Ametek/Ketema Aerospace Manufacturing Facility) for violation of Cleanup and Abatement Order No. R9-2002-0201. The Regional Board will consider adoption of an Order Assessing Administrative Civil Liability in accordance with the terms of a settlement agreement between the Regional Board Prosecution Team and Ametek, Inc. The Order would resolve violations alleged in Complaint No. R9-2008-0033. The settlement includes: (1) payment of \$600,000 to the Regional Board for reimbursement of staff costs and to the State Water Resources Control Board Cleanup and Abatement Account; and (2) suspension of the remaining civil liabilities pending Ametek, Inc.'s completion of specified actions set forth in an agreed upon Cleanup and Abatement Order to the satisfaction of the Regional Board. 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. R9-2009-0024) (*Laurie Walsh*)

Item 6 was postponed.

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

**Item 9** – Information Item: Algalita Marine Research Foundation – Information item on reducing marine debris. (*Bruce Posthumus*)

Mr. Rayfield introduced the item. David Weeshoff, Algalita Marine Research Foundation, gave a presentation titled, "Plastics in the Marine Environment."

**Item 7** – Administrative Assessment of Civil Liability, South Orange County Wastewater Authority, the South Coast Water District Groundwater Recovery Facility. The Regional Board will consider adoption of a tentative Order that would impose a \$204,000 mandatory minimum penalty recommended in Complaint No. R9-2009-0028 for violations of Order No. R9-2006-0054, NPDES No. CA0107417, Waste Discharge Requirements for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County. On May 13, 2009, the Regional Board conducted a public hearing on the matter. The Regional Board closed the hearing and directed the prosecution staff and the Discharger to each submit a summary legal brief by June 12, 2009 based on the evidence in the record. On July 1, 2009, the Regional Board will consider the briefs, continue its deliberation on the matter, and may take an action. The public comment period is closed. No testimony will be received at the July 1, 2009 meeting. The Regional Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order R9-2009-0048) (*Jeremy Haas*)

Mr. Rayfield announced that he was a Board Member for the South Coast Water District. He therefore recused himself from participating in the item. Senior staff member Jeremy Haas gave the presentation.

Patricia Chen, Miles-Chen Law Group, spoke on behalf of the South Orange County Wastewater Authority and the South Coast Water District.

Mr. King said that he reviewed every statute that could potentially be an exemption from the mandatory minimum penalties and found there was no ambiguity. He said there was no reason to look for legislative intent. Mr. King also said that even though the Board struggled with mandatory minimum penalties, the intent of the legislature was clear in their language – the Board did not have any discretion.

Other Board Members expressed their concerns.

Mr. Haas responded to Mr. Loveland and Mr. Thompson's questions/concerns.

Ms. Chen made closing comments.

Mr. Robertus responded to comments made by Board Members and recommended adoption of the Order with errata.

Mr. Destache made a motion to adopt Order R9-2009-0048 with errata. The motion was seconded by Mr. King.

Mr. Thompson made a substitute motion to divide the question. One, to vote on the penalties themselves, and then take the SEP separately as to whether or not some of the penalties could be imposed with regard to the SEP that was proposed. The motion failed due to lack of a second.

The motion made by Mr. Destache was approved with opposition by Mr. Thompson.

**Item 8** – PUBLIC HEARING: Reissuance of NPDES Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) draining the watersheds of the County of Orange, the Orange County Flood Control District, and the incorporated Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano within the San Diego Region (South Orange County Municipal Storm Water Requirements). The Board will hear comments as they pertain to Tentative Order No. R9-2009-0002 (formerly Tentative Order Nos. R9-2008-0001 and R9-2007-0002). Public review of the revised Order began on March 13, 2009, with the staff of the Northern Watershed Unit convening several meetings with the public and the Copermitees subsequent to public release. This Hearing

continues the process of reissuing the MS4 Permit that began in 2007. The Board will not be taking an action on this item. *(Ben Neill)*

Chairman Wright explained the hearing procedures.

Mr. Thompson recused himself from participating in the item due to his position with the City of Rancho Santa Margarita, a copermittee in the permit.

Speakers included:

Mark Nielsen, Mayor – City of San Juan Capistrano  
Lisa Bartlett, Mayor – City of Dana Point  
Neil Blais, Councilmember – City of Rancho Santa Margarita  
Robert Ming, Mayor – City of Laguna Niguel  
Verna Rollinger, Councilmember – City of Laguna Beach

Staff members James Smith, Chad Loflen, and Ben Neill gave the presentation.

*The meeting recessed for lunch and Closed Session at 12:30.*

**Item 10** – *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.

**Item 11** – *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 12** – *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 13** – *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 held.

Board Member Luker left the meeting at 1:15 p.m.

*The meeting reconvened at 1:25 p.m.*

**Item 8** – Continued

Additional speakers:

Mary Anne Skorpanich – County of Orange  
Richard Boon – County of Orange  
Brad Fowler – City of Dana Point  
Geoffrey Hunt – County Counsel  
Richard Montevideo – Dana Point attorney  
Vaikko Allen – Contech Stormwater Solutions  
Andre Monette – Best Best & Krieger LLP  
Noah Garrison – Natural Resource Defense Council  
Jim Fitzpatrick – Pronto Wash  
Erica Root – Rancho Santa Margarita  
Roger Von Butow – Clean Water Now!  
Barbara Metzger – Laguna Beach resident  
Jerry Collamer – SaveTrestles.com  
Jack Eidt – Wild Heritage Planners  
Penny Elia – Sierra Club  
Michael Beanan – South Laguna Civic Association  
Barbara Picheny – Laguna Beach resident  
Jinger Wallace – Village Laguna Boardmember  
Gary Brown – Orange County Coastkeeper  
Mark Grey – Construction Industry Coalition on Water Quality  
Cheryl Lynn – Orange County resident  
Richard Gardner – self

Mr. Smith made closing comments.

Board Members asked questions of staff and the County.

Board Members made comments and recommendations.

Mr. Weber asked for a matrix showing similarities or differences between the Region 8 and Region 9 permit.

Mr. Rayfield said he felt the request for an extension of time to comment on the latest errata should be granted. He also said he was concerned about the reporting requirements.

Mr. King expressed his concerns with unfunded mandates.

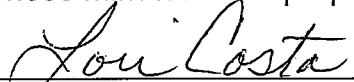
Mr. Smith summarized.




**Item 14** – Arrangements for Next Meeting and Adjournment  
Wednesday, August 12, 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 4:45 p.m.

These minutes were prepared by:

  
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Lori Costa  
Executive Assistant

Signed by:

  
\_\_\_\_\_  
John H. Robertus  
Executive Officer