

State of California
Santa Ana Regional Water Quality Control Board

Minutes of the February 2, 2024 Board Meeting
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
And via Video and Teleconference (Gov. Code, § 11123.2)

Court Reporter recorded items: 1, 4, 5, 6, 7, 8, and 9.

Board Member William Ruh called the meeting to order at 9:07 a.m.

Closed Session: 11:37 a.m.- 1:08 p.m.

Item 1. Introductions and Declaration of Quorum

Information pertaining to this item is contained in a verbatim transcript of the proceedings.

***Indicates that attendance was virtual.

Board Members Present at Board Meeting

Kris A. Murray, Chair
John Scandura, Vice Chair (2024)
William Ruh, Board Member
Gloria Alvarado, Board Member
Al Lopez, Board Member

Board Members Absent at Board Meeting

Letitia Clark, Vice Chair (2023)

Staff Present at Board Meeting

Jayne Joy, Executive Officer
Eric Lindberg, Assistant Executive Officer
Jessica Baenre, Executive Assistant
Nick Amini, Branch Manager
Jagroop Khela, Branch Manager
Dan Mefford, Information Technology Specialist
Don Nguyen, Information Technology Associate
Fernanda Arechiga, Scientific Aid***
Claudia Tenorio, Senior Environmental Scientist (Supervisor)***
Kyle Fructuoso, Environmental Scientist***
Chuck Griffin, Senior Water Resource Control Engineer (Specialist)
Hero Alexander, Water Resource Control Engineer
Adam Fischer, Senior Environmental Scientist (Supervisor)
Tavish Sturdivant, Staff Services Analyst
Christopher Robles, Seasonal Clerk

State Water Board Present at Board Meeting

Lori Okun, Regional Board Counsel
Naomi Rubin, State Water Board Counsel
David Lancaster, State Water Board Counsel***
DeeDee D'Adamo, State Water Board Liaison***
German Meyers, Water Resource Control Engineer***

Court Reporter Present at Board Meeting

Elise Hicks***

Public Attendance Present at Board Meeting

Amanda Carr
Colin Burns
Lori Sassoon
Chad Blais
Shanna Burkholder

Ms. Joy presented Ms. Baenre with a Superior Accomplishment Award.

Item 3. State Water Resources Control Board (State Water Board) Liaison Report

State Water Board Member, Dorene D'Adamo, presented an update on the following:

Budget Issues-

On January 10, 2024, the Governor announced a state spending plan of \$291 billion. The State is facing a deficit of approximately \$37.9 billion.

CalEPA has proposed a budget of \$5 billion for this fiscal year. The State Water Board has \$490 million allocated for non-climate-related natural resources and environmental protection programs.

The budget also includes \$6.1 million for the waste discharge permit fund and \$7 million for the Water Board to conduct essential activities in protecting the waters through water quality permitting and enforcement work that was previously conducted by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency.

Additionally, the budget maintains \$348 million previously allocated to water recycling and groundwater cleanup programs, but there is a proposed reversion of \$174.4 million in general funds and a delay of \$100 million until 2025-2026 for these programs.

Lastly, PFAS/PFOA maintains \$53 million that was previously allocated, but with a reversion of \$71.6 million of general funds and a reduction of \$30 million in 2024-2025.

Safe Drinking Water Program-

The State Water Board is currently accepting applications for its Wastewater Needs Assessment Advisory Group until February 29, 2024. Additionally, the Safer Drinking Water Advisory program will hold its first 2024 meeting both in person at its headquarters in Sacramento and virtually.

State Water Board Meeting-

The State Water Board meeting will take place next week. Ms. D'Adamo highlighted a few items:

- Proposed Strategic Work Plan
- Governor's Water Supply Strategy
- The Adoption of Maximum Contaminant Level for Chromium-6 Six Implementation
- Implementation of the Sustainable Groundwater Management Act
- Bay-Delta Plan Workshops
- 2024 Clean Water Act, Section 303(d) List

Ms. D'Adamo also mentioned that several items from Region 8 will be heard at the State Water Board in 2024, including the Middle Santa Ana River Watershed bacterial TMDL, Newport Bay Copper TMDL, and revisions to Lake Elsinore and Canyon Lake Nutrient TMDLs.

Activities Implementing the Governor's Water Supply Strategy-

On December 20, 2023, State Water Board staff released the final seawater desalination siting and streaming report to expedite permitting.

The Division of Water Quality staff initiated a contract with the Office of Water Programs at Sacramento State to develop a method to estimate current stormwater volume and amounts using open-source tools. This project will also begin to establish an inventory of stormwater capture infrastructure throughout California. The contract will begin in April 2024 and will be completed by June 2026.

The State Water Board adopted Direct Potable Reuse at the December 19, 2023 Board meeting. The regulations will continue through the Administrative Procedures Act process before final adoption which will take place in July 2024.

State Water Board staff are working on the response to comments for Hexavalent Chromium. The comment period will close on March 19, 2024, at noon. Ms. D'Adamo anticipates that this item will come before the State Water Board in April 2024.

State Water Board members and staff are working on revisions to the proposed water use efficiency outdoor standard. Ms. D'Adamo anticipates that an updated draft will be released by the end of February 2024 or early March 2024.

No questions or comments from the Board.

Item 2. Public Forum

Amanda Carr, Deputy Director for OC Environmental Resources, presented on the County of Orange/Orange County Flood Control District (OCFCD) Water Pollution Response program. OC Environmental Resources manages the Orange County Stormwater program for the 34 cities in Orange County.

Ms. Carr discussed the Water Pollution Response Program and Water Pollution Response Team. She mentioned that OC Environmental Resources operates a 24-hour pollution response hotline where individuals can report pollution or spills; there is also a webpage

available for logging complaints. The Water Pollution Response Team is comprised of 10 staff members who are available during the day to respond to and investigate complaints; six staff members are assigned for two-week periods to be on call for 24 hours.

Chair Murray provided comments.

Item 4. Election of Santa Ana Water Board Officers for 2024

Information pertaining to this item is contained in a verbatim transcript of the proceedings.

The nominating committee met to discuss the election of Board Officers for 2024. Board Member Alvarado and Board Member Lopez recommended the re-election of Ms. Kris Murray to continue serving as Chair and Mr. John Scandura to serve as Vice Chair for 2024.

Chair Murray asked the Board Members for a motion and asked Board Clerk Ms. Baenre for a roll call vote.

Motion: It was moved by Board Member Ruh, seconded by Board Member Lopez, to elect Ms. Kris Murray to serve as Chair, and Mr. John Scandura to serve as Vice Chair for 2024.

Roll call vote: Board Member Lopez- Aye, Board Member Scandura- Aye, Board Member Alvarado- Aye, Board Member Ruh- Aye, Chair Murray- Aye.

Item 5. Regional Board Meeting Minutes of December 1, 2023

Information pertaining to this item is contained in a verbatim transcript of the proceedings.

Chair Murray asked the Board Members for a motion and asked Board Clerk Ms. Baenre for a roll call vote.

Motion: It was moved by Board Member Ruh, seconded by Vice Chair Scandura, and the Regional Board Meeting Minutes of December 1, 2023 were approved as presented by roll call vote.

Roll call vote: Board Member Lopez- Aye, Vice Chair Scandura- Aye, Board Member Alvarado- Aye, Board Member Ruh- Aye, Chair Murray- Aye.

Item 6. Consideration of the Consent Calendar items are listed with an asterisk

Chair Murray asked the Board Members for a motion and asked Board Clerk Ms. Baenre for a roll call vote.

Item *7. Waste Discharge Requirements for Bombay Partners V Ontario, LLC, Ramona Indian Warehouse, Perris, Riverside County; R8-2024-0005

Item *8. Revision Order to Amend Multiple Existing Orders; R8-2024-0015

Motion: It was moved by Board Member Ruh, seconded by Board Member Alvarado, and Order Number R8-2024-0005 and Order Number R8-2024-0015 were approved as presented by roll call vote.

Roll call vote: Board Member Lopez- Aye, Vice Chair Scandura- Aye, Board Member Alvarado- Aye, Board Member Ruh- Aye, Chair Murray- Aye.

Item 9. Public Hearing on Administrative Civil Liability Complaint R8-2023-0056 City of Norco, Riverside County

Information pertaining to this item is contained in a verbatim transcript of the proceedings.

Chair Murray read an opening statement for the Administrative Civil Liability Complaint R8-2023-0056 City of Norco, Riverside County.

It was noted that all Board members, party representatives, and witnesses were physically present.

Chair Murray named the Board Members, Advisory Team, Prosecution Team, and Respondent.

Board Members

Kris Murray

William Ruh

Gloria Alvarado

John Scandura

Al Lopez

Advisory Team

Jayne Joy

Lori Okun

Prosecution Team

Nick Amini, Senior Water Resources Control Engineer

Adam Fischer, Senior Environmental Scientist

Charles Griffin, Senior Water Resources Control Engineer

Hero Alexander, Water Resources Control Engineer

Naomi Rubin, Attorney with the State Water Board's Office of Enforcement

Respondent

City of Norco represented by Colin Burns

Ms. Murray stated that no speaker cards were submitted for this item and that German Meyers, a witness for the Prosecution Team, would speak only if called upon.

Ms. Murray administered the oath.

Prosecution Team Presentation

Mr. Amini stated that the City of Norco (the City), a co-permittee violated the requirements of the MS4 permit for Riverside County and a Civil Liability penalty in the amount of \$401,888.88 was issued to the City. The main violation is the demolition of an over 60-year-old water reservoir and replacing it with a larger one without following the appropriate requirements of permits. Informal enforcement efforts by staff and additional progressive enforcement efforts were not effective. The City argued that the project was routine maintenance, a point that the Prosecution Team disagreed with.

Mr. Amini mentioned that the initial goal of the Santa Ana Water Board staff was to educate the City staff to follow the requirements of the MS4 program; however, a change in attitude was not reached by the end of the enforcement process, which resulted in the Prosecution Team imposing financial penalties to make the City change their practices and establish compliance.

Ms. Alexander provided information on the MS4 permit, 3 MG Reservoir 1 Replacement Project, January 7, 2022 Inspection, Communication Timeline, Violation 1: Significant Redevelopment, Violation 2: Failure to Train City Staff, and Violation 3: Failure to Provide Records within a Reasonable Time.

Ms. Alexander summarized that the project was not routine maintenance, the City undermined the regulatory program, the City did not follow Permit provisions nor City procedures, and the City's response during progressive enforcement was wholly inadequate.

The Prosecution Team recommended that the Board adopt Administrative Civil Liability R8-2023-0056 imposing \$401,888.88 in liability on the City of Norco. Additionally, the Prosecution Team recommended that the City improve its staff training updates, update its local implementation plan to reflect city procedures, and disavow its rationale about routine maintenance.

Board Members asked questions and provided comments.

Cross-examination by the Respondent

None.

Respondent Presentation

Colin Burnes, City Attorney for the City of Norco stated that this case asks whether the Board should impose a fine on a small community in the amount of \$400,000 because a Water Quality Management Plan (WQMP) was not prepared for one project and the Director of Public Works didn't receive training on the WQMP.

Mr. Burnes's presentation discussed the point of view of a small agency conducting day-to-day business operations and how this case impacts that.

Mr. Burnes introduced the following people:

Lori Sassoon, City Manager

Chad Blais, Director of Public Works

Shanna Burkholder, Krieger & Stewart Attorney

Ms. Burkholder, an attorney who represents Krieger and Stewart addressed Violation 1.

Ms. Burkholder stated that the purpose of the permit and reason to have a water quality plan in place is to manage and reduce stormwater runoff that carries pollutants into our waterway. Ms. Burkholder stated that there were no pollutants or discharges at all. In addition, Ms. Burkholder mentioned that there was no increase as a result of the project and construction in runoff volumes; the post-construction calculations showed that there was a decrease in the volume of runoff.

Next, Ms. Burkholder addressed the definition of routine maintenance, stating that there was no definition. Ms. Burkholder mentioned that engineers made determinations based on their understanding of the definition as it applies to their own field and it was interpreted that a WQMP was not necessary because this was routine maintenance of the overall water system.

Ms. Burkholder addressed liability calculations, stating that damages were high; there was no discharge and no need for cleanup.

Ms. Burkholder addressed the cooperation factor, stating that it was unclear how the City was supposed to acknowledge this violation. Ms. Burkholder stated that if, at any point in time, the City had been told to do a WQMP, Krieger & Stewart would have done it immediately. Ms. Burkholder mentioned that a four-month period of emails took place after the notice of termination was denied and it was assumed that this was cooperation with the Regional Board.

Next, Ms. Burkholder addressed calculation factors. For cleanup and cooperation, Ms. Burkholder argued that the range should be 0.75, the lowest possible. For the culpability factor, Ms. Burkholder states that this was not an intentional or negligent conduct

Mr. Burnes addressed training. Mr. Burnes stated that the City of Norco is a small agency that relies on consultants and subject matter experts. The City of Norco hired a subject matter expert on this project, which was Krieger & Stewart, and relied on their training and experience. In addition to Krieger & Stewart, the City of Norco had two employees who had WQMP training, just not the Director of Public Works who is now trained. Ms. Burnes stated that there is no history of violation, the City had no economic benefit or de minimis. The Prosecution Team's request for a base violation of \$100,000 from a small community, is a huge penalty for not having one staff member trained. Mr. Burnes asked the Board to exercise discretion to lower the fines as they seem grossly disproportionate for the violations addressed.

Lori Sasson, City Manager spoke. Ms. Sasson provided information on the City of Norco stating that Norco is a small community with about 26,000 people. The City has a small staff of 80 people and relies heavily on contacts, consultants, private sector partners, and on-call design contractors to help augment small staff and a small budget.

Chad Blais, the Director of Public Works, spoke and stated that the City had reasons for its actions. He also mentioned that the City is willing to make any necessary accommodations and do things correctly going forward.

Board Members asked questions and provided comments.

Cross-examination by the Prosecution Team

None.

Public Comments

None.

Closing Statement by the Prosecution Team

Ms. Rubin highlighted several arguments from the City, pointing out that accepting them would make the MS4 permit requirements concerning WQMP meaningless. She highlighted that the City's own permit employees are responsible for ensuring WQMP compliance in its local implementation plan. The MS4 regulatory program aims to ensure that water quality goals are met by putting in place a process.

Ms. Rubin urged the Board to approve the proposed Administrative Civil Liability amount and hold the City accountable for its commitments.

Closing Statement by the Respondent

Mr. Burnes mentioned that neither party had tried to discuss the matter informally before coming to this point. He requested the Board consider that the City had no prior violations, progressive discipline, or competitive advantage. He asked for a reasonable fine if one is imposed since the City didn't act in bad faith.

Board Members asked questions and provided comments.

Closed Session

Chair Murray closed the record of the hearing and moved to a closed session.

Pursuant to Government Code section 11126, subdivision (c)(3), the Board went into a closed session at 11:37 a.m. to deliberate on item 9.

Resume Open Session

The Board resumed at 1:08 p.m.

Chair Murray asked legal counsel, Ms. Okun, to summarize the Board's deliberations. Ms. Okun read the changes into the record.

Chair Murray asked the Board Members for a motion and asked Board Clerk Ms. Baenre for a roll call vote.

Motion: It was moved by Board Member Ruh, seconded by Vice Chair Scandura, and Complaint Number R8-2023-0056 was approved with amended changes as presented

by roll call vote, affirming the penalty of \$321,643.88.

Roll call vote: Board Member Lopez- Aye, Vice Chair Scandura- Aye, Board Member Alvarado- Aye, Board Member Ruh- Aye, Chair Murray- Aye.

Item 10. Executive Officer's Report

Written report submitted.

Item 11. Board Member and Executive Officer Communications

Vice Chair Scandura congratulated Ms. Baenre and Mr. Lindberg and expressed his excitement about working with Mr. Lindberg in his new role. He also mentioned that it's an honor to be elected as Vice Chairman and is eager to support Chair Murray.

Board Member Lopez had no additional comments.

Board Member Alvarado congratulated Ms. Baenre, Chair Murray, and Vice Chair Scandura. She also thanked Director Clark for her service as Vice Chair.

Board Member Ruh congratulated Ms. Baenre, Mr. Lindberg, Chair Murray, and Vice Chair Scandura. He also wished everyone a Happy New Year.

Chair Murray wished everyone a Happy New Year and expressed gratitude to Ms. Baenre, Mr. Lindberg, Ms. Joy, and the staff. Chair Murray acknowledged Director Clark for her service as Vice Chair and congratulated Director Scandura on his new role as Vice Chair. Chair Murray stated that it's an honor to serve another year as Chair.

Closed Session

The Board entered a closed session from 11:37 a.m.- 1:08 p.m.

Adjournment

Chair Murray adjourned the meeting at 1:24 p.m.

Respectfully submitted:

JAYNE JOY, P.E.
Executive Officer

/jb