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Item No. 13
Supporting Document No. 19

December 8, 2009

California Regional Water Quality Control Board Members
via David Barker
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Request for Extension of the Public Comment Period and Postponement of the Scheduled Hearing for Draft Tentative Order No. R9-2009-0094 – NPDES Permit No. CAG679001 and Public Comment for the Record Thereof

Dear Mr. Barker:

The Olivenhain Municipal Water District, along with all of the other water agencies in Region 9, shares the Regional Water Quality Control Board's (RWQCB's) goal for improving water quality. Water agencies are stewards of the environment whose operations are negatively impacted by any impairment of water bodies in the region, so we want to assure you that it is our intent in all of our operations to protect the receiving waters of the region.

In fact, discharges of potable water are required by state and federal laws and regulations to assure that water served is safe for human consumption and use. Community water systems must be able to concurrently protect source waters, and protect public health and water supply safety by compliance with safe drinking water laws and regulations, all in a cost effective fashion to assure comprehensive availability and affordability of potable water.

Along with many other water agencies in RWQCB Region 9, the Olivenhain Municipal Water District has several concerns about the Draft Tentative Order No. R9-2009-0094 –that is scheduled to be adopted on December 16, 2009. The purpose of this letter is twofold, with the first being a request for postponement of adoption of the Order and the second being an overview of our chief objections to some of the provisions of the Order.

The Draft Order was originally released to interested parties on June 25, 2009. After a series of meetings with RWQCB staff in which good progress was made to a cooperative permitting



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process, we were informed that the adoption of the Order would be postponed for several months. To our surprise, the Order returned to the Agenda without any notification to members of the TAC. We received copies of the new, heavily modified Order only on December 2, giving us a short 6 days to review and comment. This is an unacceptably short review period.

Were this Order a simple update to the 2002 Order, this time period for review might be appropriate. However, the magnitude of the changes included in the Tentative Order makes this time frame hopelessly short for the dozens of public agencies to properly evaluate and comment before the published deadline.

For this reason, we ask that the Regional Board postpone adoption of this order for a period of at least 90 days. This amount of time will allow the relevant stakeholders to meet with RWQCB staff and develop language for the Order that will meet all of our goals in the protection of the receiving waters without causing an undue burden on the operations of public agencies.

With regard to the provisions contained in the Tentative Order itself, the District has a number of concerns that we would like the RWQCB to address prior to adoption of this Order. The District has participated on a regional Technical Advisory Committee (TAC) that has met with RWQCB staff over the last weeks in an attempt to work through these issues, but no firm resolution of these issues could be accomplished in the short time period allowed. Brian Kelley on your staff graciously met with the TAC on December 1, 2009 for over 3 hours and we expressed in great detail the issues in the Order as it is currently drafted. He indicated to us verbally that he would consider those comments as having been submitted by the posted deadline. We will follow up with written version of those comments provided in person over the next few days.

In addition to those comments provided in person, we offer these comments and questions in an attempt to bring certain issues up for discussion so that a mutually acceptable set of conditions for the Order can be developed.

1. The Tentative Order does not identify any specific water of the United States or California where a beneficial use has been threatened or compliance with a water quality objective has not been met because of the discharge of potable water or where there is a reasonable potential for this to occur. For the benefit of agencies that the Tentative Order would regulate, the permit should identify those surface waters or groundwater being threatened or degraded by potable water discharges as a result of routine water operations.

Water Code Section 13000 states that the RWQCB must regulate activities that affect water quality...“to attain the highest water quality which is reasonable,

considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." A key element of this requirement that water quality regulations be "reasonable" is that the burden of a regulation is balanced by commensurate improvements to water quality. In the absence of any evidence that discharges of potable water during routine operations of public water systems may adversely affect water quality, the regulation of such discharges is not reasonable.

Additionally, Water Code Section 13260 states that the RWQCB must regulate discharges... "that could affect the quality of the waters of the state". However, there is no evidence that the small volumes of high quality potable water discharged sporadically from potable water systems either cause or have the reasonable potential to affect the quality of the waters of the state. Thus, they do not appear to require regulation under a separate NPDES permit and can continue to be discharged into MS4s as non-stormwater discharges that do not pose a threat to water quality.

The previously mentioned TAC has met with RWQCB staff and inquired about any observations, complaints, or evidence of any kind that could show even the possibility that discharges covered under the 2002 permit had caused any problem whatsoever to the receiving waters of the region. RWQCB staff indicated that they had no such information to indicate that there had been any adverse affects on any water bodies from any of the discharges allowed under the 2002 permit.

Further, the United States Environmental Protection Agency and the American Water Works Association Research Foundation funded a study to examine the environmental impact of "non-treatment discharges" from utilities which was just released in 2007. The study consisted of data collection and research in both the eastern and western regions. The study (AWWARF #2937) concluded that there were no significant impacts from potable water discharges on the receiving waters.

Based on the above, we ask that the RWQCB identify any waters of the United States whose beneficial uses have been adversely impacted by the routine discharges of potable water conducted in accordance with the 2002 permit or where there is a reasonable expectation for this to occur. If the RWQCB cannot make such an identification, based on the statutes provided above, the excessively large regulatory scheme outlined in the Tentative Order is not

consistent with the Water Code.

2. Under Water Code Section 13225 (c), a RWQCB may not require local agencies to obtain and submit analyses of water where...“the burden, including costs, of such reports [bears] a reasonable relationship to the need for the report and the benefits to be obtained there from”. There is no evidence that such an analysis of the costs and benefits of the sampling required in the permit was conducted much less that benefits are greater than the costs.

Has the RWQCB performed a cost benefits analysis on the costs of the massive amount of sampling required under this Tentative Order? If so, since there is no evidence of any impairment of the beneficial uses of the receiving waters under discharges allowed under the 2002 permit, how can it be shown that these benefits outweigh the costs?

3. Section B.2 of the San Diego Region MS4 NPDES Permit (Order R9-2007-0001) specifically exempts water line flushing “unless a Copermittee or the Regional Board identifies the discharge category as a significant source of pollutants to the waters of the U.S.” The rationale for this section is firmly grounded in Federal Law in 40 CFR 122.26(d)(2)(iv)(B)(1).

Has the RWQCB or any Copermittee to the San Diego MS4 Permit made any such determination? Since the water in question here is potable and by its very nature does not contain any such pollutants, it would seem unlikely that such a determination could be made.

4. In several areas of the Tentative Order potable water is referred to as “waste” or “effluent”. We object to this characterization as misleading and inaccurate as potable water is arguably the highest quality water that could be found anywhere in the region. These terms are probably left over terms from RWQCB Orders that deal with wastewater systems and should be modified to reflect the fact that dechlorinated potable water poses no threat to any receiving water.

The fact that RWQCB staff, nor any other source that we are aware of, has indicated that any discharge by any water agency covered under the 2002 permit has caused any impairment to any beneficial use of any receiving waters is testimony enough to demonstrate that the regulations in place in the 2002 permit are adequate and

Michelle Mata
San Diego Regional Water Quality Control Board
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reasonable. The burdens being placed on water agencies under this new Tentative Order as written are extraordinary and punitive in costs and labor, yet will have no new benefit through their implementation.

We ask again that the adoption of this Draft Tentative Order be delayed by at least 90 days so that the local water agencies can work with RWQCB staff to craft a set of requirements that satisfy both the RWQCB's need for information related to our discharges and the need of water agencies not to be financially and operationally burdened by regulations that will not in themselves make any water quality improvements in the region.

Thank you for your time and consideration.

Sincerely,

Tom Kennedy
Operations Manager
Olivenhain Municipal Water District

Cc: Wesley Peltzer, General Counsel
Edmund Sprague, President, OMWD Board of Directors