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**Item No. 13**  
**Supporting Document No. 7**

August 5, 2009

California Regional Water Quality Control Board Members  
via Michelle Mata  
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 Ms. Mata:

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 August 12, 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 released to interested parties on June 25, 2009 and is over 95 pages in length. This document represents a massive increase in complexity and potential costs for all





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 effects 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. For Olivenhain MWD, we estimate that the costs of this sampling will exceed \$1M per year in order to comply with the Draft Tentative Order.

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. On July 31, 2009, the California Commission on State Mandates ruled on a Test Claim regarding the Los Angeles RWQCB Oder 01-182 which is related to the MS4 permit for LA county. In this ruling, the Commission approved staff's Proposed Statement of Decision including a conclusion that all of the stormwater permit requirements raised by the claimants are new programs and/or higher levels of service resulting from the State's exercise of discretion (i.e., State mandates).

The legal record in this case is voluminous (nearly 4000 pages) and the claims that were upheld by the Commission relied specifically on the provisions of 40 CFR 122.26(d)(2) in the areas where the Los Angeles RWQCB imposed requirements that were not specifically required under Federal law. In the case of the Draft Tentative Order, the San Diego RWQCB is attempting to impose massive water sampling and monitoring requirements for discharges that are **specifically exempted** from regulation under Federal law which would clearly fall into the category of an Unfunded Mandate which is not allowed by law in California.

5. 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



result in an additional burden being placed on OMWD without any basis in the protection of water quality. We ask that this section, along with other references to this that are included in the Notice of Intent form be stricken as RWQCB staff had indicated previously.

9. The NOI form requests a map of all discharge points. It is impracticable for an agency that covers a wide area with hundreds of miles of pipelines and tens of thousands of water services, hydrants, blow offs, air releases, and other facilities, all of which could be a discharge point, to provide a map that would be of any beneficial use. If desired, the District could provide digital copies of our Geographic Information System data to the RWQCB on the condition that these records not be made available to the public.
10. On Page E-17 the Order requires some specific monitoring and reporting for emergency discharges. This section includes requirements for providing the number of discharges within 1000 feet of an emergency discharge in the last 12 months. It seems that the RWQCB is trying to assess the condition of the potable distribution systems by the collection of this data. Such information is not relevant to the water quality impacts of these discharges and the cost and complexity of collecting this information will not actually improve any receiving waters.

All water agencies in the San Diego region take the conservation of water very seriously and have passed mandatory water use restrictions that prohibit the waste of water. Water mains that suffer multiple failures are always fast tracked for replacement whenever funds are available. In addition, very detailed water loss monitoring and reporting is already being done by each agency with actual water loss from agencies in this region being well below the national and statewide averages. If the RWQCB would like copies of our annual water loss reports we can make these available.

11. We would ask that any discharges from oil and/or gas systems or any other system that is not part of the municipal water system be deleted from this Order as these are a very different class of discharges and should be regulated separately.

Finally, the characterization of potable water given in the third paragraph of Section I on page 5 is wholly inaccurate. Other than chlorine, which is controlled using the Best Management Practices (BMPs) in place under the current permit, the

Michelle Mata  
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constituents of concern outlined in this paragraph are all well below Basin Plan standards in potable water. The BMPs that have been in place for 7 years now and have effectively controlled the impact of chlorine and dechlorination of water during routine releases is now part of the every day habits of water operators across the county. Erosion control is similarly part of the normal course of business.

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 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,



Kimberly Thorne, Esq.  
General Manager  
Olivenhain Municipal Water District

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