



Public Works

SAN DIEGO RWQCS
2018 APR 18 AM 9:57

April 13, 2018

Via Email to sandiego@waterboards.ca.gov

David Gibson
San Diego Water Resources Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Attn: Roger Mitchell

Re: Comment on Administrative Draft Investigative Order R9-2018-0021
Reference 656543: RMitchell

Dear Mr. Gibson:

The City of El Cajon (the "City") appreciates the opportunity to submit these comments on the draft of San Diego Regional Water Quality Control Board Tentative Investigative Order R9-2018-0021, circulated on February 23, 2018 to those agencies identified therein as the Investigative Order Parties (the "Draft Order").

The City supports the Regional Board's intent to establish a collaborative approach toward addressing an important water quality issue in the San Diego River watershed; however, we believe the Draft Order should be modified based on the comments received by the City of Santee ("Santee") and the County of San Diego (the "County"), as well as in this correspondence and those comments received from the other Investigative Order Parties.

After our preliminary review, and without waiving its right to submit additional comments at the time of the Board's consideration of the Draft Order, including its right to object to the Draft Order if approved in final form, and in addition to supporting all of the Requested Revisions of the City of Santee and the County, the City requests three specific revisions to the Draft Order, which are set forth in this letter.

Requested Revisions

1. Joinder in Santee Requested Revision No. 1

The City joins in the requested revisions or deletions from Santee and the County they related to Finding No. 46, "Homeless Encampments".

Without repeating those specific comments, in particular the argument that the Regional Board is acting in excess of its legal capacity by including Finding No 46, and those comments from both the County and Santee that homelessness is a socio-economical problem that far exceeds the ability of the Regional Board to include this problem in the Draft Order, Finding No. 46 fails to take into account efforts of the Investigative Order Parties to address homelessness; nor does the Draft Order acknowledge those constitutional and other legal impediments to removing homeless individuals from "homeless encampments" within our respective jurisdictions and "[preventing] habitation in public open space areas" through our police powers.

As so clearly pointed out by Santee, the enforcement of any such local laws has been the subject of litigation and local agencies such as the City cannot adopt local laws that the courts have determined to be unconstitutional.

The City has, however, made great efforts to remove persons from its stormwater facilities. Regular inspections and enforcement of our Municipal Code has resulted in the conviction of those persons living in the culverts and channels that discharge into the San Diego River as trespassing in violation of El Cajon Municipal Code 9.60.010 (Drainage ditch – Trespass prohibited). Open conviction as a misdemeanor the courts have started to agree with our need for strongly conditioned terms of probation including that the defendant must stay away from all drainage ditches and channels in the City or risk additional jail time.

With this additional information in mind the City asks that the Regional Board modify the Draft Order to acknowledge these efforts of the City to keep the homeless population and all other persons from trespassing in our drainage ditches and channels.

2. Joinder in Santee Requested Revision No. 2

As pointed out by Santee the Draft Order requires the City to submit a Work Plan, no later than July 1, 2018. The required Work Plan must be developed through a comprehensive procedure consistent with our Municipal Code and state laws. Santee has presented a reasonable objection to requiring the submission of such a Work Plan in such a short amount of time and the City agrees with Santee that more time should be given to the Investigative Order Parties in order to all each of our jurisdictions the time necessary to perform such an important but monumental task, even assuming cooperation and collaboration with other Investigative Order Parties in order to provide consistency and comprehensive Work Plans.

3. Joinder in Santee Requested Revision No. 6

It is the City's position that by requiring the implementation of a new program to address the findings in the Draft Order the Regional Board will, again, constitute a state mandate and, unless funded by the state, is in violation of Section 6 of Article XIII B of the California Constitution.

The City requests that the Regional Board comply with Section 17561 of the Government Code and undertake the following:

- Prepare and provide a bill appropriating the funds for the costs mandated by the Draft Order, or alternatively, provide an appropriation for these costs in the Budget Bill for the next fiscal year.
- Revise the Draft Order cite that item of appropriation in the Budget Bill or that appropriation in any other bill that is intended to serve as the source from which the Controller may pay the claims of local agencies and school districts.

Finally, there are minor typographical errors, the most notable of which is found in Directive No. 7, where references are made to paragraphs in Directive 6, which should be changed to Directive 7.

Sincerely,



Yazmin Arellano
Deputy Director of Public Works
City of El Cajon