



June 20, 2018

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

Via Email to [sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov)

Attn: Roger Mitchell

**Re: Comment on Tentative Investigative Order R9-2018-0021**  
**Reference 656543: RMitchell**

Dear Mr. Gibson:

The City of El Cajon ("City") appreciates the opportunity to submit these comments on San Diego Regional Water Quality Control Board Tentative Order R9-2018-0021, An Order Directing the City of San Diego, the City of Santee, the City of El Cajon, the City of La Mesa, the County of San Diego, the Padre Dam Municipal Water District, the Ramona Municipal Water District, San Diego State University, Metropolitan Transit System, and the California Department of Transportation to Submit Technical and Monitoring Reports to Identify and Quantify the Sources and Transport Pathways of Human Fecal Material to the San Diego River Watershed ("Tentative 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 Tentative Order is not the best approach.

The Tentative Order's focus on homeless encampments as a source of direct deposition of human fecal matter to the San Diego River and its tributaries raises significant socio-economic issues that are not easily solved by the entities currently included in the Tentative Order. Important stakeholders, such as law enforcement, entities providing services to homeless populations, and the Regional Board, are not part of the Tentative Order. For this reason, we believe the better approach is to establish a memorandum of agreement between stakeholders which is designed to establish structures for identifying key sources and pathways and collaborating on solutions. *The City respectfully asks the Regional Board not to issue the Tentative Order and instead to explore a collaborative agreement between stakeholders.*

If the Regional Board decides to issue the Tentative Order over these objections, the City requests three revisions to the Tentative Order, which are set forth in this letter.<sup>1</sup>

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<sup>1</sup> This request for revisions does not constitute concurrence in the issuance of the Tentative Order.

## **REQUESTED REVISIONS**

### **1. Acknowledge recent and existing efforts underway**

The City requests that Finding 16 be revised to acknowledge recent and existing efforts underway by jurisdictions other than the City of San Diego.

**Requested Revision 1.** Revise Finding 16, or insert a separate finding as follows:

The City of El Cajon has undertaken and supported many efforts to identify sources of bacteria within the City's jurisdiction, and more specifically, potential human contributions. The City has been proactively addressing transient encampments within Forester Creek and its tributaries within the City. El Cajon Police and Public Works crews routinely inspect sections of the creek, and have facilitated hundreds of inspections and encampment cleanups on public properties, removing many tons of solid, hazardous, and bio-waste from the environment. The City's Police Department has actively participated with the East County Homeless Task Force to collaboratively address concerns and impacts of the transient and homeless population.

### **2. Provide sufficient time to prepare the Investigative Study Work Plan**

The Tentative Order requires the City to begin the Investigative Study by constructing a conceptual watershed model (Model). The Model is to be based on available data on the occurrence of human fecal material discharges, pathways of human fecal material, waste composition and concentration, and other complex data related to sources and pathways of human fecal material. The Model is to be submitted as part of the Investigative Study Work Plan (Work Plan), no later than January 7, 2019.

The Tentative Order does not provide sufficient time for the named parties to establish the legal arrangements necessary to facilitate the development of the Model or the Work Plan. The Tentative Order requires the City (and all other named parties) to submit an Investigative Study Work Plan (Work Plan), no later than January 7, 2019. The Work Plan must describe the proposed actions to be conducted in order to complete an investigative study or studies of the sources of human fecal material in wet weather discharges to the San Diego River (Order Directive 3). The Tentative Order requires investigative studies that will be complex and resource-intensive. Before it can begin preparing a work plan for a very complex and resource intensive study, the City needs to review the Regional Board's adopted order, solicit and hire a consultant, negotiate agreements with the consultant and/or negotiate collaborative agreements with other Dischargers subject to the Tentative Order, and obtain funding for the consultant and/or collaborative agreements. After a Work Plan is in draft form, it will need to be circulated and approved by all participating entities before it can be submitted to the Regional Board.

The City understands that the Tentative Order is anticipated to be adopted at the Regional Board's August meeting, providing just four months to procure funding, establish legal arrangements and prepare the Model and Work Plan. Four months is wholly inadequate to coordinate with other Dischargers, obtain budgetary amendments, solicit professional services, negotiate contracts, and prepare the Model and Work Plan for a "complex and resource-intensive" investigation. Therefore, the City requests the following revisions to extend the deadline for the Work Plan to correspond with the fiscal year and budgeting process:



**Requested Revision 2.** Revise paragraph 3 of the Ordering Provisions to read as follows:

Investigative Study Work Plan Describing Investigative Study Milestones. No later than ~~January 7, 2019, eighteen months after the effective date of this Order,~~ the Dischargers must submit an Investigative Study Work Plan describing the proposed actions to be conducted to complete the investigative study described in Directive 1. The Dischargers must implement the Investigative Study Work Plan within ~~60~~ 180 days of submittal, unless otherwise directed by the San Diego Water Board. The Investigative Study Work Plan must include, but not be limited to, the following:

### **3. Reduce monitoring and reporting obligations**

The Tentative Order requires Dischargers to submit progress reports each July 15 and January 15, which describe actions taken during the previous six months, the results of all sampling, all scheduled activities, including a graphical depiction of the progress of the investigative study, any modifications to the work plan, and any delays encountered as well as efforts to mitigate delays. Preparing semiannual reports on the Work Plan creates reporting obligations that must be added to City's established reporting schedule. The City already prepares reports on the Jurisdictional Runoff Management Plan ("JRMP"), the Water Quality Improvement Plan ("WQIP"), and the Trash Order provisions. A requirement to prepare these semiannual reports appears to disregard the City's established reporting obligations and to prioritize reporting on the Work Plan over long-standing and long-anticipated programmatic elements, such as implementing the JRMP and WQIP, implementing the requirements of the Trash Order, TMDL implementation, and participating in the bacteria reopener and MS4 permit reissuance process. Because semiannual reporting on the Work Plan adds another "complex and resource-intensive" program without consideration of limited time and personnel resources already dedicated to water quality programs, the City requests the following revision:

**Requested Revision 3.** Revise paragraph 4.b of the Ordering Provisions to read as follows:

All semiannual progress reports shall be submitted to the San Diego Water Board by the ~~thirty-first (31st) (15th)~~ day of ~~October January and July~~ of each year following the submission of the Work Plan ~~effective date of this Investigative Order.~~ Submission of these progress reports shall continue until submittal of the Final Investigative Study Report verifying completion of the investigative study or studies required under Directive 12 of this Investigative Order.

### **4. Provide funding for conducting the studies**

Section 6 of Article XIII B of the California Constitution requires the State to provide a subvention of funds to local agencies any time the Legislature or a state agency requires the local agency to implement a new program, or provide a higher level of service under an existing program. The Tentative Order requires the City to implement a new program to investigate the sources and pathways of human fecal material in wet weather discharges to the San Diego River. Issued pursuant to Water Code sections 13267 and 13383, the Tentative Order constitutes a state mandate. The City does not have authority levy service charges, fees, or assessment sufficient to pay for the mandated program.

Because the Tentative Order constitutes a state mandate, the City requests that the Regional Board comply with Section 17561 of the Government Code and undertake the following:

**Requested Revision 4.a.** Prepare and provide a bill appropriating the funds for the costs mandated by the Tentative Order, or alternatively, provide an appropriation for these costs in the Budget Bill for the next fiscal year.

**Requested Revision 4.b.** Revise the Tentative Order to 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.

Thank you for considering these comments on the Tentative Order. Please contact John Phillips, Storm Water Program Manager at (619) 441-1783, with any questions or concerns.

Sincerely,



Yazmin Arellano, PE, PLS  
Deputy Director of Public Works/City Engineer

Copy: Graham Mitchell, City Manager  
Dirk Epperson, Director of Public Works  
John Phillips, Storm Water Program Manager

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