

The requirements for public water systems in California to fluoridate their drinking water is set forth in California Fluoridation Act of 1995 (Health and Safety Code §§ 116410 et seq.), which sets forth requirements for public water systems with over 10,000 service connections to fluoridate their drinking water when funding becomes available from sources other than taxes or customers. As relevant to your question, Health and Safety Code § 116415(a) provides certain exemptions to when public water systems must fluoridate their water, with subsection (B) potentially being applicable to OMWD here:

(a) (1) A public water system is not required to fluoridate pursuant to Section 116410, or the regulations adopted thereunder by the department, in any of the following situations:

(A) If the public water system is listed on the schedule to implement a fluoridation program pursuant to paragraph (4) of subdivision (b) of Section 116410 and funds are not offered pursuant to a binding contractual offer to the public water system sufficient to pay the capital and associated costs from any outside source. As used in this section, "outside source" means a source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(B) If the public water system has been offered pursuant to a binding contractual offer the capital and associated funds necessary for fluoridation as set forth in subparagraph (A) and has completed the installation of a fluoridation system, **however, in any given fiscal year (July 1-June 30, inclusive) funding is not available to the public water system sufficient to pay the noncapital operation and maintenance costs described in subdivision (g) from any outside source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.** A binding contractual offer to provide funds for 12 months, without regard to fiscal year, of noncapital operation and maintenance costs shall render a water system unqualified for an exemption under this subparagraph for that year.

(C) If the funding provided by an outside source for capital and associated costs is depleted prior to completion of the installation of a fluoridation system and funds sufficient to complete the installation have not been offered pursuant to a binding contractual offer to the public water system by an outside source. In the event of a disagreement between the public water system and an outside funding source about the reasonableness of additional capital and associated costs, in order to qualify for an exemption under this subparagraph the costs overruns must be found to be reasonable by a registered civil engineer recognized or employed by the department who is familiar with the design, construction, operation, and maintenance of fluoridation systems.

This exemption is addressed in the regulations adopted by the State Water Resource Control Board ("State Water Board") in accordance with the statute in Cal. Code Regs. Tit. 22, § 64433(f)(2), which provides that public water systems with over 10,000 service connections shall be exempt from fluoridation requirements in the following circumstances:

The water system received sufficient capital funds from a source identified by the State Board and not excluded by Health and Safety Code section 116415 and subsequently installed a fluoridation system or the water system meets the criteria in subsection (b), and **the water system did not receive sufficient funds from a source identified by**

the State Board and not excluded by Health and Safety Code section 116415 to cover the noncapital operation and maintenance costs to fluoridate. The water system shall be exempted for any fiscal year (July 1 through June 30) for which it does not receive the funds for noncapital operation and maintenance costs.

Thus, OMWD may be exempt from the requirement to fluoridate its water where there is not sufficient funding for operations and maintenance costs from sources other than rates or taxes for a given fiscal year (July 1 – June 30), but only for that fiscal year. If Olivenhain intends to utilize that exemption, it is recommended that OMWD confirm with the relevant contact at the State Water Board that the State Water Board has not identified any capital funds, and that the State Water Board has not placed OMWD on the list of public water systems excluded from utilizing the exemption pursuant to Health and Safety Code § 116415.