

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)
)
CLEANUP AND ABATEMENT) STIPULATION FOR ENTRY OF
ORDER R2-2021-00XX) CLEANUP AND ABATEMENT ORDER
(PROPOSED) REQUIRING THE) R2-2021-00XX (PROPOSED)
CITY AND COUNTY OF SAN)
FRANCISCO TO ABATE)
THREATENED POLLUTION)
)
)

Section I: INTRODUCTION

This Stipulation for Entry of Cleanup and Abatement Order R2-2021-00XX (PROPOSED) ("Stipulation") and Cleanup and Abatement Order R2-2021-00XX (PROPOSED) ("Proposed CAO"), attached and incorporated by reference, is entered into by and between the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Water Board"), on behalf of the Regional Water Board Prosecution Team (the "Prosecution Team"), and the City and County of San Francisco (the "City") (collectively, "Parties").

Section II: RECITALS

1. The City owns and operates two wastewater collection and treatment systems, the Oceanside and Bayside systems, within the City and County of San Francisco:
 - a. The Oceanside system includes the Oceanside Water Pollution Control Plant and its wastewater collection system, and discharges to the Pacific Ocean pursuant to NPDES Permit CA0037681 (Order R2-2019-0028).
 - b. The Bayside system includes the Southeast Water Pollution Control Plant, North Point Wet Weather Facility, and their wastewater collection system, and discharges to San Francisco Bay pursuant to NPDES Permit CA0037664 (Order R2-2013-0029).
2. The collection systems are primarily combined sewer systems that transport municipal wastewater (from domestic, commercial, and industrial sources) and stormwater to the treatment plants.

3. During dry weather, the Oceanside and Bayside collection systems route wastewater and sometimes stormwater to the treatment plants through pipes, pump stations, and transport/storage structures.
4. During wet weather, when the treatment systems operate at full capacity or when hydraulic constraints within the collection systems preclude additional flows to the treatment systems, certain transport/storage structures provide storage for combined wastewater and stormwater. When the storage capacity of a transport/storage structure and the wet weather capacity of their associated treatment plants are exceeded, combined wastewater is discharged through one or more combined sewer discharge outfalls. The Oceanside system has 7 combined sewer discharge outfalls to the Pacific Ocean, and the Bayside system has 29 combined sewer discharge outfalls to San Francisco Bay. Discharges from these 36 combined sewer discharge points are authorized under NPDES Permit CA0037681 (Order R2-2019-0028) and NPES Permit CA0037664 (Order R2-2013-0029).
5. During some wet weather events and in the specific low-lying areas identified in Finding 10 of the attached Proposed CAO (the description of which is incorporated by reference), sewer overflows from the combined sewer systems¹ occur when the collection systems cannot convey or contain all wastewater and stormwater for storage, treatment, and discharge from an authorized discharge point to the Pacific Ocean or San Francisco Bay. These sewer overflows from the combined sewer systems can flow to public rights of way or private property in these low-lying areas, and both paved and pervious land.
6. The Prosecution Team alleges that certain of the sewer overflows from the combined sewer systems in the low-lying areas identified in Finding 10 of the Proposed CAO threaten to cause or permit discharges of waste to groundwaters, which are waters of the state, and threaten to create a condition of pollution, as set forth in Findings 6 to 11 of the Proposed CAO. The City denies these allegations in their entirety.
7. Water Code section 13304, subdivision (a), states, in part:

A person who...threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order

¹ The term “sewer overflows from the combined sewer systems” refers to releases or diversions of untreated or partially treated wastewater or combined wastewater and stormwater from the City’s combined sewer collection systems. This term does not include releases due to failures in privately-owned sewer laterals or authorized discharges from combined sewer discharge outfalls.

of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. ... Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

8. The Parties have engaged in settlement negotiations and agree to present this Stipulation and Proposed CAO to the Regional Water Board or its delegate for adoption as a decision by settlement, pursuant to Government Code section 11415.60.

Section III: STIPULATIONS

The Parties incorporate and agree with the foregoing Recitals and stipulate to the following:

1. **Waiver of Hearing:** The City hereby waives any rights it may have to request a hearing before the Regional Water Board prior to the Regional Water Board's adoption of the Proposed CAO.
2. **Attorney's Fees and Costs:** Each Party shall bear all of its attorneys' fees and costs, including expert fees, incurred and arising from that Party's participation in connection with the matters set forth herein.
3. **Interpretation:** This Stipulation and Proposed CAO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted in favor of or against any one Party. The City is represented by counsel in this matter.
4. **Matters Covered:** This Stipulation and Proposed CAO resolve all of the Prosecution Team's known claims that arise from the conditions causing a threatened discharge of waste that are: (1) alleged in Section II, paragraphs 5 and 6 of this Stipulation and in Findings 6 through 11 in the proposed CAO; and (2) in the Low-Lying Areas defined in Finding 10 in the Proposed CAO; and (3) up until the effective date of the Proposed CAO. Except as provided in this Paragraph and Section III, paragraph 12 of this Stipulation, this Stipulation and Proposed CAO do not preclude the Regional Water Board or any other federal, state, or local agency from requiring compliance with requirements prescribed by the Regional Water Board or the State Water Resources Control Board ("State Water Board"), from requiring any cleanup or remediation of any actual past discharge of waste into soil or groundwater,

or from taking any other action as allowed by law to require compliance with this Stipulation and Proposed CAO. The City agrees that the Prosecution Team's execution of this Stipulation and Proposed CAO do not constitute a release of any unknown claims.

5. **Public Notice:** The City understands that this Stipulation and Proposed CAO will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Proposed CAO to the Regional Water Board or its delegate for adoption, the Prosecution Team may decide not to present it to the Regional Water Board or its delegate.
6. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulation and Proposed CAO, and the Regional Water Board's or its delegate's adoption of the Proposed CAO, is lawful and adequate. The Parties acknowledge that the Regional Water Board or its delegate has the authority to require a public hearing on the Proposed CAO. If procedural objections are raised or the Regional Water Board or its delegate requires a public hearing prior to the Proposed CAO becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulation and Proposed CAO as necessary or advisable under the circumstances. If the meet and confer in good faith is unsuccessful, then the Parties agree that this Stipulation and Proposed CAO will be null and void.
7. **Advocating for Adoption of the Proposed CAO:** The Parties expect that the Regional Water Board will consider adoption of the Proposed CAO at a public meeting. The Parties agree to each have a representative appear in person before the Regional Water Board to advocate and speak in support of the Proposed CAO, as allowed. Nothing in this Paragraph shall be construed to require the City to admit to any allegations made by the Prosecution Team or any liability under the Water Code during such a public meeting.
8. **Modification:** This Stipulation and Proposed CAO may not be modified orally before or after their execution by any of the Parties. All modifications must be in writing and signed by all Parties. The Parties acknowledge that the Regional Water Board or its delegate may make minor, non-substantive amendments to the Proposed CAO prior to adoption without approval by the Parties, including assignment of a final order number. The Parties agree that any substantive revisions or amendments to the Proposed CAO, including any amendments pursuant to Provision 8 of the Proposed CAO, must be agreed to by all Parties and approved by the Regional Water Board or its delegate.

9. **If the Proposed CAO Does Not Take Effect:** Unless the parties agree otherwise, this Stipulation will be null and void and this matter will proceed to a contested evidentiary hearing before the Regional Water Board to determine whether the Regional Water Board may issue any enforcement action if any of the following occur: (1) the Proposed CAO does not take effect because it is not approved by the Regional Water Board or its delegate; (2) the Regional Water Board modifies the Proposed CAO; or (3) after the Regional Water Board adopts the proposed CAO, it is vacated in whole or in part by the State Water Board or a court. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in such a hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors, and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Stipulation and Proposed CAO, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing; and
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent that such period has been extended by these settlement proceedings.
10. **Waiver of Right to Petition or Appeal:** The City hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Proposed CAO for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate court.
11. **The City's Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim against the State of California or any State agency officers, board members, employees, representatives, agents, or attorneys arising out of, or relating to, any matter expressly addressed by this Stipulation or Proposed CAO.
12. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the City does not admit to any of the allegations the Prosecution Team has made, including those in the Findings in the Proposed CAO and in Section II, paragraphs 5 and 6 of this Stipulation, or that there has been or is a violation of the Water Code, or any other federal, state, or local law or ordinance. By entering this stipulation, the City reserves the right to challenge any allegation made in a future enforcement action arising from circumstances similar to those alleged in the Findings in the Proposed CAO and in Section II, paragraphs 5 and 6 of this Stipulation. The City recognizes that this

Stipulation and Proposed CAO may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e), and the State Water Board Enforcement Policy. In exchange for the City's agreement not to challenge the Regional Water Board's adoption of this Stipulation and Proposed CAO, the Prosecution Team agrees that the City's execution of this Stipulation and Proposed CAO do not constitute a waiver of any defenses or arguments related to any future enforcement action. The Prosecution Team agrees not to cite this Stipulation or the Proposed CAO as precedent or as a basis for asserting a defense or claim of estoppel, claim preclusion, issue preclusion, or waiver in any future proceeding.

- 13. California Environmental Quality Act Compliance:** The Parties agree that nothing in this Stipulation commits the City to approve any project that is subject to review under the California Environmental Quality Act ("CEQA") until such environmental review is complete, as required by law. On May 15, 2020, under Case Number 2020-002636ENV, the City, through its Planning Department, determined that the project described in Finding 19 of the Proposed CAO is categorically exempt from the CEQA Guidelines under Section 15303, Class 3 (New Facilities). The City's execution of this Stipulation and agreement to its terms do not constitute approval of any of the potential projects that the City may undertake as described in Finding 20 or otherwise pursuant to the Proposed CAO. In considering any such potential projects, the City retains discretion, subject to the requirements of the Proposed CAO (including the design objective requirements of Provision 6), to (1) make such modifications to any such projects as may be necessary to mitigate significant environmental impacts, (2) select feasible alternatives to any such projects that avoid significant adverse impacts, (3) require the implementation of specific measures to mitigate significant adverse environmental impacts as part of the decision to approve any such projects, and (4) balance the benefits of any such projects against any significant environmental impacts before taking final actions to approve such projects if such significant impacts cannot otherwise be avoided. In addition, the City may seek approval from the Regional Water Board to pursue an alternative approach in accordance with Provision 8 of the Proposed CAO.
- 14. Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of, and to bind, the entity for which he or she executes the Stipulation.
- 15. Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature,

and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

16. Effective Date: This Stipulation shall be effective and binding on the Parties upon full execution. The Proposed CAO, as may be modified in accordance with Section III, paragraph 8, shall be effective upon issuance by the Regional Water Board or its delegate.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: _____

By: _____



Digitally signed by Michael
Montgomery

Date: 2021.10.18 08:24:12 -07'00'

Michael Montgomery
Executive Officer

CITY AND COUNTY OF SAN FRANCISCO

Date: 10/15/2021

By: _____



Michael Carlin
Acting General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

/s/ John Roddy
JOHN RODDY
Deputy City Attorney

Attachment: Proposed Cleanup and Abatement Order R2-2021-00XX