

July 8, 2016

Dale Bowyer
SF Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Transmitted via electronic mail to dale.bowyer@waterboards.ca.gov

Re: Comments on San José Direct Discharge Trash Control Plan Submittal

Dear Dale,

I am writing on behalf of San Francisco Baykeeper (“Baykeeper”), to comment on the City of San José’s (“San José” or “City”) Direct Discharge Trash Control Plan (“Control Plan”) San José has requested a 15% Trash Load Reduction Offset, the maximum permitted under section C.10.e.ii of the Municipal Regional Stormwater Permit, NPDES Permit No. CAS12008 (“Permit”). While Baykeeper recognizes San José’s increased efforts to house homeless individuals in their City and reduce the impact of trash generated from homeless encampments, resources allocated to homeless response and support in the City are incommensurate with the scale of the problem. In the absence of on-going monitoring to support the City’s request, consistent with requirements of the Permit, or development of a comprehensive homeless response program on the scale seen in some other major cities, Baykeeper urges you to reject San José’s request for the full Trash Load Reduction Offset.

Homelessness in Santa Clara County, and the Bay Area as a whole, has reached critical proportions. While homelessness is largely a social issue, the City has found that homeless encampments along San José’s waterways, and particularly along Coyote Creek, are a major contributor to trash and other pollutants entering its waterways. To merely state that beneficial uses of receiving waters in and around San José are compromised by direct discharges of trash, human waste, and toxic materials originating from homeless camps represents a gross simplification of existing conditions. In many places, the creeks have become unsafe for residents to access. Additionally, these waterways are federally-designated Critical Habitat for Central California Coast Steelhead and essential fish habitat for Chinook salmon, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The trash and other pollution entering the waterways significantly hinders fish passage and impairs this key habitat. Several reports by California Department of Fish and Wildlife and local groups, supported by observations by Baykeeper, indicate the release of pollutants from encampments and the presence of traps likely intended to illegally capture and take these and other fish species.

According to the Control Plan, San José is devoting considerable resources to addressing homelessness in the City. However, the City’s commitment does not demonstrate a recognition of the scale of the problem. The base assumption of the Control Plan is that housing individuals and/or removing encampments from waterways will address the source of a significant amount of trash that is entering San

José's waterways. This assumption does not, however, consider that a significant proportion of the homeless population is uninterested or incapable of establishment in shelters and managed housing. In the absence of comprehensive social services and alternatives to the creek-side encampments, it is unlikely conditions along the creeks will improve. We urge the Regional Board to seek additional demonstration that resources shall be allocated towards social services, provision of trash receptacles and restrooms in known hot spots, removing encampments from the creeks, and creating alternatives so that homeless individuals do not reform camps along the creeks. In the absence of such measures, few assurances exist that homelessness will be managed effectively, and that loading of trash, human waste, and other pollution sources will cease to impair beneficial uses.

To specifically address elements of the Control Plan, section C.10.e.ii of the Permit allows an offset to be claimed using the C.10.e.i formula, coupled with qualitative and quantitative performance measures. San José has not followed this formula or shown how it has calculated the percentage it requests, based on methods established in the Permit. Therefore, it is unclear how San José is calculating its offset request, and the full offset is unjustified.

Since 2011, San José has conducted the Clean Creek, Healthy Communities ("CCHC") program, which has resulted in, according to the Control Plan, 60 tons of trash being picked up along San José's waterways. At the same time, San José was working to house homeless individuals. While the cleanup efforts are encouraging and helpful to mitigating impacts, it is unclear from San José's submission whether the efforts to house individuals resulted in less trash being placed along the waterways in the first place. From Baykeeper's observations, trash has continued to accumulate within and along the creeks. The City has recognized that the trash generated from homeless encampments will not be eliminated through cleanup efforts alone. Therefore, it is important to know whether housing individuals has, so far, reduced the trash levels found along the waterways. Additionally, the EPA-funded CCHC program ends in 2016 and it is not clear whether the City intends to maintain funding, so on-going support over the life of the Permit cannot be ensured.

A large part of the mission of San José's Homelessness Response Team is to remove homeless encampments along the waterways, which is an ongoing effort largely reliant on two (2) rangers without strict enforcement authority or committed police support. It is unclear from San José's submission where homeless individuals are relocating once encampments have been removed. San José has made efforts, such as installing gates, to prevent encampments from reforming in the same locations. However, San José's Control Plan does not state whether these efforts have been successful at deterring encampments from re-establishing at the same, or nearby, locations. Without this information, it is impossible to know whether these efforts are successful at reducing the overall trash being deposited next to or in waterways.

Baykeeper was pleased to see that, in its supplemental submission, San José has agreed to count the encampments and also specify whether they are located on waterways. This is necessary information to determine whether the number of encampments is decreasing or whether encampments are just being moved up and down stream. However, it is inappropriate to give the full offset for these actions when the impact of these actions is unknown at this time. Routine monitoring (i.e. quarterly) is necessary to ensure

accurate census counts and on-going management of a problem that has contributed to the 303(d) listing of creeks throughout Santa Clara County.

The City is also making an effort to house homeless individuals. The City plans to commit nearly \$40 million to create over 700 housing opportunities to help people transition from encampments to safe, stable living environments. This serious commitment seems like a positive effort that will provide much-needed housing for homeless individuals in San José. This commitment, however, is not reflected in San José's budget for 2015-16, presented as Exhibit 7 of the Control Plan, which indicates \$3,500,000 has been allocated in 2015-16 from the Homeless Rapid Rehousing/Homeless Response Team Reserves. Of this, \$1.5 million is for outreach and other social services, and \$2.0 million is allocated for housing. Even if this number was enhanced in the short term to \$40 million, this is woefully inadequate to address the homeless situation in San José and is hardly sufficient or targeted to meet the needs of homeless residents, let alone ensure that the pipeline of trash from homeless camps to creeks and San Francisco Bay is stopped. In comparison, San Francisco allocated \$241 million last year to address homelessness, \$129 million of which is for non-housing outreach and services, while Los Angeles reportedly allocated \$138 million on its homeless efforts. Additional commitments from the City are required to demonstrate homeless-related discharges will be significantly reduced over the Permit lifetime.

Additionally, there will be a time lapse between this commitment and the actual provision of housing. San José's submission does not make clear on what schedule housing units will be available. The Permit requires a reduction of trash discharges by 70% by July 1, 2017 and 80% by July 1, 2019, and a statewide requirement requires 100% reductions by 2022. Thus, these reductions must happen within a 1-4 year timeline. Although San José should be commended for taking efforts to provide housing for homeless individuals, it is inappropriate for the Regional Board to give an offset for trash reduction requirements for such efforts, unless San José can show that they will reduce trash discharges within the legally-required timelines. San José has not made that showing in its Control Plan. Moreover, the City has not articulated its expectation for the housing program, in terms of the number or percentage of individuals being housed, and how that translates to trash load reductions.

Finally, Baykeeper appreciates San José's efforts to conduct cleanups along its waterways. As San José recognized in its submission, however, cleanup efforts conducted by volunteers should not be considered in determining how much of an offset San José should receive here. It is important for the Regional Board to separate those efforts from this decision to avoid double-counting and incentivize City support for these programs. On another note, it is unclear whether cleanups are just removing trash along the banks of the waterways or whether the volunteers are also removing trash within the waterways. Baykeeper urges that San Jose, and the Regional Board require the City, clean up trash that has accumulated within the waterways themselves

. In some places, the trash has almost completely blocked the waterway, which can block fish passage, and the trash in the waterways can wash downstream out to the Bay.

In conclusion, Baykeeper appreciates the efforts that San José has made and is making to address direct discharges of trash from homeless encampments. However, because of the questions regarding

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whether such efforts are effective (e.g., moving and preventing encampments), or when the efforts will result in trash reductions (e.g., housing individuals), a 15% reduction is absolutely inappropriate. We recommend that the Regional Board not grant an offset, until the City addresses the issues discussed in this letter.

Although Baykeeper has not reviewed similar plans by other permittees, Baykeeper's concerns over ensuring the efficacy and timeliness of efforts before granting a full reduction can be applied to those submissions as well. A full 15% reduction reduces the burden on permittees significantly to reduce trash discharging from the MS4; therefore, the Regional Board should ensure that the permittees' efforts to control direct discharges are proven to be effective and will, in fact, reduce trash in the waterways by the full 15% or more.

Thank you for your time and consideration of these comments.

Sincerely,



Erica A. Maharg
Staff Attorney, San Francisco Baykeeper



Ian Wren
Staff Scientist, San Francisco Baykeeper