

Sewer Authority Mid-Coastside

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A Joint Powers Authority
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City of Half Moon Bay
Granada Community Services District
Montara Water and Sanitary District

July 30, 2018

Michael Chee
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Via e-mail to michael.chee@waterboards.ca.gov

**SUBJECT: Response to Comments on the Proposed Settlement Agreement and Stipulation
Order in the Matter of Sewer Authority Mid-Coastside, San Mateo County**

Dear Mr. Chee,

This letter is intended to provide information regarding the process in presenting the proposed ECA to the Sewer Authority Mid-Coastside (SAM) Board, including introduction of the ECA project, budgeting and the like, as requested in your July 25, 2018 e-mail correspondence concerning the two comment letters received by the Regional Board regarding the proposed Stipulated Order.

This letter also provides a partial response to the comment letters received by the San Francisco Bay Regional Water Quality Control Board (Regional Board) from San Francisco Baykeeper and the Ecological Rights Foundation regarding the proposed settlement agreement and stipulated order, and the proposed ECA: Wet Weather Storage Expansion Project (Project).

Addressing first the second ground of objection in the comment letter received from the Ecological Rights Foundation, the Regional Board has discretion to expand this ACL proceeding to include violations in addition to those alleged in the initial complaint; all of the violations identified in the stipulated order predated the August 21, 2017 ACL complaint, and all were identified in the December 8, 2017 Inspection Report. ¹ It would put form over substance to require the Regional Board to file one or more supplementary complaints before it could pursue other violations. ²

1. The Inspection Report was the source of all of the allegations set forth in the 60-day notice letter threatening a Citizen's Suit under the Clean Water Act. As such, it appears clear that this ground seeks to protect the scope of the contemplated Citizen's Suit, turning the purpose of the Clean Water Act provision on its head.

2. The letter also incorrectly references the Enforcement Policy that did not become effective until after the instant proceeding was initiated under the 2009 Enforcement Policy.

The remainder of the letter responds to the comment letter received from San Francisco Baykeeper regarding the proposed settlement agreement and the proposed ECA: Wet Weather Storage Expansion Project (Project), and to the first ground of objection in the comment letter from the Ecological Rights Foundation, which states essentially the same objection.

Assertion of Ecological Rights Foundation:

“I The June 25, 2018, proposed ACL is improper because the proposed ECA is already required for SAM to comply with the law, and is already being implemented, violating the State Water Resources Control Board’s Water Quality Enforcement Policy (Policy) for ECAs and the EPA’s SEP policy.”

Assertion of San Francisco Baykeeper

“The purpose of the Wet Weather Storage Expansion Project is to reduce SAM’s unlawful SSOs. SAM’s permit does not allow SAM to have any SSOs; therefore, a project that is aimed at reducing or eliminating SSOs is necessary for SAM to come into compliance with its permit and required by law. Accordingly, this project is not appropriate for an ECA.”

SAM’s Response

As stated in Attachment D to the Proposed Settlement Agreement, the goal of the proposed Wet Weather Storage Expansion Project is to “provide more time to perform maintenance on the pumps and ancillary features on the force main such as air/vacuum relief valves and the surge tank. A larger storage facility would also provide SAM the ability to hold a portion of the peak daily flow and release it back into the collection system when plant influent flows are low during the night. This procedure would help to stabilize the dramatic diurnal flow variance that the plant currently experiences.” Thus, the purpose of the proposed Project is not to reduce or eliminate sanitary sewer overflows. In fact, the record shows that SAM has not experienced a sewer system overflow at the Portola Pump Station since the original Wet Weather Storage Project became operational in 2012.

Assertion of San Francisco Baykeeper

“SAM’s General Manager, Beverli A. Marshall, wrote to the Board of Directors for SAM’s January 22, 2018, meeting regarding SAM’s Infrastructure Plan Projects for Fiscal Year 2018/19. SAM’s ‘Priority 1’ projects include project 1.12 Wet Weather Storage Expansion Project – \$700,000.”

SAM's Response

The Project was added to the draft Infrastructure budget for FY 2018/19 months after confidential discussions with the Regional Board regarding possible ECAs. The funding for the Project was added in direct response to the Regional Board's request for SAM to demonstrate a commitment to funding the additional \$400,000 for the project that is above the suspended portion of the ACL monetary amount. This commitment was thought necessary due to the ongoing lawsuit between the City of Half Moon Bay and the other member agencies.

Assertion of San Francisco Baykeeper

"SAM's adopted Infrastructure Plan FY 2017-2022 prioritizes proposed projects, wherein Priority Level 1 (Regulatory and Safety) projects are defined as "must do" projects that "aim to ensure that SAM remains in full regulatory and safety compliance." The Infrastructure Plan goes on to state that "SAM has little to no control to defer these projects," because they are required for regulatory compliance."

SAM's Response

SAM's 5-Year Infrastructure Plan, as adopted in March 2017, does not identify the proposed Wet Weather Storage Expansion Project. It was added as a Priority 1 project much later in anticipation of the Regional Board's approval of the ECA, which, if approved, would be funded by the SAM Member Agencies through their respective FY 2018/19 assessments. Had the Project not been included in the proposed ACL, the SAM Board would not have included it in the FY 2018/19 Budget funding.

Assertion of San Francisco Baykeeper

"SAM's 20-year Capital Improvement Plan FY 2017-2022 references planned project 3.02 – Expand Wet Weather Storage at Portola Pump Station – priced at \$690,000."

SAM's Response

SAM's proposed 20-Year Capital Improvement Program (CIP) expands on the adopted 5-Year Infrastructure Plan. The Project was added to the proposed 20-Year CIP based on the timing of the presentation of it to the Board as well as the fact that the Regional Board had given preliminary approval for the Project.

"SAM's June 2018 staff report and Resolution Approving the General Budget for Fiscal Year 2018/19 describes the Wet Weather Storage Expansion Project – expanding the

Portola Pump Station storage capacity from 200,000 gallons to 400,000 gallons – as
'Ranked a Priority Level 1 in response to the SSOs and equipment failures experienced in
2017.'"

SAM's Response

*Due to the confidential nature of the discussions regarding the ACL and proposed ECA,
SAM was unable to openly discuss the Project as part of the proposed Stipulated Order;
therefore, funding for the Project had to be included in the budget without identifying it
as such.*

I believe that this response answers the concerns regarding timing of the Project and the ACL. If
you have any questions regarding the Project, please contact me at your convenience.

Respectfully,

Beverli A. Marshall

Beverli A. Marshall, SDA
General Manager