

*Via Electronic Mail*

July 19, 2018

Michael Chee  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[michael.chee@waterboards.ca.gov](mailto:michael.chee@waterboards.ca.gov)

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

Dear Mr. Chee,

On behalf of San Francisco Baykeeper (“Baykeeper”) and our over 5,000 members and supports who use and enjoy the environmental, recreational, and aesthetic qualities of San Francisco Bay and the nearby open coast, we respectfully submit the following comments on the proposed Settlement Agreement and Stipulated Order in the matter of Sewer Authority Mid-Coastside San Mateo County (“SAM”) (“Proposed Order”), which addresses unlawful discharges of untreated sewage to surface waters from May 2, 2007 to December 31, 2017.

Baykeeper commends the Regional Water Board for responding to the numerous, unlawful sanitary sewage spills caused by SAM. Enforcement action, either by the Regional Water Board or private entities, is key to ensuring that sewer agencies, like SAM, are properly operating their sanitary systems and not causing public health threats or harm to the environment from the unlawful discharge of raw or untreated sewage.

However, Baykeeper has significant concerns about the environmental compliance action (“ECA”) included in the Proposed Order. The Proposed Order requires SAM to pay an administrative civil liability (“ACL”) of \$600,000 for its violations, but waives \$300,000 of the ACL upon completion of a environmental complication action (“ECA”). The proposed ECA is a Wet Weather Storage Expansion Project which will expand an existing underground wastewater storage tank system from 200,000 gallons to 400,000 gallons to reduce wet weather sanitary sewer overflows (“SSOs”) caused by capacity exceedances at SAM’s Portola Pump Station.

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.

Both the State Water Resources Control Board’s Enforcement Policy and EPA’s Supplemental Environmental Project (“SEP”) policy make clear that an ECA or SEP cannot otherwise be required by law. The State Board Enforcement Policy states “ECAs are projects that

enable a discharger to make capital or operational improvements *beyond those required by law*, and are *separate from projects designed to merely bring a discharger into compliance.*" (Enforcement Policy at 31 [emphasis added].) The EPA SEP Policy includes similar language. To be approved as a SEP, a project must secure public health and/or environmental improvements "*beyond what can be achieved under applicable environmental laws.*"

While the Proposed ACL claims that the ECA requires SAM to make operational improvements "beyond those required by law" and which are "separate from projects designed to merely bring SAM into compliance," these statements are simply not borne out by the facts. SAM planned to implement the Wet Weather Storage Expansion Project because it determined that the project is necessary to bring SAM back into regulatory compliance, as evidenced by the following statements:

- 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/ 2019. SAM's "Priority 1" projects include Project 1.12 - Wet Weather Storage Expansion Project - \$700,000."
- 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 20-year Capital Improvement Program references planned project 3.02 - Expand wet weather storage at Portola Pump station – priced at \$690,000.
- 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."

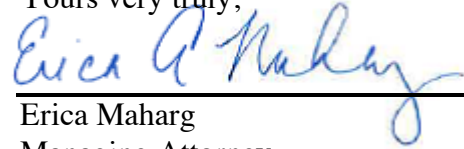
Thus, SAM's own documents make clear that the Wet Weather Storage Expansion Project has been planned because it has identified it as necessary to reduce SSOs from the sanitary sewer system. Thus, according to the State Board Enforcement Policy and EPA SEP Policy, this project does not qualify for an ECA.

Baykeeper supports the use of ECAs and SEPs to remedy the impact of a violator's unlawful discharges. ECAs and SEPs can provide financial resources to implement projects that provide a direct benefit to the impacted environment that would otherwise not occur. However, it is imperative that ECAs and SEPs are not improperly used for projects that merely bring the violator into compliance with its legal obligations. SAM has had an obligation to prevent SSOs, and the Wet Weather Storage Expansion Project is intended to bring SAM into compliance with that obligation. Baykeeper urges the Regional Water Board to modify the Proposed Order either to remove the ECA

altogether or to modify the ECA to require a project that is not required to bring SAM into compliance with its legal obligations.

Thank you for your consideration of these comments. If you have any questions or would like to discuss further, please contact me at [erica@baykeeper.org](mailto:erica@baykeeper.org) or 510-735-9700, x106.

Yours very truly,



---

Erica Maharg  
Managing Attorney

**Sewer Authority Mid-Coastside**

1000 Cabrillo Hwy N.  
Half Moon Bay, CA 94019  
(650) 726-0124  
[www.samcleanswater.org](http://www.samcleanswater.org)

---



A Joint Powers Authority  
Serving:  
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](mailto: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. <sup>1</sup> It would put form over substance to require the Regional Board to file one or more supplementary complaints before it could pursue other violations. <sup>2</sup>

---

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