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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CITY AND COUNTY OF SAN
FRANCISCO,

Petitioner,

vs.

THE SAN FRANCISCO BAY REGIONAL
WATER QUALITY CONTROL BOARD

Respondent.

Case No.: RG19042575

**FIRST AMENDED PETITION FOR WRIT
OF ADMINISTRATIVE MANDATE (Code
of Civ. Proc., §1094.5), COMPLAINT FOR
DECLARATORY RELIEF (Code of Civ.
Proc. § 1060).**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE FRANK ROESCH
DEPARTMENT: 17

1 Petitioner City and County of San Francisco (“San Francisco”) brings this Petition for Writ of
2 Mandate and Complaint for Declaratory relief and alleges upon information and belief, unless
3 otherwise specified, as follows:

4 **I. INTRODUCTION**

5 1. This matter concerns the severe procedural and legal deficiencies in connection with
6 the issuance of a required permit for San Francisco’s operation of its Oceanside Water Pollution
7 Control Plant, Wastewater Collection System, and Westside Recycled Water Project (“Westside
8 Facilities”). San Francisco brings this action pursuant to California Code of Civil Procedure (“CCP”)
9 §§ 1060 and 1094.5 to (i) achieve certainty over the effective date of the relevant permit and (ii)
10 challenge certain permit terms approved by the San Francisco Bay Regional Water Quality Control
11 Board (“Regional Board”) without, or in excess of its jurisdiction, and in a manner amounting to a
12 prejudicial abuse of discretion.

13 2. The Westside Facilities are authorized to operate via a permit jointly issued by the U.S.
14 Environmental Protection Agency (“EPA”), pursuant to the federal National Pollutant Discharge
15 Elimination System (“NPDES”) program under the federal Clean Water Act (“CWA”), and the
16 Regional Board, pursuant to the Waste Discharge Requirements (“WDRs”) program under the state
17 Porter-Cologne Water Quality Control Act. The permit subject to this action is jointly identified as
18 Order No. R2-2019-0028 and NPDES No. CA0037681 (the “2019 Permit”). A copy of the 2019
19 Permit is attached to this Petition and Complaint as Exhibit 1.

20 3. San Francisco is caught in the cross-fire between EPA and the Regional Board due to
21 their failure to agree upon a uniform effective date for the jointly issued permit. This matter, therefore,
22 arises from the Regional Board’s insistence that the 2019 Permit was effective as of November 1,
23 2019, whereas EPA – the joint-permitting authority – takes the position that the 2019 Permit will not
24 be effective until four months later, on February 1, 2020.

25 4. This petition seeks certainty and clarity as to the effective date of the 2019 Permit and,
26 therefore, asks for a declaration, pursuant to CCP §§ 1060 and 1094.5, from this Court that the 2019
27 Permit is not effective until EPA’s effective date of February 1, 2020 (or later, to the extent a petition
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1 for permit review is filed with the EPA Environmental Appeals Board (“EAB”) results in a federal
2 stay of the permit).

3 5. This Petition also arises from San Francisco’s objection to specific provisions –
4 Sections V, G.I.I.1, VI.C.5.d., and VI.C.5.a.ii.b – that were considered, approved, and then included
5 in the 2019 Permit in a manner by the Regional Board that (i) failed to proceed in a manner required
6 by law, (ii) imposed terms not supported by the findings, and (iii) relied upon findings not supported
7 by the evidence. Further, in incorporating these objectionable terms in the 2019 Permit, the Regional
8 Board has failed to provide fair notice to San Francisco regarding how compliance with these terms
9 can be achieved and failed to respond to significant comments made regarding these terms during the
10 relevant public comment period. These procedural deficiencies violate the Due Process Clause of the
11 U.S. Constitution, State law, and the Clean Water Act (“CWA”).

12 6. San Francisco objected to the permit terms subject to this action, and challenged the
13 Regional Board’s lack of fair notice and failure to respond to comments, via the appropriate
14 administrative process by petitioning to the State Water Resources Control Board (“State Board”) for
15 review. Despite the substantial consequences of allowing the challenged terms to go into effect, the
16 State Board summarily denied the petition on November 22, 2019. This petition for writ of mandate
17 challenging the Regional Board’s adoption of the challenged terms in the 2019 Permit is appropriate.
18 Water Code § 13330(b).

19 7. San Francisco hereby petitions this Court for an administrative writ of mandate
20 pursuant to CCP § 1094.5 directing Respondent Regional Board to set aside the challenged 2019
21 Permit Terms – specifically Sections V, G.I.I.1, VI.C.5.d., and VI.C.5.a.ii.b – or in the alternative,
22 remand the challenged terms of 2019 Permit, because the Regional Board abused its discretion in
23 adopting these terms. CCP §§ 1094.5(b), (f).
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1 **II. PARTIES**

2 8. Petitioner is the City and County of San Francisco. San Francisco is the entity that
3 operates the Westside Facilities and will be regulated by all of the terms included the 2019 Permit
4 absent the relief requested in this action. San Francisco also is the party that pursued an administrative
5 appeal of the 2019 Permit before the State Board. Absent relief from this Court, San Francisco will
6 be subject to substantial legal uncertainty, risk, and confusion due to the lack of clarity over the
7 effective date of the 2019 Permit and will be required to comply with permit terms that are contrary
8 to law or otherwise adopted by the Regional Board in a manner that abused its discretion.

9 9. Respondent Regional Board is an agency of the State of California that prepared the
10 2019 Permit jointly with EPA, whose authorized members voted to approve the 2019 Permit on
11 September 11, 2019, and whose Executive Officer takes the position that the effective date of some or
12 all of the terms in 2019 Permit is and remains November 1, 2019 despite the explicit permit terms and
13 EPA's position to the contrary. The Regional Board abused its discretion by voting to approve the
14 2019 Permit with those terms challenged by this action.

15 **III. JURISDICTION AND VENUE**

16 10. This Court has jurisdiction to issue writs of administrative mandate pursuant to CCP §
17 1094.5 and Water Code § 13330, and declaratory relief pursuant to CCP § 1060.

18 11. Venue is proper in this Court because the parties stipulated to change the venue from
19 San Francisco Superior Court, where the injury and cause of action arose, to Alameda Superior Court.
20 The Honorable Ethan P. Shulman of San Francisco Superior Court signed an Order on Stipulation to
21 Change Venue on November 5, 2019, which was filed with this Court the same day. The change in
22 venue is authorized by Water Code § 13361(b) and CCP § 394(a).

23 12. San Francisco has a clear, present, and beneficial right to the performance of the duty
24 by the Regional Board to declare the 2019 Permit not effective as of November 1, 2019, and for the
25 2019 Permit to have a single effective date in accord with EPA. Because the Regional Board and EPA
26 must issue the 2019 Permit jointly, and because EPA has identified an effective date of February 1,
27 2020, the effective date of the 2019 Permit cannot be until February 1, 2020 at the earliest. Due to
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1 the conflicting effective dates selected by State and federal regulators, San Francisco has no remedy
2 that will provide relief to avoid significant harm in time other than administrative mandate and/or
3 declaratory relief from this Court.

4 13. San Francisco has a clear, present, and beneficial right to have this Court invalidate or
5 remand Sections V, G.I.I.1, VI.C.5.d, and VI.C.5.a.ii.b of the 2019 Permit because the imposition of
6 these permit terms by the Regional Board was an abuse of discretion and the challenged terms are
7 contrary to law and/or are not supported by the weight of the evidence.

8 14. San Francisco has no other plain, speedy, and adequate remedy at law.

9 15. San Francisco has exhausted all available administrative remedies by going through all
10 of the feasible stages of the administrative review process under applicable state law. There are no
11 further administrative review remedies that San Francisco can seek to challenge the Regional Board's
12 adoption of the 2019 Permit at this time or the Regional Board's continued insistence that the effective
13 date of the permit is November 1, 2019.

14 16. Water Code § 13330(b) allows an aggrieved party to obtain review of the order of the
15 Regional Board in Superior Court by filing a petition for writ of mandate not later than 30 days from
16 the date on which the state board denied review. The State Board denied review of San Francisco's
17 Petition on November 15, 2019. Thus, San Francisco is seeking this Court's review of the Regional
18 Board's issuance of the 2019 Permit. Immediate action from this Court, pursuant to Water Code §
19 13330(b) and CCP § 1094.5 is now necessary to resolve the irreconcilable dispute between the State
20 and federal government and to ensure the permit does not include provisions that are contrary to the
21 relevant facts, regulations and policies.

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1 **IV. BACKGROUND OF THE WESTSIDE FACILITIES**

2 17. The Westside Facilities handle wastewater from hundreds of thousands of San
3 Francisco residents spread across the entire western portion of the City as depicted in the pink shaded
4 area labeled “Westside Drainage Systems” in this figure:



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15 18. The Westside Facilities are a combined sewer system. A combined sewer system is a
16 wastewater collection system owned by a municipality that is specifically designed to collect and
17 convey sanitary wastewater (domestic sewage from homes as well as industrial and commercial
18 wastewater) and stormwater through a single pipe.

19 19. During rainfall or other precipitation events, combined sewer systems are designed to
20 first treat the combined stormwater and sewage at a treatment plant before discharging to surface
21 waters. In large enough precipitation events, when the system capacity is exceeded, the system is
22 designed and permitted to overflow to surface waters via specifically constructed and permitted
23 outfalls. These discharges are referred to as Combined Sewer Discharges (“CSDs”). The Regional
24 Board has confirmed this description of the operation of a sewer system in its May 4, 2017, San
25 Francisco Bay Basin Water Quality Control Plan (“Basin Plan”) as follows: “During periods of heavy
26 rainfall, large pulses of water enter sewerage systems. When these pulses exceed the collection
27 treatment, or disposal capacity of a sewerage system, overflows occur.”

1 20. The Westside Facilities were designed and constructed by San Francisco with sufficient
2 capacity to capture and treat combined wastewater and storm water during storms to limit CSDs to a
3 long-term average of eight per year, based on historical rainfall data. The development of the combined
4 sewer system involves a long history, most recently articulated in San Francisco’s *Wastewater Long*
5 *Term Control Plan Synthesis*, which identifies and explains the various documents that make up San
6 Francisco’s long-term control plan (“LTCP”) consistent with EPA’s Combined Sewer Overflow
7 Control Policy (“CSO Control Policy”), 59 Fed. Reg. 18,688 (April 19, 1994), discussed in more detail
8 below.

9 21. All combined sewer systems, including San Francisco’s, are governed by the EPA’s
10 CSO Control Policy, which contains, in part, requirements for developing appropriate, site-specific
11 NPDES permits for combined sewer systems. Congress codified the CSO Control Policy via
12 amendment of the CWA. *See* CWA § 402(q).

13 22. The CSO Control Policy represents a comprehensive national strategy to ensure that
14 municipalities, permitting authorities, water quality standards authorities and the public engage in a
15 comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately
16 meet appropriate health and environmental objectives and requirements. 59 Fed. Reg. at 18,689.
17 Notably, the CSO Control Policy “recognizes the site-specific nature of CSOs and their impacts and
18 provides the necessary flexibility to tailor controls to local situations.” *Id.*

19 23. The watershed drained by the Westside Facilities is largely paved or consists of other
20 hard surfaces. As a result, rain has no place to go other than San Francisco’s combined sewer system
21 before being discharged to the Bay or Ocean.

22 24. Routing stormwater to the combined sewer system and, ultimately, a treatment plant
23 when possible, serves an important environmental purpose because of the street pollutants that wash
24 into the sewer system during storm events. When it rains, motor oil, pesticides, metals, and other street
25 litter can flow into the sewer system. Because San Francisco operates a combined sewer system, the
26 City is able to treat a higher percentage of stormwater flows than many other municipalities that
27 operate separate sanitary and stormwater systems. The benefits of San Francisco’s system include
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1 cleaner discharges to the Pacific Ocean from the Westside Facilities. The combined system allows
2 San Francisco to annually capture and treat billions of gallons of stormwater via disinfection and
3 secondary or primary treatment before discharging to receiving waters (i.e., the Pacific Ocean).

4 25. Combined sewer systems are used by municipalities across the United States. A 2004
5 report to Congress found that 746 communities in the United States operate combined sewer systems
6 with a total of 9,348 combined sewer overflow outfalls regulated by 828 separate NPDES permits
7 issued by EPA or pursuant to authority delegated to state agencies. Combined sewer systems are
8 found in 32 states.

9 26. San Francisco is the only coastal city in California that operates a combined sewer
10 system that collects and treats both wastewater and stormwater in the same network of pipes. It is also
11 the only combined sewer system within the geographic jurisdiction of the SF Bay Regional Board.

12 27. San Francisco was at the forefront in the United States of engineering and investing
13 resources in its combined sewer system to reduce wet weather discharges to the Pacific Ocean. San
14 Francisco's efforts to comprehensively characterize wet weather sewer overflows and identify system
15 improvements are described in the 1967 *Characterization and Treatment of Combined Sewer*
16 *Overflows Report* ("SF CSO Report"). In the early 1970s, San Francisco developed its *San Francisco*
17 *Master Plan for Waste Water Management* ("SF Master Plan") based on findings in the SF CSO
18 Report. The SF Master Plan recommended an approach to minimize overflows by maximizing
19 collection system capacity. The SF Master Plan predated the federal CSO Control Policy by almost 20
20 years. Nonetheless, the monitoring, modeling, and other analyses undertaken by San Francisco to
21 develop the SF Master Plan, and to implement it, are consistent with the requirements later imposed
22 on municipalities nationwide by EPA via the CSO Control Policy.

23 28. The SF Master Plan developed control alternatives to reduce the average CSD
24 frequency from the Westside Facilities by an order of magnitude: from 82 annual CSDs to only 8
25 annual CSDs. After the Clean Water Act was passed in 1972, San Francisco modified the SF Master
26 Plan in 1974 via an Environmental Impact Report ("EIR") and Environmental Impact Statement
27 ("EIS") prepared by EPA under the National Environmental Policy Act. The development of the
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1 EIR/EIS was followed by a planning period that included extensive surveys of beach recreational use
2 and monitoring and modeling to evaluate the relationship between receiving waters and wet weather
3 discharges from the Westside Facilities. Subsequently, in 1975, San Francisco prepared an *Overview*
4 *Facilities Plan*, which further developed plans for storm water and wastewater collection, transport,
5 and treatment facilities.

6 29. In 1975, the Regional Board adopted its first comprehensive Basin Plan for the San
7 Francisco Bay Region. The Basin Plan is the Regional Board's master water quality control planning
8 document. It designates beneficial uses and water quality objectives for waters of the State, including
9 surface waters and groundwater. It also includes programs of implementation to achieve water quality
10 objectives. The Regional Board's Basin Plan is adopted and approved by the State Water Resources
11 Control Board, U.S. EPA, and the California Office of Administrative Law.

12 30. The Regional Board's adoption of its Basin Plan in 1975 prompted a series of
13 regulatory actions that required San Francisco to evaluate wet weather discharges from the Westside
14 Facilities to the Pacific Ocean. San Francisco's fieldwork, information gathering, and assessments
15 resulted in detailed analyses for control alternatives for those discharges, and was the basis for the
16 State Board's adoption of Order No. 79-12. Based upon the record of information generated by San
17 Francisco, Order No. 79-12 approved the current design of San Francisco's combined sewer system,
18 including the setting of a long-term average discharge criteria of eight CSDs to the Pacific Ocean, per
19 typical year, for the Westside Facilities.

20 31. San Francisco designed and proceeded with constructing the existing Westside
21 Facilities to protect beneficial uses during wet weather events in compliance with, and reliance on
22 Order No. 79-12. The State Board later amended Order No. 79-12 by adopting State Board Order No.
23 79-16, which granted an exception to the statewide Ocean Plan for planned CSDs from the Westside
24 Facilities. In adopting Order No. 79-16, the State Board made a finding that the ultimate design of the
25 Westside Facilities would *not* impair beneficial uses.

26 32. Based on, and in reliance of the State Board approved design, and the exception to the
27 Ocean Plan authorized by Order No. 79-12, San Francisco began construction of the relevant
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1 components of the Westside Facilities in the early 1980s. Substantial infrastructure construction was
2 completed by the mid-1980s, resulting in anticipated CSD reduction to the Pacific Ocean. The project
3 was ultimately completed in the 1990s at a cost of nearly \$2 billion (in unadjusted dollars).

4 33. The heart of the Westside Facilities is the Oceanside Treatment Plant, which provides
5 all weather wastewater collection and treatment of about 20% of San Francisco’s total wastewater
6 flows. On an average day, the Treatment Plant treats 17 million gallons per day of sewage; during
7 rain events, the wet-weather treatment capacity is 65 million gallons per day. Wastewater routed
8 through the treatment process at the Oceanside Treatment Plant, which includes removal of solids,
9 flows out of the Treatment Plant (the “effluent”) through a deep ocean outfall in the Pacific Ocean.

10 34. The Oceanside Treatment Plant cannot operate without discharging effluent to the deep
11 ocean outfall. The design of San Francisco’s wastewater collection system is such that the wastewater
12 collected and received by the Oceanside Treatment Plant cannot be sent to any other treatment plant
13 prior to discharge. In other words, there is no alternative to treat wastewater generated in the western
14 portion of San Francisco other than to send it to the Oceanside Treatment Plant where the treated
15 effluent must be discharged to the deepwater outfall.

16 35. Since San Francisco completed construction of the relevant infrastructure for the
17 Westside Facilities consistent with State Board Order No. 79-12, it has implemented a post-
18 construction monitoring program consistent with the CSO Control Policy. Based on actual wet weather
19 monitoring data, the current CSD frequency from the Westside Facilities is below the long-term
20 average of eight CSDs, per typical year identified by Order No. 79-12. In addition, San Francisco uses
21 a Hydrologic and Hydraulic (“H&H”) Model, which simulates the performance of the combined sewer
22 system in the Westside Facilities. The modeled frequency of CSDs in a typical year for the Westside
23 Facilities, based on the H&H Model, is also below the long-term average of eight CSDs, per typical
24 year, identified in Order No. WQ 79-16.

25 36. San Francisco has also developed and calibrated a Receiving Water Quality Model
26 (“RWQ Model”) to allow, in part, for evaluation of levels of bacteria in receiving waters (including
27 the Pacific Ocean). The RWQ Model indicates that the current performance of the Westside Facilities
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1 results in enterococcus bacteria concentrations in the receiving waters (i.e., the Pacific Ocean) below
2 104 MPN/100mL for over 99% of the typical year. This further confirms that the Westside Facilities
3 are operating as anticipated and in accord with long-standing permit conditions.

4 37. San Francisco's post-construction monitoring program continues to conclude that the
5 Westside Facilities are operating as designed and consistent with design and the requirements imposed
6 by Order No. 79-12 and 79-16.

7 **V. FACTURAL AND PROCEDURAL HISTORY**

8 38. Since 2009, the Westside Facilities have operated pursuant to Order No. R2-2009-0062
9 (the "2009 Permit"), which was jointly adopted by the Regional Board and EPA.

10 39. Because the Oceanside Treatment Plant, which is at the heart of the Westside Facilities,
11 discharges to both state (shorcline Pacific Ocean) and federal (deep-water outfall) waters, any permit
12 must be issued and signed jointly by the Regional Board and EPA. The 2009 Permit was approved
13 and issued jointly by EPA and the Regional Board.

14 40. In April of 2019, the EPA and the Regional Board made a proposed draft of the permit
15 intended to regulate the Westside Facilities available and issued a public notice and opportunity to
16 comment. San Francisco submitted substantial written comments on the draft permit on May 20, 2019,
17 which included objections to the permit terms subject to this action.

18 41. Following the conclusion of the public comment period, the Regional Board held a
19 hearing on September 11, 2019, to receive further oral comments and consider approval of the permit.
20 San Francisco appeared at the hearing and raised objections to the proposed permit, including on those
21 issues subject to this action. At the September 11, 2019, hearing, representatives from EPA's regional
22 office in San Francisco also testified that EPA supported the 2019 Permit.

23 42. In reliance on EPA's representation of support for the 2019 Permit, and in disregard of
24 San Francisco's written and oral comments, the Regional Board voted to adopt Order No. R2-2019-
25 028 (the "2019 Permit") on September 11, 2019, with a November 1, 2019 effective date. The 2019
26 Permit was intended to replace Order No. R2-2009-0062 (i.e., the 2009 Permit).

27 43. About a week after the Regional Board's action on the 2019 Permit, the Trump
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1 Administration began to target San Francisco’s combined sewer system in apparent furtherance of the
2 president’s national political objectives. For example, according to the Associated Press, on
3 September 18, 2019, President Trump made a statement to reporters aboard Air Force One that
4 included the following:

5 “We’re looking at San Francisco and we’re looking at Los Angeles, and we’re
6 looking at all of the things that are happening ... You know, there’s tremendous
7 pollution being put into the ocean because they’re going through what’s called the
8 storm sewer that’s for rainwater. And we have tremendous things that we don’t have
9 to discuss pouring into the ocean. You know there are needles, there are other things.
10 It’s a terrible situation that’s in Los Angeles and in San Francisco ... And we’re
11 going to be giving San Francisco — they’re in total violation — we’re going to be
12 giving them a notice very soon. ... You’re going to see over the next, I would say,
13 less than a week. EPA is going to be putting out a notice. They’re in serious violation
14 ... And this is environmental... and they have to clean it up. We can’t have our cities
15 going to hell.”

16 44. A week after President Trump’s disparagement of San Francisco, on September 26,
17 EPA Administrator Wheeler issued a letter to Governor Gavin Newsom claiming that “EPA is
18 concerned that California’s implementation of federal environmental laws is failing to meet its
19 obligations under delegated federal programs.” The letter, continuing President Trump’s earlier
20 accusations and in apparent furtherance of the President’s political objectives, singled-out San
21 Francisco’s combined sewer system with a number of mischaracterizations and inaccurate claims.

22 45. On October 1, 2019, Michael Montgomery, Executive Officer of the Regional Board,
23 sent San Francisco a letter attaching a copy of the 2019 Permit adopted on September 11, 2019. As
24 of that date, EPA had not adopted the 2019 Permit. The transmittal letter stated that the “requirements
25 of the [Permit] are effective starting November 1, 2019.” The copy of the 2019 Permit provided by
26 Mr. Montgomery was signed on behalf of the Regional Board, but the accompanying signature block
27 for Mr. Tomas Torres, Director of the Water Division of EPA Region 9 – the individual designated as
28 the person that would sign the 2019 Permit on behalf of EPA – was blank.

46. That same day, on October 1, 2019, twenty (20) days after the Regional Board public
hearing, the EPA still had not issued the 2019 Permit. According to the NPDES Memorandum of
Agreement between the U.S. Environmental Protection Agency and the California State Board in 1989
(the “MOA”), Mr. Torres, as the Director of the Water Division of EPA Region 9, is the official

1 designated by the MOA to address any delays in EPA’s concurrence or issuance of permits in
2 California.. As a result, on October 1, San Francisco sent a letter to Mr. Tomas Torres inquiring about
3 the status of the permit and how and when the permit would ultimately be issued by EPA.

4 47. On October 2, 2019, despite being the EPA official designated by the MOA as
5 responsible for addressing CWA permitting issues across California, Mr. Torres responded by leaving
6 a voicemail that stated he was unable to give San Francisco any update on the timing for EPA’s
7 approval of the 2019 Permit. Instead, he suggested that San Francisco contact the Principal Deputy
8 Assistant Administrator at the Office of Water at EPA Headquarters with any questions. This indicates
9 that review and control related to finalization and issuance of the 2019 Permit had been pulled from
10 the EPA Region 9 office in San Francisco and transferred to political appointees at EPA’s
11 Headquarters in Washington, DC.

12 48. On October 3, 2019, Senators Feinstein and Harris sent a joint request to EPA’s
13 Inspector General, asking for an investigation into whether the White House pressured EPA to abuse
14 its law enforcement authority to single out California and, more specifically, the city of San Francisco.
15 A press release issued jointly by the Senators included the following summary of EPA’s actions: “Last
16 Week, EPA Administrator Wheeler sent a letter to Governor Newsom alleging state water quality
17 violations that contradict the agency’s own findings. The letter was sent after President Trump
18 inaccurately claimed that waste and needles from San Francisco’s homeless were flowing into the
19 ocean from storm sewers and that the city would soon be given a notice of violation.” Ultimately, the
20 Senators asked that the EPA Inspector General “investigate why EPA abruptly reversed course in
21 Administrator Wheeler’s letter and alleged water quality violations that are contradicted by the
22 agency’s own reasoned findings in recent permit approvals for San Francisco.”

23 49. While the uncertainty surrounding the effective date of the 2019 Permit continued, San
24 Francisco pursued the appropriate administrative remedies for challenging the substantive terms of the
25 2019 Permit. On October 11, 2019, San Francisco filed an administrative Petition for Review with
26 the State Board. The Pctition challenged the severe substantive defects with the terms included by
27 Regional Board in the 2019 Permit – the same at issue in this action – and the procedural deficiencies

1 with the Regional Board’s process undertaken to adopt the 2019 Permit. A copy of the Petition for
2 Review is attached as Exhibit 2.

3 50. By October 11, when San Francisco filed the administrative petition for review, it had
4 become readily apparent that EPA was unlikely to approve and sign the 2019 Permit before the
5 November 1, 2019 effective date claimed by the Regional Board. As a result, San Francisco also filed
6 a Request for Stay with the State Board in an attempt to obtain clarity, maintain the status quo with
7 respect to the permitting of its critical sewer operations, and prevent legal uncertainty. The stay request
8 explained that San Francisco met the legal requirements for a stay under Title 23, section 2053 of the
9 California Code of Regulations and that a stay was necessary to prevent substantial harm resulting
10 from the legal uncertainty that would occur on November 1, 2019. San Francisco asked the State Board
11 to hold a hearing on its request and to stay the 2019 Permit until the permit was also approved and
12 issued by EPA. A copy of the Stay Request is attached as Exhibit 3.

13 51. On October 18, 2019, San Francisco wrote to the Regional Board and State Board to
14 explain that there was no legal support for the position that the 2019 Permit can become effective
15 without EPA’s joint issuance, that there is a need for clear direction from the Regional Board on the
16 effectiveness issue, and that San Francisco would welcome the opportunity to discuss its concerns.
17 Although the Regional Board expressed a willingness to meet, it did not identify any dates to meet
18 prior to November 1, 2019.

19 52. On October 25, 2019, San Francisco wrote to the Regional Board and State Board
20 requesting issuance of a stay, or some other clear statement as to the lack of the effectiveness of the
21 2019 Permit absent EPA’s approval and signature.

22 53. Also on October 25, 2019, Michal Montgomery, the Executive Officer of the Regional
23 Board, sent a letter to Mr. Torres at EPA (the “October 25 Montgomery Letter”). The letter, in part,
24 describes the cooperation between the Regional Board and EPA in writing a single permit for joint
25 approval by the two agencies – the 2019 Permit – and the frustration experienced by the Regional
26 Board staff with the lack of EPA action following the September 11 action by the Regional Board:

27 “... [W]e are concerned that U.S. EPA has not yet signed the Oceanside permit adopted
28 on September 11, 2019. The Oceanside permit was developed hand-in-hand with U.S.

1 EPA Region 9 staff and reviewed and cleared by appropriate technical staff in the
2 Office of Water at U.S. EPA Headquarters. Our staff jointly produced the response to
3 public comments and jointly agreed to the changes in response to those comments.
4 When we met on August 23, you assured me that the Oceanside permit was ready for
5 U.S. EPA to sign. Indeed, U.S. EPA staff and management were present during the
6 September hearing before our Board and explicitly endorsed adoption of the permit on
7 the record. I have informally requested information regarding the timing and cause of
8 the delay and have been told that the permit is being held up by personnel at U.S. EPA
9 Headquarters.”

10 54. The October 25 Montgomery Letter also expressed the Regional Board’s expectation
11 “that U.S. EPA will also sign the permit by November 1, 2019, to avoid any uncertainty for the
12 permittee and to ensure that permit requirements applicable to the main outfall also go into effect.”
13 (emphasis added). The letter continues, asking that “[i]f U.S. EPA does not intend to sign the permit,
14 we respectfully request a written explanation for its refusal to adopt the permit for federal purposes
15 and clarification regarding the applicable federal NPDES permit requirements.”

16 55. On October 29 – two days before the alleged November 1 effective date of the 2019
17 Permit – the Executive Officer of the Regional Board, Michael Montgomery, sent a letter to San
18 Francisco (the “October 29 Montgomery Letter”). The letter argued, for the first time since the
19 Regional Board members took formal action at a hearing on September 11, that “the joint permit is
20 properly viewed as two separate permits, one issued by U.S. EPA and one issued by the Regional
21 Water Board ... Contrary to your assertions ... precedent support the view that joint permits are in
22 fact dual permits ...” The letter then alleges that “most of the permit will go into effect on November
23 1” and attempts, “for ease of reference” to enumerate the provisions that the Regional Board claims
24 “will not go into effect, because they relate only to discharges to federal waters.” A copy of the
25 October 29 Montgomery Letter is attached as Exhibit 4.

26 56. Given San Francisco’s grave concern regarding the Regional Board’s illegal position
27 in the October 29 Montgomery Letter on the effective date of a portion of the 2019 Permit terms, on
28 October 31, 2019, San Francisco filed an *Ex Parte* Application for a Temporary Restraining Order and
an Order to Show Cause (“*Ex Parte* Application”) and a Petition for Writ of Mandate, or in the
alternative, for Writ of Administrative Mandamus with a Complaint for Declaratory and Injunctive
Relief in San Francisco Superior Court, where the cause of action arose. CCP §§ 1085, 1094.5, 1060.

1 See Docket No. CPF-19-516906.

2 57. On October 30, 2019, one day before the hearing on the *Ex Parte* Application, the
3 Regional Board filed a Motion to Change Venue based on Water Code § 13361(b) and CCP § 394.
4 Counsel for San Francisco contacted counsel for the Regional Board in advance of the hearing on
5 October 31 and offered to meet and confer to negotiate a stipulation to change venue after the hearing
6 on the *Ex Parte* Application in San Francisco Superior Court. This offer was rebuffed.

7 58. A hearing on San Francisco's *Ex Parte* Application was held in San Francisco Superior
8 Court on October 31, 2019. The Court concluded that the Regional Board's motion required that the
9 venue issue be resolved before a disposition of the *Ex Parte* Application. At the hearing, the
10 Honorable Ethan P. Schulman explicitly stated that controlling precedent prohibited him from taking
11 any action in the case, due to the filing of a motion to change venue, including granting San Francisco's
12 *Ex Parte* Application. As a result, Judge Schulman abstained from ruling on San Francisco's *Ex Parte*
13 Application during the hearing and indicated that a hearing on the motion to change venue would need
14 to occur or the parties would need to stipulate to change venue. Consistent with the court's conclusion
15 that controlling precedent prevented any action until resolution on the motion to change venue, Judge
16 Schulman issued no order on the docket with respect to the *Ex Parte* Application.

17 59. On November 5, 2019, the parties stipulated to change venue to Alameda Superior
18 Court, and Judge Schulman signed the Order on Stipulation to Change Venue with respect to San
19 Francisco's Petition for Writ of Mandate. The case was subsequently transferred to this Court.

20 60. On November 15, 2019, thirty-six (36) days after San Francisco filed its Petition for
21 Review and Request for Stay, Eileen Sobek, Executive Director of the State Board, dismissed San
22 Francisco's Petition for Review and Denied San Francisco's Request for Stay without any hearing.
23 Executive Director Sobek's one page dismissal claimed, without any supporting analysis, that the
24 petition "fails to raise substantial issues that are appropriate for review by the State Board." In
25 conjunction with the petition denial, the request for a stay was denied "because any stay would be in
26 effect only during the pendency of the State Board's review." The State Water Board provided no
27 legal analysis or factual rationale for the denial of the petition beyond its brief conclusory statement.

1 61. On December 9, San Francisco requested in writing that the Regional Board prepare
2 the administrative record for this matter.

3 62. It was not until December 10, 2019 – ninety (90) days after the Regional Board took
4 its action at its hearing in September – that Regional Administrator Michael Stoker, on behalf of EPA,
5 sent a letter to San Francisco adopting the 2019 Permit with an effective date of February 1, 2020.
6 Mr. Stoker’s letter cited to 40 C.F.R. § 124.19 to note that challenged permit terms may be stayed
7 beyond February 1, 2020, in the event a petition for an appeal is filed with the federal Environmental
8 Appeals Board.

9 63. On December 11, 2019, in light of EPA’s delayed approval of the 2019 Permit, and
10 EPA’s stated effective date of February 1, 2020, San Francisco sent a letter to the Executive Officer
11 of the Regional Board, Michael Montgomery, raising concern about the inconsistent effective dates
12 identified by the two agencies for the jointly issued permit and requested that the Regional Board
13 recognize February 1, 2020, as the permit’s effective date. A copy of San Francisco’s December 11,
14 2019 letter is attached as Exhibit 5.

15 64. On December 13, in response to the letter from San Francisco inquiring about the
16 effective date of the 2019 Permit, the Regional Board’s counsel responded by letter to state, in part:

17 “After consideration and discussion, including discussion with folks at Region IX of
18 the U.S. Environmental Protection Agency, I can confirm that my client’s position
19 regarding the Oceanside permit effective date has not changed since Mr. Montgomery’s
20 letter of October 29, 2019. Our position is that the provisions of the permit that “relate
21 only to discharges to federal waters” have an effective date as determined by the U.S.
22 Environmental Protection Agency, and the remaining provisions of the permit (that
23 relate to discharges to state waters) have an effective date of November 1, 2019. Mr.
24 Montgomery’s letter described where that line is to be drawn.”

25 65. This First Amended Petition for Writ of Mandate amends the Petition for Writ
26 originally filed in San Francisco Superior Court, which was subsequently transferred to this Court.

27 66. As of the date of this First Amended Petition for Writ of Mandate and Complaint for
28 Declaratory Relief, therefore, the Regional Board continues to take the position that substantial parts
of the 2019 Permit became effective on November 1, 2019, while EPA takes the position that the entire
permit has an effective date of February 1, 2020 (absent any stay that may apply to terms subject to a

1 federal administrative appeal).

2 **VI. STANDARD OF REVIEW**

3 67. A Petition for Writ of Mandate is appropriate where a final administrative order is made
4 as the result of a proceeding in which by law a hearing is required to be given, evidence is required to
5 be taken, and discretion in the determination of facts is vested in the board. CCP § 1094.5(a). The
6 California Water Code specifies that CCP § 1094.5 shall govern proceedings for petitions challenging
7 a decision or order of the Regional Board for which the State Board denies review, as is the
8 circumstance in this matter. Water Code § 13330(e).

9 68. In reviewing a challenged decision or order of the Regional Board, a Court must
10 determine “whether the respondent has proceeded without, or in excess of jurisdiction; whether there
11 was a fair trial; and whether there was any prejudicial abuse of discretion.” CCP § 1094.5(b). Abuse
12 of discretion is established if (i) the respondent has not proceeded in the manner required by law, (ii)
13 the order or decision is not supported by the findings; or (iii) the findings are not supported by the
14 evidence. *Id.*

15 69. Water Code section 13330(e) specifies that this Court shall exercise its independent
16 judgment on the evidence. Where it is claimed that the findings are not supported by the evidence, in
17 cases where the court is authorized by law to exercise its independent judgment, abuse of discretion is
18 established if the court determines that the findings are not supported by the weight of the evidence.
19 CCP § 1094.5(c).

20 **VII. GENERAL ALLEGATIONS.**

21 **A. The Regional Board’s Declaration that the Effective Date of the Jointly-Issued 2019**
22 **Permit is November 1, 2019 is Not Authorized by Law and Not Supported by the Permit**
23 **Terms or Other Public Statements.**

24 70. The Regional Board consists of, and acts through, “seven members appointed by the
25 Governor, each of whom shall represent, and act on behalf of, all the people and shall reside or have
26 a principal place of business within the region.” Water Code § 13201. The Regional Board members
27 “after necessary hearing, shall prescribe requirements as to the nature of any proposed discharge,
28

1 existing discharge, or material change in an existing discharge ...” Water Code § 13263. It was this
2 authority under which the appointed members of the Regional Board took action on the 2019 Permit
3 on September 11, 2019. Regional Board staff are overseen by an Executive Officer. The Executive
4 Officer’s authority is more narrow than that of the Regional Board members except when operating at
5 the specific direction provided by the Regional Board’s members. Water Code § 13223.

6 71. Prior to effective date of the 2019 Permit, San Francisco has, and will continue to
7 operate the Westside Facilities pursuant to Order No. R2-2009-0062 (the 2009 Permit). This is
8 explicitly recognized in the 2019 Permit, which states that “Order No. R2-2009-0062 [2009 Permit]
9 is rescinded upon the effective date of this Order ...” Exhibit 1 (2019 Permit), at 5.

10 72. The 2019 Permit does not provide any terms that anticipate or provide for a partial
11 repeal of the 2009 Permit due to different federal and State effective dates. There is not, therefore,
12 any way to read the terms for rescission of the 2009 Permit other than to conclude that it will be
13 accomplished on a single date following the joint issuance of a new permit by EPA and the Regional
14 Board.

15 73. San Francisco is continuing to operate its Westside Facilities for the four month period
16 between November 1, 2019 and February 1, 2020 pursuant to the 2009 Permit. San Francisco has
17 successfully operated the Westside Facilities pursuant to the 2009 Permit for a decade and doing so
18 for an additional four month period until February 1, 2020 will continue to provide protection for
19 human health and the environment.

20 74. The Regional Board Executive Officer has unilaterally taken the position that large
21 portions of the 2019 Permit became effective on November 1, 2019, even though EPA has stated the
22 effective date to be February 1, 2020. As such, the Executive Officer’s position is that San Francisco
23 must immediately begin complying with at least certain terms despite EPA’s position that the 2019
24 Permit will not be effective until February 1, 2020 (and certain terms may be stayed beyond that date
25 in the event of a federal administrative appeal). The Regional Board members have not held a hearing
26 to consider, or otherwise voted to approve the interpretation of effectiveness of the 2019 Permit being
27 pursued by the Executive Officer.

28

1 75. To resolve the conflicting effective dates, the Regional Board Executive Officer
2 attempts to take unilateral administrative action – without public notice and comment and without any
3 consultation with the joint permitting authority (EPA) or the discharger (San Francisco) – to
4 retroactively declare that the approval of the entire 2019 Permit on September 11, 2019 by the
5 authorized members of the Regional Board, was actually the issuance of two separate permits – one by
6 the Regional Board and one by EPA. Such an effort is contrary to the plain terms of the 2019 Permit
7 – which clearly is drafted as a single legal document – and contrary to all principles of administrative
8 law.

9 76. San Francisco’s Westside Facilities function as an integrated wastewater system and
10 treat sewage for hundreds of thousands of San Francisco residents and associated businesses. The
11 Occanside Treatment Plant cannot operate without discharging to both waters of the United States and
12 waters of the State. Therefore, in order to operate and to discharge in compliance with the law, San
13 Francisco must have a validly issued permit under the CWA and state law. Because the Occanside
14 Treatment Plant’s deep-water outfall – identified as Discharge Point 001 – discharges into the Pacific
15 Ocean outside the waters of the State, EPA has concurrent jurisdiction with the Regional Board to
16 issue the NPDES Permit. *See* Exhibit 1 (2019 Permit), at 5 (“The Regional Water Board intends []
17 joint issuance of this Order with U.S. EPA. . . .”).

18 77. It is neither technically practical, nor legally authorized, for the Regional Board
19 Executive Officer to seek to “split” the 2019 Permit into two separate “federal” and “State” permits
20 with separate, legally enforceable requirements. By way of example, operating Discharge Point 001
21 – the “federally authorized” discharge point in the Pacific Ocean – in compliance with permit terms
22 can only be accomplished via reliance on infrastructure located across the Westside Facilities,
23 including pump stations, transport-storage boxes, and conveyance pipes. Conversely, it would be
24 impossible to comply with the remaining permit terms for operation of the Westside Facility –
25 including discharge from authorized CSDs to surface waters of the State – if San Francisco were not
26 authorized to discharge from Discharge Point 001. Therefore, the complexity and integrated nature of
27 the water pollution control infrastructure, makes uniform approval of the 2019 Permit critical and
28

1 necessary for all of the Westside Facilities.

2 78. Contrary to the Regional Board Executive Officer’s *post hoc* characterization that the
3 2019 Permit is really two “separate” permits independently developed by the separate federal and State
4 regulatory agencies, Regional Board staff and EPA staff worked hand-in-hand to prepare and jointly
5 issue the 2019 Permit. This included, for example, jointly drafting the permit and its conditions, jointly
6 reviewing and responding to comments, and jointly meeting with San Francisco staff during the permit
7 issuance process. In connection with the September 11, 2019, adoption hearing, Regional Water
8 Board staff prepared a Staff Summary Report with the subject line: “City and County of San Francisco,
9 Occanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled
10 Water Project, San Francisco, San Francisco County – Reissuance of NPDES Permit.” The Staff
11 Report informed the Regional Board members, tasked with voting on the 2019 Permit authorization,
12 that “[s]ince this permit covers discharges to both State and federal waters, we have worked closely
13 with U.S. EPA to facilitate joint reissuance.” (emphasis added).

14 79. The 2019 Permit must be approved and issued by both the Regional Board members
15 and EPA to be effective. This is reflected, for example, in the signature block for the 2019 Permit
16 which provides a space for signatures from both an EPA official and a Regional Board official. The
17 signature block also states that the “signatures below certify that this Order . . . is . . . [a] correct copy
18 of the Order adopted by the California Regional Water Quality Control Board, San Francisco Bay
19 Region, on the date indicated above, and an NPDES permit issued by the U.S. Environmental
20 Protection Agency, Region IX, on the date above.”

21 80. Pursuant to the 1989 MOA, in situations where EPA is not a joint issuer of the permit,
22 as here, but must only concur in the permit, the MOA provides that “[n]either the State Board nor the
23 Regional Boards shall adopt or issue a NPDES permit until all objections made by EPA have been
24 resolved.” Here, not only does EPA have the authority to object to the 2019 Permit, it is a joint issuer
25 of the Permit. Under these circumstances, the Regional Board does not have the authority to
26 unilaterally declare large portions of a jointly issued permit to be effective on its own schedule and
27 without EPA concurrence.

1 81. There is no basis to conclude that the Regional Board members intended to adopt
2 “separate” permits when they voted on September 11, 2019, to issue state approval of the 2019 Permit.
3 Even if the Regional Board has theoretical authority under State law to issue independent waste
4 discharge requirements to San Francisco (apart from any EPA action under federal law), that is not
5 the approach nor the authority that was exercised by the Regional Board on September 11, 2019, when
6 it voted to approve the 2019 Permit jointly drafted and issued by EPA and relied upon a single
7 administrative record and a cohesive set of permit terms and obligations to do so.

8 82. The attempted action by the Regional Board Executive Officer to “split” the 2019
9 Permit is plainly inconsistent with State law. The California Water Code unequivocally states that the
10 Executive Officer does not have the authority to unilaterally modify the 2019 Permit as reviewed and
11 voted upon by the Regional Board members. California Water Code § 13223 states that “Each regional
12 board may delegate any of its powers and duties vested in it by this division to the executive officer
13 excepting only the following ... (2) the issuance, modification, or revocation of any ... waste discharge
14 requirement.” The unilateral action attempted by the Regional Board Executive Officer on October
15 29 is contrary to the plain language of Water Code § 13223 and is therefore an abuse of discretion.
16 Given the illegitimacy of this action, and the Regional Board’s continued insistence in the applicability
17 of its “dual permit” perspective, the Court must intervene.

18 83. The Regional Board Executive Officer is unable to point to any other equivalent
19 administrative action where the Regional Board members reviewed public comments on a single
20 permit, held a hearing on a single permit imposing complex and varied terms, and subsequently, after
21 a public vote at the hearing where public testimony was received, the Executive Officer unilaterally,
22 and without any consultation with a joint permitting authority (EPA) or the discharger (San Francisco),
23 declared that only a portion of the document voted upon and approved by the Regional Board members
24 would be enforceable and effective under California law absent further notice and comment and action
25 by the Regional Board members.

26 84. The attempt to parse “federal” and “state” requirements in the October 29 Montgomery
27 Letter is inconsistent with the explicit permit terms, which are joint in nature as described herein, and
28

1 the overall approach is an abuse of discretion and not authorized by law.

2 85. In addition to the joint signature block on page 3 of the 2019 Permit, multiple terms of
3 the 2019 Permit make it clear that the document is a single permit, intended to be jointly approved,
4 signed, and issued by the Regional Board and EPA with a single effective date. These terms include:

5 ● “The following Discharger is authorized to discharge from the locations listed in Table
6 2 in accordance with the waste discharge requirements (WDRs) and federal National
7 Pollutant Discharge Elimination System (NPDES) permit requirements set forth in this
8 Order.” 2019 Permit, Exhibit 1 at p. 1 (emphasis added).

9 ● “**Legal Authorities.** This Order serves as WDRs pursuant to California Water Code
10 article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued
11 pursuant to federal CWA section 402 and implementing regulations adopted by U.S.
12 EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve
13 as a National Pollutant Discharge Elimination System (NPDES) permit authorizing the
14 Discharger to discharge into waters of the United States as listed in Table 2 subject to
15 the WDRs and NPDES permit requirements in this Order.” 2019 Permit, Exhibit 1 at
16 p. 5 (emphasis added).

17 ● “The Regional Water Board and U.S. EPA notified the Discharger and interested
18 agencies and persons of their intent to jointly issue WDRs and NPDES permit
19 requirements ...” 2019 Permit, Exhibit 1 at p. 5 (emphasis added).

20 ● “The Regional Water Board intends that joint issuance of this Order with U.S. EPA
21 will serve as its certification under CWA section 401 that discharges pursuant to this
22 Order comply with 33 U.S.C. sections 1311, 1312, 1313, 1316, and 1317.” 2019
23 Permit, Exhibit 1 at p. 5 (emphasis added).

24 ● “The Discharger shall comply with all “Standard Provisions” included in Attachment
25 D. In Attachment D, references to ‘Regional Water Board’ shall be interpreted as
26 ‘Regional Water Board and U.S. EPA,’ and references to ‘Regional Water Board
27 Executive Officer’ shall be interpreted as ‘Regional Water Board Executive Officer

1 to commencing the Westside Recycled Water Project.”

- 2 • The required Efficacy of Combined Sewer System Controls Special Study must be
3 submitted “to the Regional Water Board and U.S. EPA ...” 2019 Permit at p. 23

4 87. The construction of the 2019 Permit imposes a number of requirements on San
5 Francisco that are anchored to a single “effective date.” This indicates that the Regional Board
6 members did not anticipate “splitting” the 2019 Permit when they voted to approve it in September
7 2019, and illustrates why an attempt to impose two, separate effective dates is plainly inconsistent
8 with the express terms in the 2019 Permit. Examples of these requirements anchored to the Effective
9 Date include:

- 10 • Requirements to implement new notification and reporting requirements for sewer
11 overflows “within six months of the effective date of this Order ...” 2019 Permit at Section
12 VI.C.5.a.ii(b).
- 13 • Submission of a System Characterization Report “[w]ithin 48 months of this Order’s
14 effective date.” 2019 Permit at Section VI, Table 7.
- 15 • Submission of San Francisco’s completed and planned public participation efforts to
16 involve the affected public in the decision-making process related to capital planning
17 “[w]ithin 48 months of this Order’s effective date.” 2019 Permit at Section VI, Table 7.
- 18 • Submission of a Consideration of Sensitive Areas Report “[w]ithin 48 months of this
19 Order’s effective date.” 2019 Permit at Section VI, Table 7.
- 20 • Submission of a Wet Weather Operations Report “[w]ithin 24 months of this Order’s
21 effective date.” 2019 Permit at Section VI, Table 7. The report must be used to update
22 San Francisco’s Operation and Maintenance Manual “[w]ithin 90 days of receiving written
23 concurrence from the Regional Water Board Executive Officer and U.S. EPA.” Id.
- 24 • Preparation and submission of an initial toxicity reduction evaluation work plan “within 90
25 days of the effective date of this Order” using EPA guidance. 2019 Permit at Attachment
26 E, Section V.E.1.
- 27 • Attachment F, Section I.B. of the 2019 Permit, and applicable federal regulations at 40
28

1 C.F.R § 122.46, “limit the duration of NPDES permits to a fixed term not to exceed five
2 years.” Conflicting expiration dates by EPA and the Regional Board create an
3 irreconcilable conflict in the duration of the 2019 Permit.

4 88. The conflict between EPA and the Regional Board over the effective date of the 2019
5 Permit has left San Francisco in an untenable position. In order to operate its Westside Facilities, San
6 Francisco must have certainty over what permit is current and effective. If San Francisco complies
7 with the existing permit originally issued in 2009, it risks enforcement by the Regional Board for non-
8 compliance with the 2019 Permit that the Regional Board argues was effective on November 1, 2019.
9 If it complies with the 2019 Permit, it risks enforcement by EPA, which has specified that this permit
10 is not effective until February 1, 2020. If San Francisco attempts to comply with certain provisions of
11 the 2019 Permit and certain Provisions of the 2009 Permit concurrently, as unilaterally directed by the
12 Regional Board Executive Director in his October 29 letter, the City risks enforcement by EPA and
13 the Regional Board (as well as third-party citizen suits). This disagreement between the joint
14 regulatory agencies also introduces substantial uncertainty for San Francisco because their positions
15 are irreconcilable and it is not possible for San Francisco to identify the applicable and effective permit
16 terms. Further, there is no legal basis for the piece-meal approval of the 2019 Permit and no factual
17 basis that such piece-meal compliance is reasonably feasible from a practical standpoint given that the
18 Westside Facilities comprise one complete hydrologic unit.

19 **B. The 2019 Permit Includes Substantive Terms that are an Abuse of Discretion**

20 1. The Regional Board’s Inclusion of Generic, Boilerplate Water Quality Based Effluent
21 Limitations are Not Authorized by Law and Not Supported by the Evidence.

22 89. In adopting the 2019 Permit, the Regional Board abused its discretion by including
23 both San Francisco-specific water quality based effluent limitations (“WQBELs”) and conflicting
24 generic, boilerplate WQBELs. Only the San Francisco-specific WQBELs are appropriate and
25 consistent with the CWA permitting legal framework and the available evidence before the Regional
26 Board. Incorporation of the generic, boilerplate WQBELs into the 2019 Permit, therefore, was an
27 abuse of discretion.
28

1 90. The CWA requires that designated uses and water quality criteria (called “water quality
2 objectives” in California) must be set for water bodies. With respect to designated uses, the CWA
3 describes various uses of waters that are considered desirable and should be protected, including public
4 water supply, recreation, and propagation of fish and wildlife. With respect to water quality criteria,
5 the CWA requires States to adopt criteria sufficient to protect designated uses for State waters; these
6 criteria may be numeric or narrative depending upon various factors.
7

8 91. The Regional Board was required to comply with the procedural and substantive
9 requirements in the CWA and NPDES permitting regulations when issuing the 2019 Permit. *See* 40
10 C.F.R. Parts 122, 124. If the Regional Board finds that technology based effluent limitations alone
11 will not result in the discharges from the Westside Facilities complying with the applicable water
12 quality standards then the CWA and its implementing regulations require development of WQBELs
13 for inclusion in the Permit.
14

15 92. CWA Section 301(b)(1)(C) requires that permits include WQBELs in NPDES permits
16 if “necessary to meet water quality standards.” In order to know if WQBELs are necessary, a
17 reasonable potential analysis is required. *See* 40 CFR 122.44(d). Additionally, the NPDES permitting
18 regulations require any WQBEL to be consistent with the “assumptions and requirements” of any
19 Total Maximum Daily Load and include “the appropriate site-specific considerations.” NPDES Permit
20 Writers Manual, US EPA (September 2010) at pp. 6-1—6-2.
21

22 93. The 2019 Permit identifies Section IV.B and VI.C.5.c as the applicable WQBELs for
23 the Westside Facilities. The permit terms associated with San Francisco’s LTCP at VI.C.5.c are
24 explicitly identified as the site-specific WQBEL. *See* 2019 Permit, Fact Sheet at F-25.

25 94. The 2019 Permit also includes a re-opener provision, which allows the Regional Board
26 to modify or “re-open” the 2019 Permit if “present or future investigations demonstrate that the
27 discharges governed by this Order have or will have potential to cause or contribute to . . . adverse
28 impacts on water quality.” *Id.* at F-27. Thus, the Regional Board retains the authority under the permit

1 to revisit the WQBELs set in Section VI.C.5.c. in the event that more stringent WQBELs are
2 determined necessary to meet water quality standards.

3 95. However, in addition to the Regional Board’s inclusion of San Francisco-specific
4 WQBELs and the re-opener provision, the 2019 Permit includes two sections of generic, boilerplate
5 WQBELs. These terms conflict with the specific WQBELs set in Section VI.C.5.c., and were not
6 added to the 2019 Permit in a manner consistent with required process or applicable law.

7 96. The first generic, boilerplate WQBEL is included in Section V of the 2019 Permit
8 which, in relevant part, states:

9
10 Discharge shall not cause or contribute to a violation of any applicable water quality standard
11 (with the exception set forth in State Water Board Order No. WQ 79-16) for receiving waters
12 adopted by the Regional Water Board, State Water Resources Control Board (State Water
13 Board), or U.S. EPA as required by the CWA and regulations adopted thereunder.

14 2019 Permit, at p. 8. (“Section V”).

15 97. The second generic, boilerplate WQBEL is included in Provision G.I.I.1 of Attachment
16 G, Regional Standard Provisions, and Monitoring and Reporting Requirements of the 2019 Permit,
17 which states: “Neither the treatment nor the discharge of pollutants shall create pollution,
18 contamination, or nuisance as defined by California Water Code section 13050.” (“G.I.I.1”).

19 98. Contrary to law, the Regional Board characterizes both V and G.I.I.1 as “receiving
20 water limitations.” The Regional Board provides no explanation of the nature or importance of a
21 “receiving water limitation,” how it is different from a WQBEL, or how a “receiving water limitation”
22 fits into the CWA’s legal framework. In its comments, San Francisco requested that the Regional
23 Board clarify the distinction between a WQBEL and a receiving water limitation, if any, and the
24 corresponding legal implications arising from the distinction. The Regional Board failed to respond to
25 this comment.

26 99. WQBELs are, by definition, “designed to protect water quality by ensuring that water
27 quality standards are met in the receiving water.” EPA NPDES Permit Writers Manual at 6-1. EPA
28

1 explains, “water quality-based effluent limits . . . are designed to ensure that the applicable state water
2 quality standards are met.” *In re City of Moscow, Idaho*, 10 E.A.D. 135 (EAB 2001). The Regional
3 Board itself states that V and G.I.I.1 are WQBELs - “[c]ompliance with receiving water limitations is
4 determined with respect to the discharge’s effect on the receiving water.” SFRWQCB Response to
5 Written Comments at Response to San Francisco Comment B.1 at p. 12. As drafted in the 2019 Permit
6 and explained by the Regional Board, therefore, there is no legal distinction between the definition of
7 WQBELs and Sections V and G.I.I.1 of the Permit.
8

9 100. The generic, boilerplate WQBELs create substantial regulatory uncertainty and fail to
10 provide fair-notice to San Francisco about how to operate its wastewater treatment infrastructure. The
11 generic, boilerplate WQBELs fail to identify a clear standard for compliance.

12 101. The Regional Board did not comply with the NPDES Permitting Regulations when
13 adopting these generic, boilerplate WQBELs in the 2019 Permit. These WQBELs are not based upon
14 a reasonable potential analysis, the Total Maximum Daily Load developed by the Regional Board and
15 approved by EPA, specific identification of the pollutants of concern, or site-specific considerations
16 unique to San Francisco’s combined sewer system.
17

18 102. Because Section V and GII.1. are boilerplate, generic WQBELs, their inclusion in the
19 2019 Permit is in direct conflict with the requirement that WQBELs be “site-specific.”
20

21 103. The Regional Board tries to justify its adoption of Section V and G.I.I.1. by taking the
22 position that San Francisco’s compliance with the specific WQBELs in Section VI.C.5.c. may “not
23 necessarily achieve water quality standards.” The Regional Board, however, failed to provide a
24 reasoned explanation, cite data or analyses to support this supposed factual basis for these permit
25 terms. Further, a claim that the generic, boilerplate standards in Section V and G.I.I.1. may be
26 “necessary to achieve water quality standards” conflicts with decades of contrary findings by the
27 Regional Board that the specific WQBELs achieve water quality standards. For example, the Regional
28 Board’s Basin Plan specifically concluded that San Francisco’s combined sewer system was not

1 responsible for any observed bacteria impacts on San Francisco Bay beaches:

2 “If not properly managed, the following source categories have the potential to
3 discharge bacteria to San Francisco Bay beaches at levels that cause or contribute to
4 exceedances of water quality objectives: sanitary sewer collection systems, urban
5 runoff, pets at the beaches, vessels, and wildlife. Wet weather discharges from the City
6 of San Francisco’s combined sewer system that are authorized pursuant to U.S. EPA’s
7 Combined Sewer Overflow (CSO) Control Policy (see Section 4.9 Wet Weather
8 Overflows) are not considered a significant source of bacteria to these San Francisco
9 beaches.”

10 Basin Plan at Section 7.2.5.2 (emphasis added).

11 104. The Regional Board’s stated basis for the need to include these generic, boilerplate
12 terms is also contradicted by other recent findings by the Regional Board, outside of the permitting
13 context, that have concluded that the Westside Facilities are not a significant source of bacteria to
14 receiving waters. For example, as raised in San Francisco’s comments on the draft permit, the
15 receiving waters offshore Baker Beach, which are associated with the Westside Facilities’ CSD
16 Outfalls Nos. 005-007 at Seacliff, were de-listed as impaired for bacteria in 2018 because the Regional
17 Board found, based on “[s]ixteen lines of evidence,” the “applicable water quality standards for
18 [bacteria] *are not being exceeded.*” EPA approved the de-listing in 2018, concluding it was “due to
19 *improved water quality.*” The San Francisco Bay Bacteria Total Maximum Daily Load is another
20 example, where the Regional Board found San Francisco’s CSDs were not a significant source of
21 bacteria to receiving waters. This finding is also reflected in the Basin Plan. All available information
22 indicates that the current performance of the Westside collection system is consistent with its design
23 and that it protects beneficial uses in the Pacific Ocean and San Francisco Bay. This conclusion is
24 supported by decades of information gathering and assessments and the ongoing post-construction
25 monitoring program, including monitoring and modeling of the collection system and receiving
26 waters. The Regional Board did not provide a reasoned explanation for why including the generic,
27 boilerplate permit terms was required given findings made by the Regional Board about bacteria, and
28 the operation of San Francisco’s Westside Facilities, in other contexts.

105. In its comments, San Francisco explained, with supporting information, why the
performance of the Westside Facilities protects beneficial uses. The Regional Board did not respond
to San Francisco’s post-construction monitoring information or provide a meaningful explanation why

1 it disagreed with San Francisco’s position or technical information. San Francisco has an existing post-
2 construction monitoring program and the information associated with this program demonstrates the
3 Westside Facilities protect beneficial uses.

4 106. The Regional Board, in seeking to impose the generic, boilerplate terms in the 2019
5 Permit, did not make a finding that the operation of the Westside Facilities was currently failing to
6 protect beneficial uses, nor did the Regional Board make a finding that the San Francisco-specific
7 WQBELs included in the 2019 Permit would fail to protect beneficial uses. Having failed to make
8 such finding, the imposition of the generic, boilerplate terms was an abuse of discretion.

9 107. The Regional Board cites to EPA’s CSO Control Policy – the nationwide framework
10 for controlling combined sewer overflows through the NPDES permitting program – as support for
11 requiring compliance generic WQBELs in the 2019 Permit. The section of the CSO Control Policy
12 relied upon by the Regional Board, however, is only applicable to Phase 1 NPDES Permits. Because
13 the 2019 Permit is a Post-Phase II Permit (as described below), Sections V and G.I.I.1 are in direct
14 conflict with the CSO Policy.

15 2. The Regional Board’s Imposition of Requirements related to Sewer Overflow from the
16 Combined Sewer System Resulting from Design Capacity Exceedances is Contrary to Law.

17 108. San Francisco’s combined sewer system collects stormwater and sewage in the same
18 network of combined pipes. The system, as designed, has the capacity to capture and convey rainfall
19 and wastewater at a level of service determined by San Francisco.

20 109. Level of service decisions are appropriately left to local municipalities. These
21 decisions involve design, engineering, and financial decisions relevant to the construction, upgrade,
22 or replacement of a municipality’s entire combined sewer system. For example, a city-wide change
23 in the level of service for a municipality the size of San Francisco would require re-engineering large
24 portions, or even the entire, combined sewer system. Such a decision, if approved by local elected
25 officials, would likely cost billions of dollars and require years, or even decades, of disruption as pipes
26 under the streets, and other infrastructure, is upsized.

27 110. In large storm events, which exceed the selected level of service, the hydraulic capacity
28

1 in portions of the system may be exceeded by the amount of stormwater entering the system. When
2 the hydraulic capacity of the system is exceeded, a sewer overflow from the combined sewer system
3 (“SOCSS”) may occur (for the purpose of this action, SOCSS refer only to events occurring as the
4 result of a design capacity exceedance due to a large storm event). Under these circumstances,
5 however, the system is operating as designed and the SOCSS are not the result of a design failure or a
6 lack of required operation and maintenance. As such, SOCSS can only occur during wet weather and,
7 even then, only in response to large storm events. In its Basin Plan, the Regional Board specifically
8 recognized that San Francisco’s “system is subject to overloading during severe storms.” Basin Plan
9 at § 4.11.1.

10 111. It is not possible to engineer a combined sewer system to eliminate SOCSS in all size
11 storm events.

12 112. When SOCSS do occur, the overflow exits the combined sewer system and then
13 reenters the system at a downgradient point and/or after the amount of stormwater entering the system
14 subsides. For example, during a large storm event, combined sewer and stormwater inflows that
15 exceed the capacity of a pipe may exit the collection system – e.g., via a manhole – flow overland and
16 collect in the lowest point of a street before reentering the combined sewer system via a feature like a
17 manhole cover or catch basin. Due to geography and design, SOCSS do not flow directly into waters
18 of the State, like the Bay or the Pacific Ocean, from the Westside Facilities.

19 113. SOCSS, resulting from design exceedances of the system, are materially different from
20 overflows resulting from operation and maintenance deficiencies. Examples of operation or
21 maintenance deficiencies that could cause a localized overflow from the combined sewer system
22 would include reduced pipe capacity due to fat, oil, and/or grease accumulation or the collapse of a
23 pipe due to damage or lack of repairs. Unlike SOCSS, overflows due to operation and maintenance
24 deficiencies can occur during dry weather and wet weather (and during any size storm event).

25 114. Via Section VI.C.5.(a)(ii)(b), the Regional Board seeks to impose various reporting
26 requirements for SOCSS in the 2019 Permit. The reporting requirements improperly include design
27 capacity exceedances unrelated to any failure in the system or its operation and maintenance.

1 115. The Regional Board’s alleged basis for mandating the reporting of SOCSS resulting
2 from design capacity exceedances is to determine whether “corrective action” is necessary. The first
3 time the Regional Board raised the need to collect this information to evaluate “corrective action” was
4 in their Response to Comment. The Regional Board has not provided an acceptable rationale or basis
5 to impose SOCSS reporting in the 2019 Permit because the Regional Board does not have the authority
6 to order any “corrective action” relevant to the level of service or design capacity of San Francisco’s
7 combined sewer system.

8 116. The CWA does not provide authority to regulate SOCSS that do not reach a Water of
9 the United States. 33 U.S.C. § 1362(7). Further, the Regional Board does not have legal authority to
10 regulate SOCSS that do not result from operation or maintenance deficiencies or where the SOCSS
11 do not reach waters of the State. *See, e.g.*, Water Code §§ 13050(c), 13260; 40 C.F.R. § 122.41(c).

12 117. In seeking to justify the reporting of SOCSS, the Regional Board indicated in its
13 response to comments that SOCSS may impact groundwater resources. This rationale was not
14 included as a basis for requiring SOCSS reporting when public comment on the permit was solicited.
15 Further, the Regional Board has not alleged that operation of San Francisco’s combined sewer system
16 is discharging waste into groundwater in a manner that creates or threatens to create a condition of
17 pollution or nuisance, nor has it provided any data or concrete information showing this is the case.
18 Further, the Regional Board has never alleged an impact to groundwater resulting from the system nor
19 requested that San Francisco seek Waste Discharge Requirements for such discharges despite
20 regulating San Francisco’s system for decades. The Regional Board failed to cite in the Administrative
21 Record to any other municipality in California being ordered to seek a state permit for alleged
22 discharges to groundwater from operation of a combined sewer system.

23 118. In adopting the reporting requirements for SOCCS, the Regional Board failed to cite
24 specific evidence that SOCSS occur within the geographic region covered by the 2019 Permit. For
25 example, at the September 11, 2019 adoption hearing, Regional Board staff failed to produce any
26 specific evidence of SOCSS on the Westside, the area covered under the 2019 Permit. Rather, staff
27 arbitrarily and capriciously entered photographs of SOCSS occurring on the opposite site of the City,
28

1 in an area covered under an entirely separate NPDES permit, and the Regional Board mistakenly relied
2 on this information in concluding that SOCSS have occurred in the Westside. Further, the Regional
3 Board did not consider any specific evidence that SOCSS are negatively impacting groundwater within
4 the geographic region covered by the 2019 Permit. Therefore, the Regional Board lacks a factual basis
5 to require “corrective action” to address SOCSS.

6 119. In adopting a requirement to report SOCSS resulting from design capacity
7 exceedances, the Regional Board inappropriately relies upon EPA’s 1995 Combined Sewer Overflows
8 Guidance for Nine Minimum Controls (“NMC Guidance”). The NMC Guidance was not designed to
9 address SOCSS that do not reach a surface water and, therefore is not relevant to, nor does it justify
10 the regulation of SOCSS resulting from design capacity exceedances associated with large storm
11 events. Further, the NMC Guidance does not provide a basis to require “corrective action” to address
12 SOCSS.

13 120. In justifying adoption Section VI.C.5(a)(ii)(b) requiring the reporting SOCSS, the
14 Regional Board claimed that the SOCCS reporting is necessary to confirm whether such overflows
15 reach waters of the United States. This is not a basis supporting the adoption of this reporting
16 requirement because the 2019 Permit includes other reporting mechanisms that will provide this
17 information consisting of two provisions in Attachment G, “Two-Hour Notification” and “Five Day
18 Written Report” that require the reporting of unauthorized discharges that reach a surface water. 2019
19 Permit at Sections V.E.2.a and V.E.2.b. of Attachment G.

20 121. The Regional Board tries to justify SOCSS reporting by alleging that SOCCS are a
21 public nuisance. SOCSS are not a public nuisance as a matter of law, so the Regional Board cannot
22 regulate these SOCSS as nuisances under Water Code section 13050. California Civil Code section
23 3482 explicitly states that nothing which is done or maintained under express authority of a statute can
24 be deemed a nuisance. Because San Francisco is authorized by state and local law, and under its
25 NPDES permit, to operate its combined sewer system as designed, SOCSS that occur in connection
26 with intended and expected operation of the system, due to rainfall in excess of design capacity, cannot
27 be a public nuisance. SOCSS resulting from design capacity exceedances are also protected against
28

1 nuisance claims by design immunity. *See* California Government Code § 830.6.

2 122. In an effort to craft a theory extending its jurisdiction over SOCSS resulting from
3 design capacity exceedances, the Regional Board has gone to unreasonable lengths. The legal theories
4 are not contemplated by the CWA and are contrary to the underlying intent of the CSO Control Policy.

5 3. The Regional Board Abused its Discretion by Requiring a Long Term Control Plan Update in
6 the 2019 Permit.

7 123. The 2019 Permit, at VI.C.5.d, seeks to establish what the Regional Board describes as
8 an “LTCP Update.” VI.C.5.d includes Table 7, which imposes a list of tasks that must be completed
9 by San Francisco over a period of years in order to “update” its LTCP. The Regional Board’s attempt
10 to include VI.C.5.d in the 2019 Permit is an abuse of discretion because it would impose elements of
11 the CSO Control Policy LTCP requirements that do not apply to San Francisco. The 2019 Permit
12 Requirements in Section VI.C.5.d are contrary to law and are not supported by evidence.

13 124. A Long Term Control Plan, consistent with the minimum elements in the CSO Control
14 Policy and as implemented through individually approved NPDES permits, is EPA’s and Congress’
15 method to implement the CSO Control Policy. The CSO Control Policy expects implementation to
16 happen via a phased process as each municipality’s combined sewer system obtains information and
17 begins to build its collection system and treatment facilities. *See* 59 Fed. Reg. at 18,696 (i.e., Phase I,
18 Phase II, and Post-Phase II NPDES Permits).

19 125. San Francisco is unique in the context of the CSO Control Policy and its implementation
20 framework. As explained above, San Francisco was decades ahead of most combined sewer systems and
21 completely built the Westside Facilities by 1997 – only three years after the release of the CSO Control
22 Policy. The Westside Facilities are fully built, operate as designed, have been properly permitted by a
23 post-Phase II permit that incorporates the applicable technology-based and water-quality based
24 requirements of the CWA.

25 126. The CSO Control Policy anticipated that some municipalities – like San Francisco –
26 would have undertaken substantial study and build-out of their combined sewer systems prior to issuance
27 of permits following the 1994 finalization of the CSO Control Policy. To that end, in Section I.C. of the
28

1 CSO Control Policy, EPA “recognize[d] that extensive work has been done by many Regions, States,
2 and municipalities to abate CSOs. As such, portions of this Policy may already have been addressed by
3 permittees’ previous efforts to control CSOs.” The CSO Control Policy continues, in Section I.C.2.,
4 stating in relevant part:

5 Any permittee that, on the date of publication of this final Policy, has substantially
6 developed or is implementing a CSO control program pursuant to an existing permit or
7 enforcement order, and such program is considered by the NPDES permitting authority
8 to be adequate to meet [water quality standards] and protect designated uses and is
9 reasonably equivalent to the treatment objectives of this Policy, should complete those
10 facilities without further planning activities otherwise expected by this Policy. ...

11 127. The Regional Board has affirmed that the I.C exemption in the CSO Control Policy
12 applies to San Francisco. See 1997 Oceanside NPDES Permit No. CA0037681 p. 6, finding 11.

13 128. The Regional Board’s Basin Plan provides the following affirmation of San Francisco’s
14 system and substantial, early efforts to plan and engineer system improvements:

15 “The Water Board intends to implement the federal CSO Control Policy for the
16 combined sewer overflows from the City and County of San Francisco. The City and
17 County of San Francisco has substantially completed implementation of the long-term
18 CSO control plan (and is thereby exempted requirements to prepare a long-term control
19 plan).”

20 Basin Plan at 4.9.1.

21 129. In the 2019 Permit, the Regional Water Board seeks to impose numerous LTCP
22 requirements on San Francisco that San Francisco has already completed as part of the historical
23 development of the Westside Facilities, and that, as a matter of law, it is exempt from being required
24 to complete under the CSO Control Policy. See 2019 Permit, Section VI.C.5.d, Table 7,

25 130. The 2019 Permit is a post-Phase II Permit under EPA’s CSO Control Policy. In its
26 response to comments, the Regional Board cited CSO Policy sections IV.B.2.b., IV.B.2.d., IV.B.2.c.,
27 and IV.B.2.f for its authority to impose the LTCP-related conditions in Table 7. Those provisions of
28 the CSO Control Policy – explicitly relied upon as the basis for the Regional Board’s authority – are
“Phase II Permits-Requirements for Implementation of a Long-Term CSO Control Plan.” The 2019
Permit is *not* a Phase II permit; it is a *post*-Phase II permit. A Phase II permit is a permit issued during
the initial implementation of an LTCP. San Francisco completed implementation of its LTCP for the

1 Westside Facilities in 1997 and the Regional Board has issued two post-Phase II Occanside permits
2 issued to San Francisco since 1997. *See* 2003 Occanside NPDES Permit, Order No. R2-2003- 0073)
3 and (2009 Occanside NPDES Permit, Order No. Order No. R2-2009-0062). Section VI.C.5.d of the
4 Permit is contrary to law because it would impose requirements on San Francisco that the CSO Control
5 Policy explicitly determines do not apply to San Francisco.

6 131. The Regional Board provided no explanation why it is legal or appropriate to apply
7 Phase I or Phase II permitting requirements to a combined sewer system via a post-Phase II permit.

8 132. The Regional Board has provided no findings in support of the requirements sought to
9 be imposed by Section VI.C.5.d of the 2019 Permit, and its responses to comments raising concerns
10 about the requirements are *post hoc* rationales, unsupported by any evidence. For example, in its
11 response to comments, the Regional Board states, “since decades have passed since San Francisco
12 constructed most of its wet weather facilities, *we find it unlikely that no improvement can be made.*”
13 The Regional Board provided no explanation of what - if any – evidence supported its conclusion that
14 “improvements” are necessary.

15 133. The 2019 Permit, at VI.C.5.d is contrary to law, because even those permit terms that
16 could apply to San Francisco fail to align with the legal requirements of the CSO Control Policy. For
17 example, Table 7, Task 3, fails to align with the CSO Control Policy requirement that any CSDs to a
18 sensitive area, that cannot be eliminated or relocated, must be tied to the level of control “*deemed*
19 *necessary* to meet [water quality standards] for full protection of existing and designated uses.” *See*
20 CSO Control Policy at II.C.3.

21 134. The Regional Board has failed to provide evidence that San Francisco’s Westside
22 Facilities do not protect beneficial uses. As such, there is no basis for imposing the requirements in
23 Table 7, Task 3 of the 2019 Permit which requires a report “that evaluates, prioritizes, and proposes
24 control alternatives needed to eliminate, relocate, or reduce the magnitude or frequency of discharges
25 to sensitive areas” and then San Francisco must “prioritize and propose for implementation alternatives
26 to eliminate, relocate, or reduce the magnitude or frequency of discharges” and propose an
27 “implementation schedule.”

1 135. Evidence in the record demonstrates the Westside Facilities protect beneficial uses.
2 The Regional Board has not made a finding to the contrary. As a result, the lack of such a finding by
3 the Regional Board, combined with the text of Section VI.C.5.d, illustrates the Permit is inconsistent
4 with the CSO Control Policy and contrary to law.

5
6 **C. Contrary to Law, Sections V, VI.C.5.d, and G.I.I.1 of the 2019 Permit Fail to Provide San**
7 **Francisco with Fair Notice.**

8 136. In adopting the 2019 Permit, the Regional Board was required to provide “fair notice”
9 of its requirements and terms, as mandated by the Due Process Clause of the U.S. Constitution.
10 *Cranston v. City of Richmond*, 40 Cal.3d 755, 763-64 (1985); *McMurty v. Bd. Of Med. Examiners*,
11 180 Cal. App. 2d 760, 766 (1960). In the context of NPDES permits, the Due Process requirement of
12 fair notice is a basic standard in administrative law. See, e.g., *Wisconsin Resources Protection Council*
13 *v. Flambeau Min. Co.*, 727 F.3d 700, 708 (7th Cir. 2013) (In determining whether regulated party
14 received fair notice of EPA’s approval of NPDES permit, Court recognized that due process
15 requirement has been “thoroughly incorporated into administrative law.”) (citing *Gen. Elec. Co. v.*
16 *United States EPA*, 53 F.3d 1324, 1328-29) (D.C. Cir. 1995).

17 137. Fair notice is based on the fundamental principle in our legal system that “laws which
18 regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox*
19 *Television Stations, Inc.*, 567 U.S. 239, 253 (2012). First, under this principle “regulated parties should
20 know what is required of them so they may act accordingly;” and second, “precision and guidance are
21 necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” *Id.*

22 138. The Regional Board did not provide San Francisco fair notice of what conduct is
23 prohibited in the 2019 Permit when it adopted Sections V, VI.C.5.d, and G.I.I.1.

24 139. Section V declares the Westside Facilities “shall not cause or contribute to a violation
25 of any applicable water quality standard.” Exhibit 1 (2019 Permit), at 8. San Francisco has no
26 reasonable certainty of what Section V requires or what San Francisco must now do, if anything, to
27 ensure compliance. San Francisco cannot “violate” a water quality standard; it can only violate
28 WQBELs in a NPDES permit, which are determined based upon the applicable water quality

1 standards. As such, in adopting the this term, the Regional Board demands that San Francisco not
2 violate water quality standards by not violating water quality standards – this circular logic, without
3 defined meaning, demonstrates the lack of fair notice.

4 140. Provision G.I.I.1 demands the Westside Facilities not “create pollution,” where
5 “pollution” means “an alteration of the quality of waters of the state . . . which unreasonably affects .
6 . . the waters for beneficial uses” without explanation as to how “unreasonably affects” is defined.
7 Exhibit 1 (2019 Permit), at G-8. The Regional Board did not provide any explanation of what conduct
8 is forbidden or required to meet this standard.

9 141. The generic WQBELs at Sections V and G.I.I.1, included in the 2016 Permit, were not
10 developed with any of the procedural and substantive safeguards built into the NPDES permitting
11 process. The Regional Board or EPA may use these undefined WQBELs as a basis to find the
12 discharges from the Westside Facilities do not protect beneficial uses or are otherwise is inconsistent
13 with applicable water quality standards and bring a civil and criminal enforcement action.

14 142. San Francisco has not been provided fair notice about the scope of the requirement
15 imposed by Section VI.C.5.d of the 2019 Permit, which mandates an LTCP update, because: (i)
16 beneficial uses are protected and the Regional Board has not said otherwise, thereby leaving the goal
17 of any LTCP Update unclear; and (ii) to the extent that an LTCP Update is imposed, the 2019 Permit
18 does not provide explicit terms for how much reduction must be accomplished by the update beyond
19 vague reference to “better protect[ion].”

20 143. The Regional Board has taken the position for decades that the current frequency and
21 volume of CSDs protects beneficial uses. If the Regional Board’s consistent findings on the level of
22 control necessary to protect beneficial uses is no longer accurate, San Francisco no longer knows what
23 level of control would provide “full protection of . . . uses” as required by CSO Control Policy
24 II.C.3.b.ii. Without fair notice of the threshold that constitutes protection of beneficial uses in the
25 Regional Board’s interpretation, San Francisco lacks a clear conception of how much is necessary to
26 “minimize” CSDs, “maximize” pollutant removal, and “reduce the magnitude or frequency of
27 discharges to sensitive areas” in order to comply with the terms of VI.C.5.d..

28

1 **D. The Regional Board Failed to Respond to San Francisco’s Significant Comments Regarding**
2 **the 2019 Permit in Violation of Law.**

3 144. The Clean Water Act and EPA’s regulations prescribe standards for State Programs
4 authorized to issue NPDES permits, including the requirement that a permit issuer shall “briefly
5 describe and respond to all significant comments on the draft permit.” 40 C.F.R. § 124.17(a)(2); see
6 § 124.17(a)(c) (“Applicable to State programs, see §§ 123.25 (NPDES)”). The State Board
7 Regulations in Title 23 apply this requirement to the Regional Board’s issuance of the Permit: “Waste
8 discharge requirements for discharge from point sources to navigable waters shall be issued and
9 administered in accordance with the currently applicable federal regulations for the National Pollutant
10 Discharge Elimination System (NPDES) program.” 23 Cal. Code Regs. § 2235.2 (emphasis added).

11 145. Accordingly, in issuing the 2019 Permit, the Regional Board was required comply with
12 certain procedural obligations, including those set forth in 40 C.F.R. § 124.17. Specifically, the
13 Regional Board was required to “briefly describe and respond to all significant comments on the draft
14 permit” that are “raised during the public comment period, or during any hearing.” 40 C.F.R. §
15 124.17(a)(2) (emphasis added).

16 146. The Regional Board failed to meet the requirements set out in 40 C.F.R. § 124.17 when
17 it did not, in its response to comments regarding the 2019 Permit, address the following specific issues
18 raised by San Francisco:

- 19
- 20 • San Francisco requested that the Regional Board clarify the distinction between a WQBEL
21 and a receiving water limitation, if any, and the corresponding legal implications for the
22 distinction. The Regional Board failed to substantively address the comment.
 - 23 • San Francisco requested that the Regional Board identify the federal and state statutory and
24 regulatory legal authority for each task and sub-task in Table 7. In response, the Regional
25 Board provided a generic string list of citations to the CSO Control Policy and EPA
26 guidance. The citations were not responsive nor did they provide an explanation, as
27 requested, about what legal authority supports each task and sub-task in Table 7.
 - 28 • San Francisco raised in its comments that the Regional Board previously affirmed that the

1 I.C.2 exemption in the CSO Control Policy applies to San Francisco because its program
2 was substantially complete and exempt from the planning and construction requirements.
3 As such, San Francisco asked the Regional Board to provide reasons for why it departed
4 from this position and an explanation of the legal basis and implications of applying
5 Section I.C. of the CSO Control Policy to San Francisco via Table 7 of the 2019 Permit.
6 The Regional Board did not respond.

- 7 • San Francisco provided comments demonstrating that the current performance of the
8 combined sewer system, pursuant to the WQBELs, protects beneficial uses. The Regional
9 Board did not respond or explain how operation of the system consistent with the San
10 Francisco-specific WQBELs in would fail to protect beneficial uses.
- 11 • San Francisco objected to the unqualified characterization in Section VI.C.5.a that the
12 Regional Board has a legitimate “need” to collect information about SOCSS or that it has
13 authority to collect such information, because operation of the system pursuant to a selected
14 level of service confers design immunity on San Francisco pursuant to the California
15 Government Code section 830.6. The Regional Board did not address or respond to San
16 Francisco’s design immunity argument.
- 17 • San Francisco raised comments that permit terms failed to provide fair notice. The
18 Regional Board failed to substantively respond, stating only that it “provided San Francisco
19 fair notice of our expectations,” without further explanation to the specific instances of
20 vagueness that San Francisco included in its comments.

21 147. San Francisco’s comments to the Regional Board in advance of its approval of the 2019
22 Permit, and identified in Paragraph 122, were significant. Although the Regional Board has discretion
23 in how it responds to comments, there is no discretion to ignore or fail to respond to significant
24 comments. 40 C.F.R. § 124.17(a)(2) (The permit issuer’s “response shall” . . . “respond to all
25 significant comments.”). Therefore, the Regional Board abused its discretion by failing to respond to
26 the comments timely raised during the public comment period.

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28

FIRST CAUSE OF ACTION

Declaratory Judgment that 2019 Permit Is Not Effective

148. San Francisco realleges and incorporates by reference the allegations set forth in paragraphs 1 through 147, above.

149. The 2019 Permit is a single document and was adopted as such by the Regional Board by vote on September 11, 2019. There is no legal basis for the Executive Officer of the Regional Board to unilaterally issue a post hoc fiat that alleges to bifurcate the 2019 Permit into separate federal and State permits, with the “new” State permit having the effective date of November 1, 2019.

150. There is no basis to conclude that the 2019 Permit is not a single permit but is, instead, “two separate permits,” as alleged by the Regional Board or that the 2019 Permit can be teased apart via *post hoc* administrative action without public notice, comment, or a vote of the Regional Board.

151. The 2009 Permit shall continue in full force and effect until February 1, 2020, or later, because it will not be rescinded by the provisions otherwise stated in the 2019 Permit.

152. San Francisco asks this Court to declare that: (a) the 2019 Permit (Order No. R2-2019-0028) was not adopted until EPA issuance on December 11, 2019; (b) the effective date of the 2019 Permit is February 1, 2020, unless a petition for permit review is filed with the EAB, not November 1, 2019; (c) the 2009 Permit remains in full force and effect until February 1, 2020, unless a petition for permit review is filed with the EAB.

153. The declaration will provide clarity to San Francisco about which specific permit is operable and must be complied with during continued operation of the Westside Facilities. The declaration will further prevent harm to San Francisco from defending against enforcement actions, brought by the State, EPA, and/or citizen suits, that have no basis in the law and arise from purported permit obligations of which San Francisco had no clear notice.

154. San Francisco asks that this Court enjoin the Regional Board from taking any enforcement action on the basis of the 2019 Permit, or any other action inconsistent with the declaration, until the effective date of the 2019 Permit on February 1, 2020 (or as that effective date may be extended as otherwise authorized by law).

SECOND CAUSE OF ACTION

Writ of Administrative Mandate Declaring 2019 Permit Not Effective

155. San Francisco realleges and incorporates by reference the allegations set forth in paragraphs 1 through 154, above.

156. The Regional Board’s decision on the 2019 Permit is a final administrative order made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the board. Cal. Civ. Proc. Code § 1094.5(a).

157. The writ of administrative mandate is appropriate because the Regional Board abused its discretion by continuing to perpetuate a November 1, 2019 effective date, in whole or in part, for the 2019 Permit absent issuance, approval and signature of the 2019 Permit by EPA. *See* Cal. Civ. Proc. Code § 1094.5(b). “Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” *Id.* at § 1094.5(c). The Regional Board’s position that portions of the 2019 Permit are effective as of November 1, 2019 is an abuse of discretion because it is contrary to law.

158. The issuance of the October 29 Montgomery Letter, seeking to retroactively modify the 2019 Permit by carving it up and partially “re-issu” it, absent any further action by the Regional Board, or public notice and opportunity to comment, is a further abuse of discretion and any such “state-only” permit is not supported by the findings nor the evidence considered by the Regional Board on September 11, 2019. The California Water Code is unequivocal that Mr. Montgomery does not have the independent authority to modify the 2019 Permit. It states, in relevant part, “Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: . . . (2) the issuance, modification, or revocation of any . . . waste discharge requirement.” Cal. Water Code § 13223.

159. San Francisco asks that this Court issue peremptory writ of administrative mandate commanding that the Regional Board not implement a November 1, 2019 effective date for the 2019

1 Order and, further, commanding that the Regional Board not seek to implement the 2019 Permit in a
2 piecemeal fashion, separate and apart from how it was approved by the Regional Board on September
3 11, 2019.

4 **THIRD CAUSE OF ACTION**

5 **Writ of Administrative Mandate Setting Aside or Remanding the Generic, Boilerplate**
6 **WQBELs in the 2019 Permit**

7 160. San Francisco realleges and incorporates by reference the allegations set forth in
8 paragraphs 1 through 159, above.

9 161. The Regional Board's decision on the 2019 Permit, including the terms in Section V
10 and Attachment G, Provision G.I.I.1, is a final administrative order made as the result of a proceeding
11 in which by law a hearing is required to be given, evidence is required to be taken, and discretion in
12 the determination of facts is vested in the board. Cal. Civ. Proc. Code § 1094.5(a).

13 162. The writ of administrative mandate is appropriate because the Regional Board abused
14 its discretion by including Section V and Attachment G, Provision G.I.I.1 in the 2019 Permit. *See* Cal.
15 Civ. Proc. Code § 1094.5(b). "Abuse of discretion is established if the respondent has not proceeded
16 in the manner required by law, the order or decision is not supported by the findings, or the findings
17 are not supported by the evidence." *Id.* at § 1094.5(c). For example, the Regional Board did not follow
18 the required legal process for establishing the WQBELs in Section V and Attachment G, Provision
19 G.I.I.1 in the 2019 Permit.

20 163. The Regional Board further abused its discretion by failing to provide sufficient legal
21 and factual evidence supporting the need of these additional generic WQBELs. For example, the
22 Regional Board attempts to justify the terms by characterizing them as "receiving water limitations"
23 without any legal authority and by inappropriately relying on CSO Control Policy for Phase I and/or
24 Phase II NPDES Permits while the 2019 Permit is a Post-Phase II Permit. *Id.* at § 1094.5(c).

25 164. The Board further abused its discretion by relying on generic WQBELs that broadly
26 prohibit "violating" water quality standards and impairing beneficial uses, instead of developing site-
27 specific permit limitations designed to address any substantiated issues with San Francisco's
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1 discharges, and possible effect on receiving waters in the San Francisco Bay.

2 165. San Francisco asks that the Court issue a peremptory writ of administrative mandate
3 against the Regional Board setting aside Sections V and G.I.I.1 of the 2019 Permit because these
4 WQBELs are an abuse of discretion. In the alternative, San Francisco asks this Court for a writ of
5 administrative mandate remanding Section V and G.I.I.1 to the Regional Board to make proper
6 determinations regarding water quality based standards consistent with the Clean Water Act and
7 NPDES permitting regulations.

8 **FOURTH CAUSE OF ACTION**

9 **Writ of Administrative Mandate Setting Aside or Remanding the Reporting and**
10 **Regulatory Requirements for SOCSS Resulting from Design Capacity Exceedances in**
11 **2019 Permit**

12 166. San Francisco realleges and incorporates by reference the allegations set forth in
13 paragraphs 1 through 165, above.

14 167. The Regional Board’s decision on the 2019 Permit, imposing reporting requirements
15 for SOCSS, is a final administrative order made as the result of a proceeding in which by law a hearing
16 is required to be given, evidence is required to be taken, and discretion in the determination of facts is
17 vested in the board. Cal. Civ. Proc. Code § 1094.5(a).

18 168. The writ of administrative mandate is appropriate because the Regional Board abused
19 its discretion by defining Section VI.C.5(a)(ii)(b) to include reporting requirements for SOCSS
20 resulting from design capacity exceedance. *See* Cal. Civ. Proc. Code § 1094.5(b). “Abuse of discretion
21 is established if the respondent has not proceeded in the manner required by law, the order or decision
22 is not supported by the findings, or the findings are not supported by the evidence.” *Id.* at § 1094.5(c).

23 169. San Francisco does not object to regulation and reporting of SOCSS arising as a result
24 of operation, maintenance, or other combined sewer system failures – encompassed by Section
25 VI.C.5(a)(ii)(b) – but asks this court to find that the Regional Board abused its discretion when it
26 extended requirements for reporting SOCSS resulting from level of service exceedances caused by
27 severe storms.

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1 Proc. Code § 1094.5(b). “Abuse of discretion is established if the respondent has not proceeded in the
2 manner required by law, the order or decision is not supported by the findings, or the findings are not
3 supported by the evidence.” *Id.* at § 1094.5(c).

4 175. The Board’s inclusion of Section VI.C.5 in the 2019 Permit is inconsistent with the
5 appropriate CSO Control Policy and Clean Water Act and not supported by the findings. The Regional
6 Board further abused its discretion by only citing to Phase II CSO Policies in support of the “LTCP
7 Update” requirements, while the 2019 Permit is post-Phase II Permit. *Id.* at § 1094.5(c).

8 176. San Francisco asks that the Court issue a peremptory writ of administrative mandate
9 against the Regional Board setting aside Section VI.C.5’s “LTCP Update” requirements in the 2019
10 Permit because they are an abuse of discretion. In the alternative, San Francisco asks this Court for a
11 writ of administrative mandate remanding Section VI.C.5 to the Regional Board to make proper legal
12 determinations regarding San Francisco’s Long Term Control Plan consistent with post-Phase II CSO
13 Control Policies.

14 **SIXTH CAUSE OF ACTION**

15 **Writ of Administrative Mandate Setting Aside or Remanding 2019 Permit Terms that**
16 **Fail to Provide Fair Notice**

17 177. San Francisco realleges and incorporates by reference the allegations set forth in
18 paragraphs 1 through 176, above.

19 178. The Regional Board’s decision on the 2019 Permit is a final administrative order made
20 as the result of a proceeding in which by law a hearing is required to be given, evidence is required to
21 be taken, and discretion in the determination of facts is vested in the board. Cal. Civ. Proc. Code §
22 1094.5(a).

23 179. The writ of administrative mandate is appropriate because the Regional Board abused
24 its discretion by failing to provide fair notice, as required under the Due Process Clause of the U.S.
25 Constitution, for the permit terms in Sections V, G.I.I.1, and VI.C.5.d. *See* Cal. Civ. Proc. Code
26 § 1094.5(b). “Abuse of discretion is established if the respondent has not proceeded in the manner
27 required by law, the order or decision is not supported by the findings, or the findings are not supported
28

1 by the evidence.” *Id.* at § 1094.5(c).

2 180. The Regional Board has not proceeded in the manner required by law because it failed
3 to articulate what is necessary for San Francisco to do, in order to comply with Sections V, G.I.I.1,
4 and VI.C.5.d of the 2019 Permit. The generic WQBELs in Sections V and G.I.I.1 do not provide fair
5 notice of what it means to violate a “water quality standard” and the LTCP Update in Section VI.C.5.d
6 fails to include the precision and guidance regarding what level of control protects beneficial uses that
7 San Francisco is entitled to under the Duc Process Clause.

8 181. San Francisco asks that this Court issue a peremptory writ of administrative mandate
9 against the Regional Board setting aside Sections V, G.I.I.1, and VI.C.5.d of the 2019 Permit because
10 they are an abuse of discretion. In the alternative, San Francisco asks this Court to remand Sections
11 V, G.I.I.1, and VI.C.5.d to the Regional Board to provide San Francisco with fair notice of its legal
12 obligations under the CWA and the Permit.

13 **SEVENTH CAUSE OF ACTION**

14 **Writ of Administrative Mandate Setting Aside or Remanding 2019 Permit Terms**
15 **for which Regional Board Failed to Respond to Significant Comments**

16 182. San Francisco realleges and incorporates by reference the allegations set forth in
17 paragraphs 1 through 181, above.

18 183. The Regional Board’s decision on the 2019 Permit, including Sections V, G.I.I.1,
19 VI.C.5.d, and VI.C.5.a.ii.b, is a final administrative order made as the result of a proceeding in which
20 by law a hearing is required to be given, evidence is required to be taken, and discretion in the
21 determination of facts is vested in the board. Cal. Civ. Proc. Code § 1094.5(a).

22 184. The writ of administrative mandate is appropriate because the Regional Board abused
23 its discretion by failing to respond to significant comments made by San Francisco regarding the 2019
24 Permit, as required 40 C.F.R. section 124.17(a)(2). *See* Cal. Civ. Proc. Code § 1094.5(b). “Abuse of
25 discretion is established if the respondent has not proceeded in the manner required by law, the order
26 or decision is not supported by the findings, or the findings are not supported by the evidence.” *Id.* at
27 § 1094.5(c).

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1 185. The Regional Board has not proceeded in the manner required by law because it
2 approved and issued the 2019 Permit in a manner contrary to the procedural requirements of the Clean
3 Water Act. The Regional Board failed to respond to significant comments concerning legal authority
4 for the LTCP update, the Regional Board's departure from the CSO Policy, and compliance with
5 protection of beneficial uses. Approval of the 2019 Permit, without addressing these significant
6 comments, is contrary to the Clean Water Act and an abuse of discretion by the Regional Board.

7 186. San Francisco asks that the Court issue a peremptory writ of administrative mandate
8 against the Regional Board setting aside Sections V and G.I.I.1 (generic WQBELs), VI.C.5.d (LTCP
9 Update Task List), and VI.C.5.a.ii.b (reporting requirements for SOCSS resulting from design capacity
10 exceedances) because inclusion of these terms, without responding to significant comments, is an
11 abuse of discretion. In the alternative, San Francisco asks this Court for a writ of administrative
12 mandate remanding these permit sections to the Regional Board to provide San Francisco with
13 responses, including explanations, to significant comments regarding these terms.

14 **VIII. PRAYER FOR RELIEF.**

15 **WHEREFORE, San Francisco prays for judgment against the Regional Board as follows:**

16 1. Under the First Cause of Action, declaring that the effective date of the 2019 Permit
17 (Order No. R2-2019-0028) is February 1, 2020 (or such other date as authorized by law), not
18 November 1, 2019; declaring that the 2009 Permit remains in full force and effect, and enjoining the
19 enforcement of the terms and obligations in the 2019 Permit against San Francisco by the Regional
20 Board or the taking of any other action inconsistent with the declaratory judgment of this Court.

21 2. Under the Second Cause of Action, that this Court issue peremptory writ of
22 administrative mandate commanding that the Regional Board not implement a November 1, 2019
23 effective date for the 2019 Order and commanding that the Regional Board not seek to implement the
24 2019 Permit in a piecemeal fashion, separate and apart from how it was approved by the Regional
25 Board on September 11, 2019.

26 3. Under the Third Cause of Action, that this Court issue peremptory writ of
27 administrative mandate setting aside Sections V and G.I.I.1 of the 2019 Permit; or in the alternative,
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1 remanding Section V and G.I.I.1 to the Regional Board to make proper determinations regarding water
2 quality based standards consistent with the Clean Water Act and NPDES permitting regulations.

3 4. Under the Fourth Cause of Action, that this Court issue peremptory writ of
4 administrative mandate setting aside Section VI.C.5(a)(ii)(b) and prohibiting the regulation (including
5 reporting) of SOCSS resulting from design capacity exceedances due to severe storm events; or in the
6 alternative, remanding Section VI.C.5(a)(ii)(b) and the definitions of “Combined Sewer Overflow”
7 and “SOCSS” to the Regional Board to make proper legal determinations that are within the Board’s
8 jurisdiction and consistent with the evidence in the record.

9 5. Under the Fifth Cause of Action, that this Court issue peremptory writ of administrative
10 mandate setting aside the LTCP requirements in Section VI.C.5.d; or in the alternative, remanding
11 Section VI.C.5.d to the Regional Board to make proper legal determinations regarding San Francisco’s
12 Long Term Control Plan consistent with post-Phase II CSO Control Policies.

13 6. Under the Sixth Cause of Action, that this Court issue peremptory writ of
14 administrative mandate setting aside Sections V, G.I.I.1, and VI.C.5.d of the 2019 Permit; or in the
15 alternative, remanding Sections V, G.I.I.1, and VI.C.5.d to the Regional Board to provide San
16 Francisco with fair notice of its legal obligations under the CWA and the Permit.

17 7. Under the Seventh Cause of Action, that this Court issue a peremptory writ of
18 administrative mandate setting aside Sections V and G.I.I.1, VI.C.5.d, and VI.C.5.a.ii.b because the
19 Regional Board failed to respond to significant comments; or in the alternative, remanding these
20 sections of the permit to provide San Francisco with responses, including explanations, to significant
21 comments regarding these terms.

22 8. Under each Cause of Action, that this Court grant Petitioner and Plaintiff such other,
23 different, or further relief as the Court may deem just and proper.

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San Francisco, California 94111

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DATED: December 16, 2019

HUNTON ANDREWS KURTH LLP



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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is 50 California Street, Suite 1700, San Francisco, California 94111.

On December 16, 2019, I served the foregoing document(s) described as:

Amended Petition for Administrative Writ

on the interested parties in this action:


Mr. Marc N. Melnick,
Mr. Daniel Harris,
Deputy Attorney General
1515 Clay Street, 20th Floor
PO Box 70550
Oakland, CA 94612

William Jenkins
Tiffany Yee
Deputy Attorney General
455 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

- By MAIL:** by placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as stated above.
- By PERSONAL SERVICE:** I delivered the envelope by hand on the addressee, addressed as stated above.
- By OVERNIGHT MAIL:** by overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.
- By ELECTRONIC MAIL:** by causing a true and correct copy thereof to be transmitted electronically to the attorney(s) of record at the e-mail address(es) indicated above.
- By CM/ECF:** I hereby certify that on the below date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants (if any) indicated on the Manual Notice list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 16, 2019, San Francisco, California.


Luis Morales