

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 HUNTON ANDREWS KURTH LLP
2 J. TOM BOER (State Bar No. 199563)
3 SAMUEL L. BROWN (State Bar No. 283995)
4 50 California Street, Suite 1700
5 San Francisco, California 94111
6 Telephone: 415 • 975 • 3700
7 Facsimile: 415 • 975 • 3701

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8 OFFICE OF CITY ATTORNEY DENNIS HERRERA
9 CITY AND COUNTY OF SAN FRANCISCO
10 JOHN RODDY (State Bar No. 96848)
11 ESTIE KUS (State Bar No. 239523)
12 San Francisco, California
13 Telephone: 415 • 554 • 3986
14 Facsimile: 415 • 554 • 8793

15 Attorneys for Petitioner,
16 CITY AND COUNTY OF SAN FRANCISCO

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF SAN FRANCISCO

19 CITY AND COUNTY OF SAN
20 FRANCISCO,

21 Plaintiff/Petitioner,

22 vs.

23 CALIFORNIA STATE WATER
24 RESOURCES CONTROL BOARD; THE
25 SAN FRANCISCO BAY REGIONAL
26 WATER QUALITY CONTROL BOARD

27 Defendants/Respondents.

Case No.:

**APPLICATION FOR ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION AND EX PARTE
TEMPORARY RESTRAINING ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT;
DECLARATION OF MICHAEL CARLIN;
DECLARATION OF SAMUEL L. BROWN
(Code Civ. Proc. §§ 525 *et seq.*, Cal. Rule of
Court 3.1150, and Cal. Rules of Court 3.1200
et seq.)**

Petition Filed: October 30, 2019

Hearing Date: October, 31, 2019

Dept.: 302

Time: 11:00am

28 APPLICATION FOR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION AND EX PARTE
TEMPORARY ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF
MICAHEL CARLIN; DECLARATION OF SAMUEL L. BROWN

- 1 1. The City and County of San Francisco (“San Francisco”) operates a combined sewer system, which
2 collects storm water and domestic wastewater in one collection system for transport to San
3 Francisco’s wastewater treatment plants for treatment prior to discharge into the Pacific Ocean and
4 the San Francisco Bay.
- 5 2. San Francisco’s Oceanside Water Pollution Control Plant and the Wastewater Collection System
6 (“Westside Facilities”) are currently permitted via Order No. R2-2009-006, National Pollutant
7 Discharge Elimination System (“NPDES”) Permit No. CA0037681, pursuant to the Clean Water
8 Act (“CWA”) and Porter-Cologne Water Quality Control Act (“Water Code”).
- 9 3. The San Francisco Bay Regional Water Quality Control Board (“Regional Board”) and the U.S.
10 Environmental Protection Agency (“EPA”) jointly issued Order No. R2-2009-006 (“the 2009
11 Permit”). The 2009 Permit expired in September 2014, but it has been administratively continued
12 for over five (5) years by the Regional Board and the EPA and it is currently the effective permit
13 for the Westside Facilities.
- 14 4. On September 11, 2019, the Regional Board conducted a hearing and took action to issue a new
15 permit for the Westside Facilities via adoption of Order No. R2-2019-0028, NPDES Permit No.
16 CA0037681 (“the 2019 Permit”).
- 17 5. The Regional Board and the EPA conducted an administrative process intended to jointly issue the
18 2019 Permit. However, it has been 49 days since the Regional Board’s September 11 adoption
19 hearing and the EPA has not yet approved, issued, or signed the 2019 Permit.
- 20 6. The Permit purports to establish an “effective date” of November 1, 2019.
- 21 7. On October 1, 2019, the Regional Board Executive Officer notified San Francisco that the 2019
22 Permit will be “effective” on November 1, even if the EPA takes no action to issue the 2019 Permit.
- 23 8. On October 11, 2019, given the uncertainty associated with when, or if, the EPA will issue the
24 Permit, and the associated harm to San Francisco, a Request for Stay of the Permit was filed by
25 San Francisco to the California State Water Resources Control Board (“State Board”).
- 26 9. More recently, on October 28, 2019, the Regional Board Executive Officer took the position that
27 part of the 2019 Permit will be effective on November 1 based on unilateral, post-adoption
28

1 statements without any consultation with the joint permitting authority (EPA) or the permittee (San
2 Francisco), not voted upon by the Regional Board members, or subject to any public notice nor
3 comment.

4 10. The Request for Stay of the Permit is intended to maintain the status quo in this unprecedented
5 situation until the EPA takes an action – one way or the other – on the Permit in order to avoid
6 practical and legal uncertainty and substantial harm to San Francisco. Given the uncertainty over
7 which of the two Permits may be effective, and in what manner, the Westside Facilities, for
8 example, could be unauthorized to discharge treated effluent from the Oceanside Water Pollution
9 Control Plant after November 1, unless the Request for Stay is granted or EPA approves, issues,
10 and signs the 2019 Permit without changes, absent action by this Court.

11 11. The State Board has taken no action on the October 11 Request for Stay and has indicated that it
12 does not plan to take action prior to November 1. As explained in the Memorandum of Points and
13 Authorities, it is unclear when, or if, the EPA will approve, issue, or sign the 2019 Permit without
14 changes. Further, if EPA’s ultimate action is to demand changes to the 2019 Permit voted upon
15 by the Regional Board members, it is entirely unclear how those changes will be reconciled
16 between State and Federal agencies and how that could retroactively affect the validity of the 2019
17 Permit, if it were effective as of November 1. The EPA’s lack of action appears to be associated
18 with recent political-based statements and actions by the Federal government against San
19 Francisco and the State of California.

20 **APPLICATION FOR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

21 Petitioner City and County of San Francisco hereby requests the Court to issue an Order to
22 Show Cause pursuant to California Rule of Court 3.1150, affording Respondents the opportunity to
23 appear and show cause why a preliminary injunction should not issue for the remainder of this
24 litigation restraining and enjoining Respondents and their agents, assigns, employees, officials, and
25 any individual or entity acting in concert with Respondents, from engaging in the following act:

- 26 1. Implementing a November 1, 2019 effective date for Order No. R2-2019-0028, the 2019
27 Permit.

1 This is San Francisco's first request for an Order to Show Cause. Cal. Rule of Court
2 3.1150(e).Cal. Rule of Court 3.1150(e).

3 **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER**

4 Petitioner also applies, ex parte, for a Temporary Restraining Order ("TRO") restraining and
5 enjoining Respondents and their agents, assigns, employees, officials, and any individual or entity
6 acting in concert with Respondents, from engaging in the following act pending a hearing on a
7 preliminary injunction:

- 8 1. Implementing a November 1, 2019 effective date for Order No. R2-2019-0028, the 2019
9 Permit.

10 This application is made pursuant to the provisions of Code of Civil Procedure sections
11 526(a)(2) and 527 on the grounds that the conduct sought to be enjoined, if allowed to occur, will
12 cause immediate, great, and irreparable injury to Petitioner. A Temporary Restraining Order should
13 be granted because there is a strong likelihood of San Francisco's success on the merits of the Petition
14 for Writ of Mandate and Complaint for Injunctive Relief and the balance of equities strongly favor
15 maintaining the status quo pending a Preliminary Injunction hearing.

16 This application is based upon the attached Declaration of Michael Carlin based on personal
17 knowledge of the grounds for the injunctive relief sought; Declaration of Samuel L. Brown based on
18 the notice given pursuant to California Rule of Court 3.1204; Memorandum of Points and Authorities
19 in support of the TRO; and proposed order; as well as the Petition for Writ of Mandate, or in the
20 Alternative, for Writ of Administrative Mandate, Complaint for Declaratory and Injunctive Relief on
21 file herein, and such other and further evidence as may be presented at the hearing on this application.

22 Pursuant to Rule of Court 3.1202(a), the name, address, and telephone numbers of counsel of
23 record for the parties to this action are:

24 State Water Resources Control Board
25 Philip Wyels, Assistant Chief Counsel
26 Office of Chief Counsel
27 1001 I Street, 22nd Floor
28 Sacramento, CA
philip.wyels@waterboards.ca.gov
(916) 341-5178

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San Francisco Bay Regional Water Quality Control Board
Marnie Ajello, Staff Counsel
1515 Clay Street, Suite 1400
Oakland, CA 94612
marnie.ajello@waterboards.ca.gov
(916) 327-4439

Daniel Harris
California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
daniel.harris@doj.ca.gov
(510) 879-0274

Marc Melnick
California Department of Justice
Office of the Attorney General
1515 Clay Street, Floor 20
Oakland, CA 94612
marc.melnick@doj.ca.gov
(510) 879-0750

William Jenkins
California Department of Justice
Office of the Attorney General
455 Golden Gate Ave., Suite 1100
San Francisco, CA 94102
William.jenkins@doj.ca.gov
(415) 510-3466

Tiffany Yee
California Department of Justice
Office of the Attorney General
1515 Clay Street, Floor 20
Oakland, CA 94612
Tiffany.yee@doj.ca.gov
(510) 879-1020

San Francisco gave all parties advance notice of its intent to seek a Temporary Restraining Order and made all possible efforts to avoid the need to file this *ex parte* application by seeking clarity from personnel at the Regional Board and the State Board that the Permit will not be effective on November 1 absent final agency action by the EPA approving, issuing and signing the 2019 Permit

1 without changes. All parties were notified of this *ex parte* application by telephone conference and via
2 email notification before October 30, 2019 at 10:00am via the email addresses above.

3 This is San Francisco's first request for an *ex parte* Temporary Restraining Order. Cal. Rule
4 of Court 3.1150(e).

5 DATED: October 30, 2019

HUNTON ANDREWS KURTH LLP



J. Tom Boer



Samuel L. Brown

Attorneys for Plaintiff/Petitioner

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CITY ATTORNEY



John Roddy



Estie Kus

Attorneys for Plaintiff/Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT EX PARTE**
2 **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO**
3 **SHOW CAUSE RE: PRELIMINARY INJUNCTION**

4 **I. INTRODUCTION.**

5 A Temporary Restraining Order (TRO) is appropriate and necessary because unless, before
6 November 1, 2019, (1) the State Board grants San Francisco’s Request for Stay or (2) the EPA
7 approves, issues and signs the 2019 Permit without changes, the Westside Facilities will no longer be
8 authorized to discharge treated effluent into the Pacific Ocean and San Francisco will be in violation
9 of law if it follows the direction of the Regional Board. As a result, San Francisco will suffer
10 irreparable harm arising from the complete confusion and uncertainty over its permit status and legal
11 requirements.

12 Absent EPA action to issue the 2019 Permit without change, there is no final 2019 Permit and
13 by legal necessity the 2009 Permit remains the currently effective permit. This is the only lawful
14 conclusion absent EPA action approving, issuing and signing the 2019 Permit without changes. The
15 2009 Permit has allowed for continuous operation of the Westside Facilities for the past decade in a
16 manner protective of human health and the environment and there will be no substantial harm caused
17 by continuing to apply the 2009 Permit until such time as EPA and the Regional Board are able to
18 reach consensus on their joint issuance of the 2019 Permit.

19 However, the Regional Board’s position is that absent the State Board granting the Request for
20 Stay, parts of the Permit – unilaterally identified and selected by the Executive Officer in direct
21 contravention of California Water Code § 13223, without a vote by the Regional Board members,
22 without public notice and comment, and without concurrence from EPA or consultation with San
23 Francisco – can become effective and enforceable on November 1.¹ The Westside Facilities function
24 as an integrated system; as a result, there will be a performance-related response in one part of the
25 system as the result of actions in other parts of the system. In other words, it is neither feasible nor
26 advisable to issue a permit for “pieces” of a massive, integrated wastewater system with multiple inter-
27 connected discharge points that services hundreds of thousands of residents. Assuming it could be

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¹ Carlin Decl. at ¶ 38.

1 done, doing so would be extraordinarily complex. The lack of effort by the Regional Board in this
2 regard is stunning – the October 29, 2019 letter from the Regional Board Executive Officer purports
3 to divide an approximately 150 page permit into purportedly entirely separate “federal terms” and
4 “State terms” via a one page, bulleted list. It is abundantly evident that such an effort is inadequate to
5 provide San Francisco clarity and certainty and avoid irreparable harm.

6 More importantly, however, the Regional Board Executive Officer has not adequately
7 explained how, as a matter of law and fact, the Permit can be divided *after* the 2019 Permit has already
8 been adopted by the Regional Board members. Even if the Permit has been adopted by the Regional
9 Board, the 2019 Permit cannot be effective on November 1 without the EPA approving, issuing, and
10 signing the 2019 Permit without changes.

11 Unless and until EPA approves, issues and signs the Permit without changes, there are
12 numerous substantial questions of law and fact outstanding and San Francisco will suffer irreparable
13 harm in the absence of a TRO. The Regional Board appears to agree, having explained in a letter to
14 the EPA on October 28, 2019 that the failure to issue the Permit before November 1 will result in
15 “uncertainty for [San Francisco]” and the “permit requirements applicable to the main outfall [will
16 not] go into effect.”²

17 If the 2019 Permit is deemed effective on November 1 via the Regional Board’s unilateral
18 action, and the EPA has not approved, issued and signed the 2019 Permit without changes, San
19 Francisco will no longer be able to lawfully discharge treated effluent, at a minimum, from the
20 Oceanside Water Pollution Control Plant.³ There are no alternative options to treat storm water and
21 wastewater within the footprint of the Westside Facilities.⁴ The Westside Facilities service hundreds
22 of thousands of San Francisco residents and associated businesses—any interference with the
23 Oceanside Water Pollution Control Plant’s operations, or potential shut-down, would be deleterious
24 to human health and the environment in San Francisco.⁵ The Oceanside Water Pollution Control Plant,
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26 ² Carlin Decl. at ¶ 38.

27 ³ Carlin Decl. at ¶ 37.

28 ⁴ Carlin Decl. at ¶ 35.

⁵ Carlin Decl. at ¶ 35.

1 must discharge and, therefore, cannot operate absent a validly issued NPDES permit under the Clean
2 Water Act and state law. The EPA is the only entity that has the legal authority to authorize discharges
3 from the main outfall at Discharge Point 001 associated with the Oceanside Water Pollution Control
4 Plant.⁶

5 In addition to other harms, this unprecedented situation deprives San Francisco of fair notice
6 and due process of its legal obligations. In contrast, if a TRO is granted, there will be no substantial
7 harm to other interested parties and to the public interest because San Francisco will continue to
8 comply with the currently effective 2009 Permit which has been protecting human health and the
9 environment for a decade.⁷ Conversely, if the 2019 Permit is deemed effective on November 1, by the
10 2019 Permit terms, the 2009 Permit is rescinded, and there is not a tool available to authorize
11 discharges of treated effluent from Discharge Point 001 associated with the Oceanside Water Pollution
12 Control Plant. Due to the nature of the Westside Facilities, the holistic nature of the 2019 Permit terms,
13 and the EPA’s role in all facets of issuance of this 2019 Permit, a TRO must be granted until the State
14 Board takes an action on the Request for Stay or EPA approves, issues and signs the 2019 Permit
15 without changes.

16 **II. FACTUAL BACKGROUND.**

17 The NPDES permit for San Francisco’s Westside Facilities is jointly issued by the Regional
18 Board and the EPA.⁸ On September 11, 2019, the Regional Board held a public hearing to adopt the
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20 ⁶ Carlin Decl. at ¶ 38.

21 ⁷ Carlin Decl. at ¶ 41.

22 ⁸ See Carlin Decl. at ¶ 21, Exhibit 6 at p. 5 (Order No. R2-2019-0028) (the Regional Board “intends
23 [] joint issuance of this Order with [EPA]”); *id.* at p. 3 (“The signatures below certify that this Order
24 with all attachments is a full, true, and correct copy of the Order adopted by the California Regional
25 Water Quality Control Board, San Francisco Bay Region, on the date indicated above, and an
26 NPDES permit issued by the U.S. Environmental Protection Agency, Region IX, on the date
27 above.”); Carlin Decl. at ¶ 26, Exhibit 9 (Request for Stay, Exhibit B: Regional Board Staff
28 Summary Report for September 11, 2019 Hearing) at p.1 (“Since this permit covers discharges to
both State and federal waters, we have worked closely with U.S. EPA to facilitate joint
reissuance.”); Carlin Decl. at ¶ 13 Exhibit 1 (Transcript of Regional Board Adoption Hearing on
September 11, 2019) (“Adoption Hearing Transcript”) at 6:7-10 (statement by Regional Board
representative explaining “. . . we issue this permit jointly with EPA because the plant discharges to
federal waters that are beyond State jurisdiction . . .”) and at 47:10-14 (statement by EPA

1 2019 Permit (a/k/a Order No. R2-2019-0028).⁹ Representatives from the EPA’s regional office in San
2 Francisco attended the public hearing and “express[ed] EPA’s support for [Order No. R2-2019-
3 0028].”¹⁰

4 On October 1, 2019, Michael Montgomery, Executive Officer of the Regional Board, sent San
5 Francisco a letter attaching a copy of the NPDES Permit adopted by the Regional Board on September
6 11, 2019.¹¹ The transmittal letter states that the “requirements of the [NPDES Permit] are effective
7 starting November 1, 2019.”¹² The copy of the 2019 Permit provided by Mr. Montgomery was signed
8 on behalf of the Regional Board, but the accompanying signature block for Mr. Tomas Torres, Director
9 of the Water Division of EPA Region 9, was blank.¹³

10 In response, on October 1, 2019, San Francisco sent a letter to Mr. Tomas Torres inquiring
11 about the status of the 2019 Permit and how and when the 2019 Permit would be approved, issued and
12 signed by the EPA.¹⁴ On October 2, 2019, Mr. Torres responded via voicemail, stating, in relevant
13 part:

14 Um, the... what I wanted to do is let you know that the Office of Water [*clearing*
15 *throat*] is reviewing the permits. Um, I can’t speak to the scope and the timing of that
16 but I want to refer you to the person that is doing the review so you can, uh,
17 communicate with that person, uh, directly. Uh, that way you don’t have sort of
18 intermediary, um, us, in between because, you know, it’s pretty much been elevated to
19 that level. Um, and so the person’s name is Lee Forsgren, F-O-R-S-G-R-E-N, [*clearing*
20 *throat*] and he is the Principal Deputy Assistant Administrator at the Office of Water
21 and his phone number is (202) 564-5700 and his email is f-o-r-s-g-r-e-n.l-e-e@epa.gov.

22 representative explaining, “As explained earlier today, EPA is here because the permit would
23 authorize discharges to federal and state waters. Therefore, the permit is jointly issued by the Board
24 and EPA.”).

25 ⁹ Carlin Decl. at ¶ 11 and at the following exhibits thereto: Carlin Decl. Exhibit 1 (Adoption Hearing
26 Transcript) at p. 61:3-17 (the five Regional Board members present at the public hearing voted in
27 favor of adoption of the NPDES Permit); Carlin Decl. Exhibit 6 (Order No. R2-2019-0028) at p. 3
28 (including the signature of Michael Montgomery, Executive Officer of the Regional Board); and
Carlin Decl. Exhibit 5 (M. Montgomery Transmittal Letter, Oct. 1) (stating that the NPDES Permit
was “adopted by the Regional Water Board on September 11, 2019”).

¹⁰ Carlin Decl. at ¶ 12, Exhibit 1 at p. 47:5-48:20.

¹¹ Carlin Decl. at ¶ 20.

¹² Carlin Decl. at ¶ 20, Exhibit 5 (M. Montgomery Transmittal Letter, Oct. 1).

¹³ Carlin Decl. at ¶ 20, Exhibit 6 (Order No. R2-2019-0028) at p. 3 (including signature information
for Tomas Torres on behalf of the EPA).

¹⁴ Carlin Decl. at ¶ 22, Exhibit 7 (SFPUC Letter to Torres, Oct. 1) at p. 1.

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Uh, I wish I could give you more details on, you know, the timing and the scope of the review of that, uh, headquarters but, uh, I cannot.¹⁵

As of the date of this application for a TRO, 49 days have passed, and the EPA has not adopted the 2019 Permit.¹⁶

In an attempt to gain clarity and maintain the status quo, San Francisco filed a Request for Stay of the 2019 Permit on October 11, 2019 with the State Board.¹⁷ The stay request explained that San Francisco meets the legal requirements for a stay under Title 23, section 2053 of the California Code of Regulations and that a stay is necessary to prevent irreparable harm that will occur on November 1, 2019 if the 2019 Permit is deemed effective absent EPA action. The Request for Stay was based on San Francisco’s position that the NPDES Permit could not legally (or reasonably) become “effective” on November 1 without approval, issuance, and signing by EPA without changes. San Francisco requested the State Board stay the entire 2019 Permit at least until, and if, EPA adopts the 2019 Permit without changes and requested the State Board to hold a hearing on its request.¹⁸ As of this filing, the State Board has not scheduled a hearing or taken any other action on the Request for Stay.¹⁹

Having received no response on the Request for Stay from the State Board, on October 18, 2019, San Francisco wrote to the Executive Officers of the Regional Board and State Board expressing concern with the continuing uncertainty associated with the 2019 Permit due to lack of any action or substantive communication from the EPA.²⁰ San Francisco explained there is no legal support for the position that any part of the 2019 Permit, jointly issued by EPA and the Regional Board, can become

¹⁵ Carlin Decl. at ¶ 23, Exhibit 8 (Transcript of Voicemail from Torres). It is important to emphasize the exceptional circumstances arising here. Mr. Torres is the Director of the Water Division at EPA Region 9. As such, Mr. Torres is the designated EPA official identified in the MOA responsible for reviewing “circumstances of [] delays” directly with State Board officials. Therefore, EPA’s designated official under the MOA was, as of October 2, unable to provide any insight into the basis for the delay, how it may be resolved, or when (or whether) EPA would approve the permit at all.

¹⁶ Carlin Decl. at ¶ 20, Exhibit 6 (Order No. R2-2019-0028) at p. 3 (including signature information for both the Regional Board and EPA, but containing only the signature of the Regional Board and leaving the EPA signature unsigned).

¹⁷ Carlin Decl. at ¶ 26, Exhibit 9 (Request for Stay). San Francisco also filed a petition for review of substance of the permit, which is not the subject of this application.

¹⁸ Carlin Decl. at ¶ 26.

¹⁹ Carlin Decl. at ¶¶ 27-28.

²⁰ Carlin Decl. at ¶ 29, Exhibit 10 (M. Carlin Letter to M. Montgomery, Oct. 18).

1 effective without EPA’s approval, issuance and signature, that there is need for clear direction from
2 the Regional Board on the issue, and that San Francisco would welcome the opportunity to discuss its
3 concerns.²¹

4 San Francisco followed up again, through counsel, with the Executive Officers of the Regional
5 Board and State Board on October 25, 2019 explaining the immediate need for issuance of the
6 requested stay, or in the absence of the stay, some other administrative action authorized by law that
7 would recognize that the 2019 Permit would not be effective as of November 1, 2019. Absent such
8 action, San Francisco informed the Regional Board and the State Board that it would have no choice
9 but to file a Petition for Writ of Mandate given the harm that will be imposed on San Francisco on
10 November 1.²²

11 The Regional Board Executive Officer finally responded at the Eleventh Hour, on October 29,
12 2019, taking the position that “the effective date of the Oceanside permit remains November 1,
13 2019.”²³ The “solution” by the Regional Board Executive Officer to EPA’s inaction is to unilaterally
14 “split” the jointly prepared 2019 Permit into two permits – one state, one federal – and only make
15 effective those permit terms that are allegedly solely within the Regional Board’s authority.²⁴ San
16 Francisco responded on October 29, 2019 that the 2019 Permit cannot be effective on November 1,
17 absent the EPA approving, issuing, and signing the 2019 Permit.²⁵ San Francisco also responded that
18 the Regional Board Executive Officer’s solution – unilaterally create two permits, one state and one
19 federal – is a *post-hoc* creation and fiction that conflicts with the permitting process used for approval
20 of the 2019 Permit by the Regional Board members after public notice and comment, the associated
21 administrative record, the terms of the permit, and the reality of the design of the combined sewer
22 system on the Westside of San Francisco.²⁶

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25 ²¹ *Id.*

26 ²² Carlin Decl. at ¶ 30, Exhibit 11 (San Francisco Letter to M. Montgomery and E. Sobeck, Oct. 25)

27 ²³ Carlin Decl. at ¶ 39, Exhibit 14 (M. Montgomery Letter, Oct. 29).

28 ²⁴ *Id.*

²⁵ Carlin Decl. at ¶ 40, Exhibit 15 (M. Carlin Letter, Oct. 29).

²⁶ *Id.*

1 The EPA’s lack of action on the 2019 Permit and San Francisco’s grave concerns expressed in
2 this *ex parte* application must be examined through the lens of recent actions and statements by
3 President Trump and the EPA that arbitrarily and capriciously target San Francisco and its municipal
4 sewer system. On September 18, 2019, President Trump made disparaging and factually inaccurate
5 comments about San Francisco, stating there are “tremendous things that we don’t have to discuss
6 pouring into the ocean. You know there are needles, there are other things.”²⁷ He went on to threaten
7 that “we’re going to be giving San Francisco — they’re in total violation — we’re going to be giving
8 them a notice very soon . . . [y]ou’re going to see over the next, I would say, less than a week. EPA is
9 going to be putting out a notice. They’re in serious violation.”²⁸

10 On September 26, 2019, EPA Administrator Wheeler followed through on President Trump’s
11 threat and sent Governor Newsom a letter alleging the State of California was failing to implement, in
12 part, the federal Clean Water Act, and focused on San Francisco, again, making inaccurate and
13 capricious allegations of noncompliance with the Clean Water Act.²⁹ On October 1, 2019, Mr. Harlan
14 Kelly, the General Manager of the San Francisco Public Utilities Commission, sent a letter to EPA
15 Administrator Wheeler responding to the allegations in the September 26, 2019 letter, identifying the
16 inaccuracies and mischaracterizations, and requesting a meeting with EPA Administrator Wheeler to
17 explain the design and performance of San Francisco’s combined sewer system.³⁰ The EPA, the next
18 day, on October 2, 2019, followed through on President Trump’s threat and sent San Francisco a
19 Notice of Violation alleging noncompliance with the Clean Water Act.³¹ Again, on October 28,
20 President Trump attacked San Francisco on Twitter, specifically targeting its combined sewer
21 system.³²

22 _____
23 ²⁷ Carlin Decl. at ¶ 16.

24 ²⁸ *Id.*

25 ²⁹ Carlin Decl. at ¶ 17, Exhibit 2 (A. Wheeler Letter to G. Newsom, Sept. 26).

26 ³⁰ Carlin Decl. at ¶ 18, Exhibit 3 (H. Kelly Letter to A. Wheeler, Oct. 1).

27 ³¹ Carlin Decl. at ¶ 19, Exhibit 4 (Notice of Violation, Oct. 2).

28 ³² Carlin Decl. at ¶ 31. Courts have concluded that President Trump’s tweets establish official positions of the Federal government. *See, e.g., Hawaii v. Trump*, 859 F.3d 741, 773 n. 14 (9th Cir. 2017) (taking judicial notice of President Trump’s tweets when granting a temporary restraining order against federal government), *vacated on other grounds*, 138 S.Ct. 377 (2017); *Knight First Amendment Institute at Columbia University v. Trump*, 928 F.3d 226, 230, 234 (2d Cir. 2019) (In

1 Against this backdrop, it is not clear when, or if, the EPA will issue the 2019 Permit and, even
2 if EPA does issue the 2019 Permit, there is no indication – after 49 days of continued inaction – that
3 the EPA will issue the 2019 Permit as currently drafted. If the 2019 Permit is deemed effective on
4 November 1 without the federally authorized components (which include, at a minimum, authorization
5 to discharge via the mail outfall at Discharge Point No. 001), San Francisco will be operating the
6 Westside Facilities in violation of law through no fault of its own and subject to civil and criminal
7 enforcement.

8 **III. STANDARD OF REVIEW.**

9 A TRO serves to preserve the status quo pending a full hearing to determine whether the
10 application is entitled to a preliminary injunction. *See Landmark Holding Group, Inc. v. Superior*
11 *Court*, 193 Cal. App. 3d 525, 527 (1987). The Court may issue a TRO when “[i]t appears from the
12 facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the
13 applicant before the matter can be heard on notice.”³³ Code Civ. Proc. § 527(c)(1). When deciding
14 whether to issue a TRO, the Court should evaluate two interrelated factors: (1) the likelihood that the
15 plaintiff will prevail on the merits at trial; and (2) the interim harm that the plaintiff is likely to sustain
16 if the restraining order is denied, as compared to the harm that the defendant is likely to suffer if the
17 order is issued. *See Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251
18 (2002) (quoting *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 69-70 (1983)). The Court also uses the
19 same two-prong test when determining whether to issue a preliminary injunction. *See Robbins v.*
20 *Superior Court*, 38 Cal. 3d 199, 206 (1985). The “court’s determination must be guided by a ‘mix’ of
21 the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must
22 be shown on the other to support an injunction.” *Butt v. State of California*, 4 Cal. 4th 668, 678
23 (1992). A preliminary injunction may be granted “[w]hen it appears by the complaint or affidavits

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25
26 _____ deciding that President Trump could not block people on Twitter, court found that Trump uses
27 Twitter “to conduct official business . . . [w]e conclude that the evidence of the official nature of the
28 Account is overwhelming”).

³³ Because the City and County of San Francisco is the Petitioner, the complaint does not have to be verified. Code Civil Proc. § 446(a).

1 that the commission or continuance of some act during the litigation would produce waste, or great or
2 irreparable injury, to a party to the action.” Code Civ. Proc. § 526(a)(2); *see also Trader Joe’s Co. v.*
3 *Progressive Campaigns*, 73 Cal. App. 4th 425, 429 (1999) (“To obtain a preliminary injunction, the
4 plaintiff must also establish that the defendant should be enjoined from the challenged activity pending
5 trial.”).

6 A TRO is distinguishable from a preliminary injunction, however, in that “[t]he issuance of a
7 TRO is not a determination of the merits of the controversy. All that is determined is whether the TRO
8 is necessary to maintain the status quo pending the noticed hearing on the application for preliminary
9 injunction.” *Landmark Holding Grp., Inc. v. Superior Court*, 193 Cal. App. 3d 525, 528 (1987)
10 (internal citations omitted); *see also Gray v. Bybee*, 60 Cal. App. 2d 564, 571(1943) (“The granting or
11 denial of a temporary restraining order is discretionary with the trial judge...and amounts to a mere
12 preliminary or interlocutory order to keep the subject of litigation in status quo pending the
13 determination of the action on its merits.”). A TRO automatically expires when a preliminary
14 injunction is issued or denied. *Landmark Holding Grp., Inc.*, 193 Cal. App. 3d at 529.

15 Where, as here, Petitioner is requesting that the Court grant a TRO without notice to the
16 opposing party, the Court must also issue an Order to Show Cause (“OSC”) why a preliminary
17 injunction should not be granted. Code Civ. Proc. § 527(d)(1); *see also* Cal. Rules of Court
18 § 3.1150(a). An OSC should be issued to afford the Respondent the opportunity to show why it should
19 not be restrained and enjoined in the same manner for the remainder of this litigation.

20 **IV. ARGUMENT.**

21 Granting the TRO is appropriate because there is a strong likelihood of San Francisco’s success
22 on the merits of the Petition for Writ of Mandate and Complaint for Injunctive Relief. Further, the
23 balance of equities strongly favors maintaining the status quo pending a preliminary injunction
24 hearing, given the substantial harm and uncertainty that will be imposed on San Francisco. This is
25 particularly the case because, once the 2009 Permit is rescinded (as it will be under the plain terms of
26 the 2019 Permit), it cannot be reinstated except, perhaps, via a months-long administrative process
27 allowing for public notice and comment and a renewed effort for joint approval by EPA and the
28

1 Regional Board, which is certainly not guaranteed to be successful given the current circumstances.
2 Further, given that the Westside Facilities have operated for a decade under the 2009 Permit, there is
3 limited, if any, harm that would be imposed on the Regional Board and State Board from maintaining
4 the status quo until the issues can be fully briefed for this Court.

5 A. There is a Strong Likelihood of Success on the Merits.

6 San Francisco’s strong likelihood of prevailing on the merits is presented in full in the Petition
7 for Writ of Mandate and Complaint for Declaratory Relief and, supplemented in this *ex parte*
8 application for a TRO. The position of the Executive Officer of the Regional Board – that only a part
9 of the Permit was adopted on September 11 and only a vaguely described part of the Permit is effective
10 on November 1 – is contrary to every basic principle of administrative law and NPDES permitting.³⁴

11 Contrary to all plain evidence, the Regional Board is trying to arbitrarily create a fiction that
12 there are *two* permits – one federal, one state – that were subject to public notice, comment,
13 development of an administrative record and a vote by the Regional Board members. The Permit itself
14 refers to “this Order” – singular – and refers to the “*joint* issuance of *this* Order.”³⁵ As San Francisco
15 explained to the Executive Officer of the Regional Board, his position conflicts with the permitting
16 process used for approval of the 2019 Permit, the associated singular administrative record, the explicit
17 terms of the 2019 Permit itself adopted by the Regional Board members, and the reality of the
18 engineering and design of the combined sewer system on the Westside of San Francisco.³⁶ The Petition
19 for Writ of Mandate and Complaint for Declaratory Relief further identifies numerous instances where
20 the terms of the 2019 Permit clearly demonstrate there is one permit, to be jointly issued and
21 administered concurrently by the Regional Board and the EPA.

22 If the Regional Board wants to take an independent action to address a state policy concern
23 without EPA involvement, it has numerous options, including adoption of a “state only” permit,
24

25 _____
26 ³⁴ See, e.g., *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 753 (D.C. Cir. 2001) (“to hold
27 that an agency may correct errors in rules merely by announcing a change would be inconsistent
28 with” administrative law.).

³⁵ Carlin Decl. at ¶ 21, Exhibit 6 (Order No. R2-2019-0028) (emphasis added).

³⁶ Carlin Decl. at ¶ 40, Exhibit 15 (M. Carlin Response Letter to M. Montgomery, Oct. 29);

1 modification of the effective date of certain permit terms within its clear sole authority, or similar
2 administrative action. However, it can only take those actions consistent with the applicable
3 administrative permitting process.³⁷ What the Executive Officer of the Regional Board is trying to do
4 via his Eleventh Hour letter, issued unilaterally on October 29, is to modify the 2019 Permit originally
5 adopted by the Regional Board because of a reliance upon an apparently erroneous representation from
6 the EPA that it supported the 2019 Permit as drafted. This is in direct contravention of the California
7 Water Code, which is unequivocal that the Executive Officer does not have the authority to modify
8 the 2019 Permit. It states, in relevant part, “Each regional board may delegate any of its powers and
9 duties vested in it by this division to its executive officer excepting only the following: . . . (2) the
10 issuance, modification, or revocation of any . . . waste discharge requirement.”³⁸ Although San
11 Francisco recognizes why the Regional Board may be frustrated that the EPA is failing to live up to
12 its commitments, taking unilateral administrative action to modify the 2019 Permit by seeking to
13 “split” it into separate Federal and State permits is unauthorized and arbitrary and capricious. Any
14 legally justifiable action by the Regional Board seeking to modify the 2019 Permit must be based on
15 cause consistent with 40 C.F.R. § 122.62 and publicly noticed for public comment on the proposed
16 modification.³⁹ This Eleventh Hour effort to navigate EPA’s failure to approve, issue and sign the
17 jointly drafted 2019 Permit must fail because, among other issues: (i) the Regional Board does not
18 have cause consistent with the applicable permitting regulations to make the modification, (ii) neither
19 San Francisco nor the public was provided with an opportunity to comment on the modification to the
20

21 ³⁷ See, e.g., *Morning Star Co. v. State Bd. of Equalization*, 38 Cal. 4th 324, 333 (2006) (Any
22 administrative action that “substantially fails to comply” with administrative procedures “may be
23 judicially declared invalid.”); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1024 (D.C. Cir.
2000) (“An agency may not escape ... notice and comment requirements ... by labeling a major
24 substantive legal addition . . . a mere interpretation.”).

25 ³⁸ Cal. Water Code § 13223 (emphasis added).

26 ³⁹ See also 23 Cal. Code Regs. § 2235.2 (Incorporating EPA’s NPDES permitting regulations at 40
27 C.F.R. Part 122 into the State permitting legal framework); Carlin Decl. at ¶ 21, Exhibit 6 at p. 10
28 (Order No. R2-2019-0028) (Identification of circumstances that allow for modification to the
permit); *In re City of Manteca*, 2005 WL 5166378, n.27, Order WQ 2005-0005 (March 16, 2005)
 (“NPDES permits are subject to revision pursuant to the applicable provisions of federal regulations
 . . .”); *In re San Diego Unified Port District*, 1990 WL 272135, at *6, Order WQ 90-3 (40 C.F.R. §
 122.62 is the authority to modify a permit).

1 2019 Permit imposed via the Executive Officer’s October 29 letter, (iii) EPA was not consulted to
2 determine if it agreed with the Regional Board’s interpretation of state and federal permit provisions;
3 (iv) San Francisco had no opportunity to explain to the Regional Board members how the Westside
4 Facilities cannot, as a practical matter, be divided consistent with the Regional Board Executive
5 Officer’s vague and arbitrary effort in the October 29 letter to San Francisco, and (v) even the Regional
6 Board members were not provided an opportunity to review, consider, or voice their opinion via an
7 adoption hearing or a vote on a modification to the 2019 Permit or the creation of a “state only” permit.

8 San Francisco is sympathetic to the Regional Board’s desire to side step the EPA’s failure to
9 issue the 2019 Permit as represented and on a timeline preferred by the Regional Board. But frustration
10 is not a legal basis for the Regional Board to take unlawful actions that have the practical effect of
11 severely harming San Francisco. Notably, Courts have consistently held that “NPDES permits are
12 treated like any other contract.”⁴⁰ In this case, one party (the EPA) has yet to sign the contract, and the
13 other party (the Regional Board) is attempting to enter into a different contract, with neither the EPA’s
14 or San Francisco’s agreement.

15 The Regional Board’s last minute position that the Permit is – in part – adopted and effective
16 on November 1 fails to provide San Francisco with fair notice of its legal obligations and violates the
17 Due Process Clause of the U.S. Constitution. Fair notice is an “essential requirement of any statutory
18 scheme”⁴¹ and is grounded in “the government’s obligation to promulgate clear and unambiguous
19 standards.”⁴² When evaluating fair notice arguments in the context of NPDES permits, courts
20 recognize the Due Process requirement as a basic standard in administrative law.⁴³ A fundamental
21 principle in our legal system, the U.S. Supreme Court explained, “is that laws which regulate persons

22 _____
23 ⁴⁰ *Natural Resources Defense Council, Inc. v. County of Los Angeles*, 725 F.3d 1194, 1204-05 (9th
Cir. 2013)

24 ⁴¹ *Pac. Bell Wireless, LLC v. Pub. Utilities Com.*, 140 Cal. App. 4th 718, 740 (2006) (quoting
Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)).

25 ⁴² *United States v. Trident Seafoods Corp.*, 60 F.3d 556, 559 (9th Cir. 1995) (emphasis added).

26 ⁴³ *See, e.g., Wisconsin Resources Protection Council v. Flambeau Min. Co.*, 727 F.3d 700, 708 (7th
Cir. 2013) (In determining whether regulated party received fair notice of EPA’s approval of
27 NPDES permit, Court recognized that due process requirement has been “thoroughly incorporated
into administrative law.”) (citing *Gen. Elec. Co. v. United States EPA*, 53 F.3d 1324, 1328-29) (D.C.
28 Cir. 1995).

1 or entities must give fair notice of conduct that is forbidden or required.”⁴⁴ This principle raises two
2 concerns: first, “regulated parties should know what is required of them so they may act accordingly;”
3 and second, “precision and guidance are necessary so that those enforcing the law do not act in an
4 arbitrary or discriminatory way.”⁴⁵ San Francisco does not know what the Regional Board and EPA
5 believe San Francisco must do to act in accordance with the Clean Water Act or whether the two
6 agencies even have a consistent viewpoint.⁴⁶ It also creates significant ambiguity that opens the door
7 to enforcing the law in an arbitrary or discriminatory way, as explained in more detail below.⁴⁷ The
8 Permit adopted and effective without EPA issuing the Permit, the Regional Board decision post-
9 adoption to unilaterally modify the 2019 Permit and declare what permit terms are effective and not
10 effective, those decisions made without input from the EPA or confirmation that the EPA agrees with
11 the Regional Board, and the risk of noncompliance and civil and criminal enforcement, are just a few
12 of the reasons why the Permit fails to provide San Francisco with fair notice.

13 B. The Balance of the Equities Favor Maintaining the Status Quo Pending a Preliminary
14 Injunction Hearing.

15 San Francisco will suffer irreparable harm from this unprecedented situation if a TRO is not
16 granted. On November 1, San Francisco will not know what permit, or what permit terms, apply to
17 the various components of the Westside Facilities and real life legal and practical ramifications will
18 arise as a result. Nor has the EPA, an integral partner in the issuance of the 2019 Permit, provided its
19 acquiescence to the Regional Board’s Eleventh Hour, unilateral action seeking to modify the 2019
20 Permit and “split” it into separate Federal and State permits. The balance of the equities favor
21 maintaining the status quo pending a preliminary injunction hearing.

22
23 ⁴⁴ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

24 ⁴⁵ *Id.*

25 ⁴⁶ *See id.* (explaining that the aforementioned principle raises two due process concerns: first,
26 “regulated parties should know what is required of them so they may act accordingly;” and second,
27 “precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or
28 discriminatory way.”); Carlin Decl. at ¶ 36 (“It is unclear how the SFPUC can operate the plant
under these circumstances and with open questions about whether parts of two separately issued
NPDES permits apply to various aspects of its facilities.”).

⁴⁷ *See id.*

1 One of San Francisco’s biggest concerns is the impact of this unprecedented situation on its
2 ability to operate the Oceanside Water Pollution Control Plant and lawfully discharge treated effluent
3 via Discharge Point 001. Discharge Point No. 001 is the main outfall associated with the Oceanside
4 Water Pollution Control Plant and is the only outfall associated with the Westside Facilities that
5 discharges during dry and wet weather, with up to 65 million gallons per day of treated effluent via
6 Discharge Point No. 001.⁴⁸ If the Permit has been adopted and is effective on November 1, the
7 discharge via Discharge Point No. 001 will be no longer be authorized by any permit and San Francisco
8 will be in violation of the CWA, subject to civil and criminal enforcement. The October 29 letter from
9 the Regional Board Executive Officer’s takes the position the 2009 Permit can continue to be
10 administratively continued “for the conditions applicable to the ocean discharge” via Discharge Point
11 No. 001. However, San Francisco still does not know what permit terms do and do not apply based on
12 the October 29 letter from the Executive Officer of the Regional Board or that San Francisco could
13 rely upon the October 29 letter as a “permit shield” under CWA Section 402(k) in the event of an
14 enforcement action by the EPA or citizen suits. More importantly, the Regional Board Executive
15 Officer’s position is directly contradicted by the terms of the Permit. The Permit is clear that once the
16 2019 Permit is effective, the 2009 Permit is rescinded.⁴⁹ This result is clear from the plain language
17 of the Permit.⁵⁰

18 The real world implication of the Regional Board’s insistence that the 2019 Permit become
19 effective, in part, absent EPA approval, issuance and signature, is that San Francisco will no longer
20 have legal authorization under the Clean Water Act to discharge treated effluent from the Oceanside
21 Water Pollution Control Plant via Discharge Point No. 001. The Regional Board recognizes these
22

23 ⁴⁸ Carlin Decl. at ¶ 37.

24 ⁴⁹ Carlin Decl. at ¶ 37 at Exhibit 6 at p. 5 (“Order No. R2-2009-0062 (previous order) is rescinded
upon the effective date of this Order.”).

25 ⁵⁰ See, e.g., *Motion Picture Studio Teachers & Welfare Workers v. Millan*, 51 Cal. App. 4th 1190,
26 1195 (1996), *as modified* (Jan. 15, 1997) (The Regional Board cannot interpret the Permit “in a
27 manner inconsistent with its plain language.”); *Klamath Water Users Protective Ass’n. v. Patterson*,
28 204 F.3d 1206, 1210 (9th Cir.1999) (“[NPDES permit] terms are to be given their ordinary meaning,
and when the terms of a [permit] are clear, the intent of the parties must be ascertained from the
[permit] itself.”).

1 types of issues, explaining to the EPA on October 28 that the failure to issue the Permit before
2 November 1 will result in “uncertainty for [San Francisco]” and the “permit requirements applicable
3 to the main outfall [will not] go into effect.”⁵¹ San Francisco will then have three choices: (1) continue
4 to discharge unauthorized via Discharge Point No. 001, every day, in violation of the CWA; (2) cease
5 discharging via Discharge Point No. 001 and discharge lower quality effluent via the other outfalls
6 onto beaches and nearshore waters, every day, in violation of the CWA; or (3) cease operations on the
7 Westside of San Francisco until it can be properly permitted and authorized. None of those choices
8 are acceptable and San Francisco should not be forced to make this choice. The Westside Facilities
9 service hundreds of thousands of San Francisco residents and associated businesses—any interference
10 with the Oceanside Water Pollution Control Plant’s operations, or potential shut-down, would be
11 deleterious to human health and the environment in San Francisco and the receiving waters.

12 The Regional Board and the State Board are essentially asking San Francisco to not worry that
13 it will be in noncompliance with the CWA and to “trust them” that nothing bad will happen. The very
14 real threat of enforcement must be viewed through the aggressive use of citizen suits in California and,
15 more importantly, as explained above, the recent political statements and actions by the Federal
16 government, notably President Trump and the EPA, attacking the State of California and San
17 Francisco.⁵² The aggressive politicized regulatory environment has developed even while EPA
18 represented to the Regional Board that it was working collaboratively during the permit reissuance
19 process.⁵³ Against this backdrop and these extraordinary circumstances, and the lack of clarity on its
20 legal obligations, San Francisco will suffer irreparable harm if the TRO is not granted.

21 On the other hand, the public will not be substantially harmed if a TRO is granted. Once a TRO
22 is granted, the confusion will be eliminated and it will be clear that San Francisco must comply in the
23 short-term with the currently effective 2009 Permit.⁵⁴ Compliance with the 2009 Permit will ensure
24 protection of human health and the environment. The State Board, in Order No. 79-16, found the
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26 ⁵¹ Carlin Decl. at ¶ 38, Exhibit 13 (M. Montgomery Letter to T. Torres, Oct. 25).

27 ⁵² Carlin Decl. at ¶¶ 16, 31.

28 ⁵³ Carlin Decl. at ¶¶ 12-13 Exhibit 1 (Adoption Hearing Transcript).

⁵⁴ Carlin Decl. at ¶ 41.

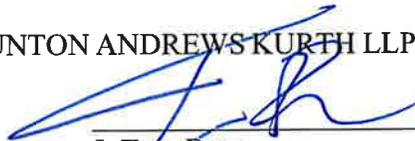
1 current design of the Westside Facilities would not impair beneficial uses, which are the uses
2 determined by the State as appropriate for the Pacific Ocean. The Regional Board confirmed the State
3 Board finding in Order No. R2-2009-0062 at F-34, declaring the Westside Facilities “would not
4 compromise beneficial uses.”⁵⁵ Having relied upon the 2009 Permit to serve this function for
5 approximately 10 years, continuing to do so in the short-term will not cause any substantial harm to
6 the public.

7 **V. CONCLUSION.**

8 A Temporary Restraining Order should be granted because there is a strong likelihood of San
9 Francisco’s success on the merits of the Petition for Writ of Mandate and Complaint for Declaratory
10 Relief and the balance of equities favor maintaining the status quo pending a Preliminary Injunction
11 hearing.

12
13
14 DATED: October 30, 2019

HUNTON ANDREWS KURTH LLP



J. Tom Boer


Samuel L. Brown

Attorneys for Petitioner
CITY AND COUNTY OF SAN
FRANCISCO

OFFICE OF SAN FRANCISCO CITY
ATTORNEY



John Roddy



Estie Kus

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28 ⁵⁵ Carlin Decl. at Exhibit 6 (Order No. R2-2009-0062) at F-34.

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Attorneys for Petitioner
CITY AND COUNTY OF SAN
FRANCISCO

ATTACHMENTS

Exhibit A: Declaration of Michael Carlin

Exhibit B: Declaration of Samuel Brown

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

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Exhibit A

Declaration of Michael Carlin

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

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HUNTON ANDREWS KURTH LLP
J. TOM BOER (State Bar No. 199563)
SAMUEL L. BROWN (State Bar No. 283995)
50 California Street, Suite 1700
San Francisco, California 94111
Telephone: 415 • 975 • 3700
Facsimile: 415 • 975 • 3701

OFFICE OF CITY ATTORNEY DENNIS HERRERA
CITY AND COUNTY OF SAN FRANCISCO
JOHN RODDY (State Bar No. 96848)
ESTIE KUS (State Bar No. 239523)
San Francisco, California
Telephone: 415 • 554 • 3986
Facsimile: 415 • 554 • 8793

Attorneys for Petitioner,
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff/Petitioner,

vs.

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD; THE SAN FRANCISCO
BAY REGIONAL WATER QUALITY
CONTROL BOARD

Defendants/Respondents.

Case No.:

**DECLARATION OF MICHAEL CARLIN IN
SUPPORT OF CITY AND COUNTY OF SAN
FRANCISCO'S EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND FOR ORDER TO SHOW
CAUSE RE: PRELIMINARY INJUNCTION**

1 **I, Michael Carlin, declare and state as follows:**

2 1. I am the Deputy General Manager and Chief Operating Officer for the San Francisco
3 Public Utilities Commission (“SFPUC”). In this capacity, my responsibilities include overseeing the
4 Wastewater Enterprise whose mission is to operate and maintain the City’s water pollution control
5 plants, pumping stations and collection system to protect public health and the environment and in
6 full compliance with permits issued by the San Francisco Bay Regional Water Quality Control
7 Board (“Regional Board”) and the U.S. Environmental Protection Agency (“EPA”).

8 2. This declaration is submitted in support of Petitioner City and County of San
9 Francisco’s (“San Francisco”) Ex Parte Application for Temporary Restraining Order and for Order
10 to Show Cause, and corresponding Petition for Writ of Mandate, or in the Alternative, for Writ of
11 Administrative Mandamus, filed today with the Court. SFPUC is filing this writ in an effort to
12 preserve the status quo in connection with the permitting of its Oceanside sewer treatment plant and
13 associated collection system and to cure the lack of action by the State Water Resources Control Board
14 in response to the SFPUC’s request for a stay. Absent issuance of a stay by the State Board or this
15 court, San Francisco will be substantially harmed and the ability of the City to continue operating
16 sewer services to hundreds of thousands of residents in a legal manner subject to authorization by a
17 jointly issued permit by the Regional Board and EPA will be in immediate jeopardy. The need for
18 intervention by this court has arisen, as described below, because EPA has refused to co-sign the
19 jointly issued permit with the Regional Board due to apparent intervention by EPA Headquarters
20 directly into the permitting process.

21 3. I became the Deputy General Manager and Chief Operating Officer for the SFPUC in
22 2009. In that role, I supervise the SFPUC’s efforts in capital planning, emergency response, asset
23 management, and other functions across the three business lines, including the Wastewater Enterprise.
24 Prior to this position, I served as the SFPUC’s Assistant General Manager for Water where I led the
25 effort to diversify the water supply portfolio.

26 4. Prior to joining the SFPUC in 1996, I worked for more than a decade at the Regional
27 Board where I served as the Board’s Planning Chief.

1 5. I have a Bachelor of Arts in Biology from San Francisco State University and a Master
2 Degree in Public Administration from Golden Gate University.

3 6. Unless otherwise stated, I have personal knowledge of the matters state herein and
4 could and would testify competently thereto.

5 7. On information and belief, the Regional Board and EPA (collectively, the
6 “Agencies”) issued Tentative Order R2-2019-XXXX on April 19, 2019. The Agencies requested
7 public comment on the Tentative Order. The deadline for providing comments to the Agencies was
8 May 20, 2019.

9 8. San Francisco submitted extensive comments on the Tentative Order. These
10 comments raised a variety of issues, including, but not limited to, concerns with the generic water
11 quality standards provisions, requirements associated with the long-term control plan, reporting
12 associated with sewer overflows from the combined sewer system, and the overly prescriptive nature
13 of signage requirements.

14 9. The Regional Board prepared responses to San Francisco’s comments on the
15 Tentative Order. Upon information and belief, those comments are part of the Administrative
16 Record maintained by the Regional Board.

17 10. On information and belief, the Regional Board issued a Revised Tentative Order R2-
18 2019-XXXX and a Staff Summary Report in advance of its September 11, 2019 public hearing on
19 the Tentative Permit.

20 11. On September 11, 2019, the Regional Board held a public hearing on the proposed
21 adoption of Revised Tentative Order R2-2019-XXXX. I attended that hearing. On information and
22 belief, a transcript was made of the statements at that hearing based upon the web-video posted
23 online by the Regional Board. Based upon representations made to me, and my experiences
24 observing the hearing in person, a true and correct copy of the transcript of the relevant portions of
25 the Regional Board Adoption Hearing on September 11, 2019 is attached as Exhibit 1.
26
27
28

1 12. During the Regional Board adoption hearing on September 11, 2019, I saw that
2 representatives from EPA Region 9 were in attendance and heard them express EPA’s support for
3 the adoption of Revised Tentative Order R2-2019-XXXX.¹

4 13. My recollection of EPA’s statement is consistent with what is reported on page 47:14-
5 22 of the transcript attached as Exhibit 1, *i.e.*, EPA represented that “EPA has worked closely with
6 [Regional Board] staff during permit development and have responded jointly to all public
7 comments. EPA and the Regional Board Staff also have worked closely with the City and County of
8 San Francisco during the permit reissuance process. For example, since last October, EPA and the
9 Regional Water Board Staff have met nine times with the City.”

10 14. During the Regional Board adoption hearing on September 11, 2019, the Regional
11 Board adopted the NPDES Permit as recommended by staff and without change from the Revised
12 Tentative Order R2-2019-XXXX. The adopted permit was labeled as Order R2-2019-0028.

13 15. The NPDES Permit was adopted over San Francisco’s objections, made at the
14 September 11, 2019 hearing before the Regional Board and via written comments.

15 16. On September 18, 2019, President Trump made disparaging and factually inaccurate
16 comments about the State of California and San Francisco, stating there are “tremendous things that
17 we don’t have to discuss pouring into the ocean. You know there are needles, there are other
18 things.”² He went on to threaten that “we’re going to be giving San Francisco — they’re in total
19 violation — we’re going to be giving them a notice very soon . . . [y]ou’re going to see over the
20 next, I would say, less than a week. EPA is going to be putting out a notice. They’re in serious
21 violation.”³

22 17. On September 26, 2019, EPA Administrator Wheeler followed through on President
23 Trump’s threat and sent Governor Newsom a letter alleging the State of California was failing to

24 _____
25 ¹ See also Exhibit 1 at p. 46:18-24 (stating that the EPA representatives at the hearing were Becky Michell in
26 EPA’s Region 9 NPDES Permit Section and Elizabeth Sublott, Ms. Michell’s supervisor) and p. 47:5-48:20
27 (expressing support for the NPDES Permit).

28 ² See Trump threatens EPA action against S.F. after claiming that needles from homeless are ‘pouring into the
ocean’ available at, <https://www.mercurynews.com/2019/09/18/trump-threatens-epa-action-against-s-f-over-needles-in-the-ocean-from-homeless/> (last visited, Oct. 29, 2019).

³ *Id.*

1 implement, in part, the federal Clean Water Act, and focused on San Francisco, again, making
2 inaccurate and baseless allegations of noncompliance with the Clean Water Act. A true and correct
3 copy of the letter dated September 26, 2019 from Administrator Wheeler to Governor Newsom is
4 attached as Exhibit 2.

5 18. On October 1, 2019, Harlan Kelly, General Manager, SFPUC, sent a letter to
6 Administrator Wheeler responding to the allegations in the September 26, 2019 letter. A true and
7 correct copy of the letter dated October 1, 2019 from Mr. Kelly to Administrator Wheeler is attached
8 as Exhibit 3. The October 1 letter from Mr. Kelly identified the large number of inaccuracies and
9 mischaracterizations in the September 26 letter and requested a meeting with Administrator Wheeler
10 to explain the design and performance of the combined sewer system.

11 19. On October 2, 2019, the next day, the EPA followed through with President Trump's
12 threat and sent San Francisco a Notice of Violation ("NOV") alleging, in part, noncompliance with
13 Order R2-2009-006, the currently effective NPDES permit. A true and correct copy of the NOV
14 from EPA Region 9 Regional Administrator Michael Stoker to Mr. Kelly dated October 2, 2019 is
15 attached as Exhibit 4.

16 20. Also on October 1, 2019, Michael Montgomery, Executive Officer of the Regional
17 Board, sent the SFPUC a letter attaching a copy of the NPDES Permit adopted on September 11,
18 2019. The transmittal letter states that the "requirements of the [NPDES Permit] are effective
19 starting November 1, 2019." A true and correct copy of the letter dated October 1, 2019 from Mr.
20 Montgomery to the SFPUC, transmitting the NPDES Permit, is attached as Exhibit 5. The copy of
21 the NPDES Permit provided by Mr. Montgomery was signed on behalf of the Regional Board. A
22 true and correct copy of the NPDES Permit, transmitted by Mr. Montgomery on October 1, 2019, is
23 attached as Exhibit 6. The accompanying signature block for Mr. Tomas Torres of EPA Region 9,
24 was blank, as evidenced in Exhibit 6 and excerpted here:
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1 The signatures below certify that this Order with all attachments is a full, true, and correct copy of the
2 Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on
3 the date indicated above, and an NPDES permit issued by the U.S. Environmental Protection Agency,
4 Region IX, on the date above.

5
6
7
8  7/12/2019

9 Michael Montgomery, Executive Officer
10 San Francisco Bay Regional Water Board

Tomás Torres, Water Division Director
U.S. Environmental Protection Agency

11 21. Upon information and belief, it was – and continues to be – my understanding that the
12 NPDES Permit must be issued by EPA Region 9 because it is jointly issued by the Regional Board
13 and EPA. By way of example, I have reviewed Order R2-2019-0028 and it contains the following
14 language: “The signatures below certify that this Order with all attachments is a full, true, and
15 correct copy of the Order adopted by the California Regional Water Quality Control Board, San
16 Francisco Bay Region, on the date indicated above, and an NPDES permit issued by the U.S.
17 Environmental Protection Agency, Region IX, on the date above.”

18 22. On October 1, 2019, on behalf of San Francisco, the SFPUC sent a letter to Tomas
19 Torres, Director of the Water Division of EPA Region 9, who I understand to be designated as the
20 person that will sign the NPDES Permit on behalf of the EPA. In that letter, the SFPUC inquired
21 about the status of the NPDES Permit and how and when the NPDES Permit may ultimately be
22 issued by EPA. A true and correct copy of the letter dated October 1, 2019 to Mr. Torres is attached
23 as Exhibit 7.

24 23. On October 2, 2019, Mr. Torres responded to the October 1, 2019 letter via voicemail.
25 A true and correct transcript of a voicemail from Mr. Torres that was left on the voicemail system of
26 Greg Norby, Assistance General Manager, Wastewater Enterprise, SFPUC, on October 2, 2019 is
27 attached as Exhibit 8. As represented in Exhibit 8, Mr. Torres indicated that he “can’t speak to the
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1 scope and the timing of that [review] but I want to refer you to the person that is doing the review ...
2 [I]t's pretty much been elevated to ... the Principal Deputy Assistant Administrator at the Office of
3 Water [in Washington, DC] ...”

4 24. On October 3, 2019, I had a telephone conversation with Michael Montgomery,
5 Executive Officer of the Regional Board. We discussed the potential issuance of the NPDES Permit
6 by the EPA. Mr. Montgomery informed me that the NPDES Permit approval was now being handled
7 by EPA Headquarters. He further indicated that, from the State's perspective, certain portions of the
8 NPDES permit would become effective on November 1. We did not discuss which portions he had
9 in mind with any specificity.

10 25. On October 11, 2019, San Francisco filed a Petition for Review of the NPDES Permit.

11 26. Concurrently, on October 11, 2019, San Francisco filed a Request for Stay of the
12 NPDES Permit. A true and correct copy of the Request for Stay is attached as Exhibit 9. The
13 Request for Stay was based on San Francisco's concern with the NPDES Permit could not
14 reasonably become “effective” on November 1 without an action by EPA. San Francisco requested
15 the State Board stay the entire NPDES Permit at least until, and if, EPA adopts the NPDES Permit
16 without changes.

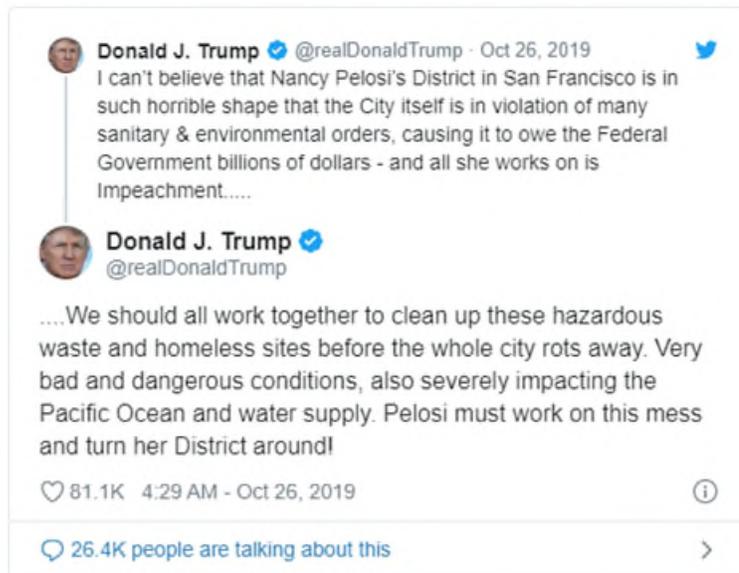
17 27. On information and belief, as of today's date, the SFPUC has not received any
18 notification from the State Board that it has granted the Request for Stay.

19 28. Therefore, on information and belief, as of today's date, the State Board has not
20 issued a stay of the NPDES Permit.

21 29. On October 18, 2019, I sent a letter to Michael Montgomery, Executive Officer of the
22 Regional Board, expressing concern with the continuing uncertainty associated with the NPDES
23 Permit due to lack of any action or substantive communication from EPA on the NPDES Permit. A
24 true and correct copy of the letter dated October 18 to Mr. Montgomery is attached as Exhibit 10. I
25 explained in the letter that the NPDES Permit cannot be effective on November 1 absent the EPA
26 issuing the NPDES Permit. Eileen Sobeck, Executive Director of the State Board was copied on the
27 October 18 letter.

1 30. On October 25, 2019, the SFPUC directed the San Francisco City Attorneys' Office,
2 and outside counsel from Hunton Andrews Kurth, to send a letter to Mr. Montgomery and Ms.
3 Sobeck. A true and correct copy of the letter dated October 25 to Mr. Montgomery and Ms. Sobeck
4 is attached as Exhibit 11. The October 25 letter provided notice that unless San Francisco's Request
5 for Stay is granted by the State Board, or other administrative action(s) is taken that makes it
6 adequately clear that – absent action by the EPA – the NPDES Permit is not effective on November
7 1, San Francisco would have no choice but to file a Petition for Writ of Mandate in California
8 Superior Court.

9 31. On October 28, President Trump again attacked San Francisco on Twitter, specifically
10 identifying its combined sewer system:



22 32. On information and belief, on October 28, 2019 the San Francisco City Attorneys'
23 Office, and outside counsel from Hunton Andrews Kurth, participated in a telephone call with Marc
24 Melnick and Daniel Harris, both Deputy Attorney Generals with the California Department of
25 Justice. Counsel from Hunton Andrews Kurth followed up the telephone with a letter to Mr. Melnick
26 and Mr. Harris. A true and correct copy of the letter dated October 28 to Mr. Melnick and Mr. Harris
27 is attached as Exhibit 12. The October 28 letter explained that given recent statements and actions –
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1 and lack of actions – by the EPA, San Francisco believes the State Board granting its October 11,
2 2019 Stay Request is necessary to maintain the status quo until it is known what action(s) EPA will
3 take on the NPDES Permit.

4 33. On information and belief, as of today’s date, the SFPUC has not received any
5 notification from EPA that it has approved, signed, or otherwise issued Order R2-2019-0028.

6 34. Therefore, on information and belief, as of today’s date, the EPA has not issued the
7 NPDES Permit.

8 35. Upon information and belief, pursuant to the requirements of the Clean Water Act and
9 California law, the Oceanside Water Treatment Plant can only operate with a duly issued and
10 approved NPDES permit. The Oceanside Treatment Plant is a vital and irreplaceable part of the
11 City’s sewer treatment system and the Plant, along with its associated collection system, services
12 hundreds of thousands of people and associated businesses. There is no other way to collect and
13 treat the sewage generated in the relevant area of the City absent operation of the Oceanside Plant.
14 Shutting down the Oceanside Plant would be deleterious to human health and the environment in the
15 City of San Francisco and would, ultimately, result in the discharge of untreated sewage directly to
16 the Pacific Ocean.

17 36. The SFPUC will be substantially harmed if the stay is not granted because there will
18 be confusion and uncertainty over whether the existing NPDES Permit R2-2009-0062, approved by
19 the Regional Water Board and EPA on August 12, 2009, or Order R2-2019-0028, approved only by
20 the Regional Board, govern operation of the Oceanside Treatment Plant and its associated collection
21 system. It is unclear how the SFPUC can operate the plant under these circumstances and with open
22 questions about whether parts of two separately issued NPDES permits apply to various aspects of
23 its facilities. Further, in the event that EPA refuses to approve Order R2-2019-0028, or requests
24 substantive modifications, efforts undertaken by the SFPUC to comply with Order R2-2019-0028 in
25 the meantime will have been unnecessary. To the extent that there is a conflict between Order R2-
26 2019-0028 and the current Order R2-2009-0062, it is unclear how it will be resolved by the SFPUC.
27 Further, in the event that SFPUC receives conflicting instruction about which order is effective from
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1 EPA and the Regional Board, there is no immediate mechanism by which the conflict can be
2 resolved. EPA has not communicated the timing or scope of the current review of Order R2-2019-
3 0028, nor has EPA opined whether or not any aspect of the Order can become effective absent
4 EPA’s explicit approval. On its face, per paragraph 21 above, the Order requires signatures by both
5 the Regional Board and EPA Region 9 to be effective.

6 37. The NPDES Permit on p. 5 is clear that “Order No. R2-2009-0062 (previous order) is
7 rescinded upon the effective date of this Order.” Order No. R2-2009-0062 will be rescinded per the
8 terms of the NPDES permit on November 1. There are many implications from this provision of the
9 NPDES Permit on San Francisco. However, the most concerning is that on November 1, the treated
10 effluent from the Oceanside Water Pollution Control Plant via Discharge Point 001 will not be
11 authorized by the NPDES Permit (i.e., because the EPA has not issued the NPDES Permit) and will
12 not authorized by Order No. R2-2009-0062 (i.e., because Order No. R2-2009-0062 is rescinded by
13 the NPDES Permit). San Francisco discharges treated effluent every day from Discharge Point 001
14 and on November 1 – unless the Request for Stay is granted or EPA issues the NPDES Permit – San
15 Francisco will not be authorized to discharge effluent via Discharge Point 001. San Francisco will be
16 subject to potential enforcement, under the Clean Water Act, by the Regional Board, EPA, and
17 private-third parties (via citizen suits).

18 38. On October 25, 2019, Michael Montgomery, Executive Officer, Regional Board, sent
19 a letter to Tomas Torres, Director, Water Division, EPA Region 9, acknowledging the legitimacy of
20 San Francisco’s concerns about confusion, saying the Regional Board expects “EPA will also sign
21 the permit by November 1, 2019, to avoid any uncertainty for the permittee.” A true and correct
22 copy of the October 25 letter from Mr. Montgomery to Mr. Torres is attached as Exhibit 13. The
23 letter from Mr. Montgomery also demands the EPA take action “to ensure that permit requirements
24 applicable to the main outfall also go into effect,” recognizing that Discharge Point 001 (i.e., the
25 “main outfall”) will be unauthorized on November 1. Finally, the letter requests that if EPA does
26 not intend to sign the permit, it should provide the Regional Board with “a written explanation for . . .
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1 . clarification regarding the applicable federal NPDES permit requirements,” further confirming the
2 confusion and uncertainty that will result from EPA’s inaction.

3 39. On October 29, 2019, I received a letter from Michael Montgomery, Executive
4 Officer, Regional Board, who explained that “the effective date of the Oceanside permit
5 remains November 1, 2019.” A true and correct copy of the October 29 letter to me from Mr.
6 Montgomery is attached as Exhibit 14. The October 29 letter from Mr. Montgomery took the
7 position that there are two permits – one state, one federal – and that only the permit terms in the
8 “state permit” are effective on November 1. The October 29 letter also took the position that the
9 discharges from Discharge Point 001 into federal waters would continue to be permitted by Order
10 R2-2019-0028, contrary to the NPDES Permit rescinding Order R2-2019-0028 on the effective date.

11 40. In response, on October 29, 2019, I responded via a letter to Mr. Montgomery’s
12 October 29 letter explaining that “the SFPUC fundamentally disagrees with your position and the
13 legal basis included in your October 29 letter. The Oceanside permit cannot be effective on
14 November 1, absent the U.S. Environmental Protection Agency issuing the permit.” A true and
15 correct copy of the October 29 letter from me to Mr. Montgomery is attached as Exhibit 15. I
16 explained that “your October 29 letter creates a fiction that there are two permits – one federal, one
17 state. This position conflicts with the permitting process used for approval of the Oceanside permit
18 by the Regional Board members, the associated administrative record, the terms of the permit, and
19 the reality of the design of the combined sewer system on the Westside of San Francisco.”

20 41. Staying the November 1, 2019, effective date of Order R2-2019-0028 is in the public
21 interest because it will reduce confusion, among the SFPUC, regulators and the public, about exactly
22 which permit, and which permit terms, are applicable to San Francisco’s operation of the Oceanside
23 Treatment Plant and its associated collection system. Further, in the event that the stay is granted,
24 the SFPUC would continue to comply with the terms and requirements of the existing R2-2009-
25 0062, which has governed operation of the Oceanside Treatment Plant and its associated collection
26 system since August 12, 2009. Upon information and belief, the terms in R2-2009-0062 protect
27 human health and the environment and there would be no harm to third-parties or the public interest
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if the SFPUC continued operating under that Order while the issues related to EPA’s approval of Order R2-2019-0028 are resolved and the State Water Board addresses the questions raised in the associated petition.

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

Executed this 29th day of October 2019, in San Francisco, California.

By 

Michael Carlin

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

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Exhibit B

Declaration of Samuel Brown

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 HUNTON ANDREWS KURTH LLP
2 J. TOM BOER (State Bar No. 199563)
3 SAMUEL L. BROWN (State Bar No. 283995)
4 50 California Street, Suite 1700
5 San Francisco, California 94111
6 Telephone: 415 • 975 • 3700
7 Facsimile: 415 • 975 • 3701

8 OFFICE OF CITY ATTORNEY DENNIS HERRERA
9 CITY AND COUNTY OF SAN FRANCISCO
10 JOHN RODDY (State Bar No. 96848)
11 ESTIE KUS (State Bar No. 239523)
12 San Francisco, California
13 Telephone: 415 • 554 • 3986
14 Facsimile: 415 • 554 • 8793

15 Attorneys for Petitioner,
16 CITY AND COUNTY OF SAN FRANCISCO

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF SAN FRANCISCO

19 CITY AND COUNTY OF SAN FRANCISCO,

20 Plaintiff/Petitioner,

21 vs.

22 CALIFORNIA STATE WATER RESOURCES
23 CONTROL BOARD; THE SAN FRANCISCO
24 BAY REGIONAL WATER QUALITY
25 CONTROL BOARD

26 Defendants/Respondents.

Case No.:

DECLARATION OF NOTICE IN SUPPORT
OF CITY AND COUNTY OF SAN
FRANCISCO'S EX PARTE APPLICATION
FOR ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER

1 **I, Samuel L. Brown, declare and state as follows:**

2 1. I am the attorney for Petitioner City and County of San Francisco (“San Francisco”) in
3 this action.

4 2. Unless otherwise stated, I have personal knowledge of the matters state herein and
5 could and would testify competently thereto.

6 3. I and my colleague J. Tom Boer provided Respondents California State Water
7 Resources Control Board and San Francisco Bay Regional Water Quality Control Board through their
8 counsel with notice of Petitioner’s *ex parte* application for an Order to Show Cause Re Preliminary
9 Injunction and Temporary Restraining Order in accordance with California Rule of Court 3.1204.

10 4. The names and addresses of counsel for Respondents are as follows:

11 Philip Wyels, Assistant Chief Counsel
12 State Water Resources Control Board
13 Office of Chief Counsel
14 1001 I Street, 22nd Floor
15 Sacramento, CA
philip.wyels@waterboards.ca.gov
(916) 341-5178

16 Daniel Harris
17 California Department of Justice
18 Office of the Attorney General
19 1515 Clay Street, 20th Floor
20 Oakland, CA 94612
(510) 879-0274
daniel.harris@doj.ca.gov

21 Marc Melnick
22 California Department of Justice
23 Office of the Attorney General
24 1515 Clay Street, Floor 20
25 Oakland, CA 94612
marc.melnick@doj.ca.gov
(510) 879-0750

26 William Jenkins
27 California Department of Justice
28 Office of the Attorney General
455 Golden Gate Ave., Suite 1100
San Francisco, CA 94102

1 William.jenkins@doj.ca.gov
2 (415) 510-3466

3 Tiffany Yee
4 California Department of Justice
5 Office of the Attorney General
6 1515 Clay Street, Floor 20
7 Oakland, CA 94612
8 Tiffany.yee@doj.ca.gov
9 (510) 879-1020

10 5. On October 29, 2019 at 1:00 p.m., I, as well as my colleague, J. Tom Boer, spoke on
11 the telephone with Daniel Harris, Marc Melnick, Phil Wyels, William Jenkins, and Tiffany Yee to
12 provide notice that San Francisco would be filing an *ex parte* application for an Order to Show Cause
13 re Preliminary Injunction and Temporary Restraining Order to this Court on October 30, 2019.

14 6. On October 29, 2019 at 5:09 p.m., my colleague, J. Tom Boer, notified Daniel Harris
15 and Marc Melnick by email that San Francisco would be presenting to this Court, on October 31, 2019
16 at 11:00 am in Department 302, its *ex parte* application for an Order to Show Cause Re Preliminary
17 Injunction and Temporary Restraining Order that would restrain and enjoin Respondents from
18 implementing a November 1, 2019 effective date for Order No. R2-2019-0028. A copy of the email
19 notice is attached as Exhibit A to this declaration.

20 7. In response to the foregoing notice, I was informed by Daniel Harris and Marc Melnick
21 that one (or both) of them would appear on October 31, 2019 at 11:00 am in Department 302 on behalf
22 of the San Francisco Bay Regional Water Quality Control Board.

23 8. On October 29, 2019 at 5:18 p.m., my colleague, J. Tom Boer, notified William
24 Jenkins, Tiffany Yee, and Phil Wyels by email that San Francisco would be presenting to this Court,
25 on October 31, 2019 at 11:00 am in Department 302, its *ex parte* application for an Order to Show
26 Cause Re Preliminary Injunction and Temporary Restraining Order that would restrain and enjoin
27 Respondents from implementing a November 1, 2019 effective date for Order No. R2-2019-0028. A
28 copy of the email notice is attached as Exhibit B to this declaration.

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9. In response to the foregoing notice, neither William Jenkins, Tiffany Yee, nor Phil Wyels responded to the email notice or otherwise identified whether anyone would appear on October 31, 2019 at 11:00 am in Department 302 on behalf of the State Water Resources Control Board.

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

Executed this 30th day of October 2019, in San Francisco, California.



Samuel L. Brown
Attorney for Petitioner
City and County of San Francisco