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State of California, San Francisco Bay Regional
Water Quality Control Board Hearing on
September 11, 2019

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1 JAMES MCGRATH: All right. With that,
2 I think we have time to at least start the San
3 Francisco PUC matter.

4 MICHAEL MONTGOMERY: Yeah, thank you.
5 I'd like to invite up Jessica Watkins. She's the
6 Senior Supervisor in the NPDS Program that will
7 be giving a presentation on this.

8 WILLIAM KISSENGER: Before we do, I
9 want to recuse myself from participating in the
10 decision. For the record, I'm a lawyer at the
11 law firm of Morgan Lewis & Bockius in San
12 Francisco and I currently am representing San
13 Francisco Public Utilities Commission on matters
14 that are unrelated to the reissuance of the
15 Oceanside permit, but because I work with this
16 discharger, albeit on matters that are unrelated
17 to this particular item, I will recuse myself to
18 avoid any potential appearance of impropriety.

19 JAMES MCGRATH: You know that's going
20 to be upstairs. Okay. We're going to have
21 lunch. Yeah, we'll go up -- up to the office and
22 I'll meet you up there. Okay.

23 JESSICA WATKINS: I'd like to use the
24 remote. Thank you. That's fine.

25 MICHAEL MONTGOMERY: Yeah, we're ready.

1 We can start.

2 JESSICA WATKINS: Good afternoon now, I
3 think. I'm Jessica Watkins. I'm still a Senior
4 Engineer in the NPDS Wastewater Enforcement
5 Division. Nothing's changed since this morning.
6 The Order before you today would re-issue the
7 existing NPDS permit for the wastewater
8 facilities in the western portion of San
9 Francisco. The permit would also cover a
10 recycled water project currently under
11 construction at the Wastewater Treatment Plant
12 site and that's expected to produce about 1.6
13 million gallons per day of recycled water. I'll
14 start with some background about San Francisco's
15 wastewater treatment facilities and how we
16 regulate combined sewer systems and then I'm
17 going to end with significant comments that we
18 received during the public comment period and our
19 responses to those comments. So, let's go back a
20 slide, please. And this is an aerial view of San
21 Francisco. The city has two NPDS permits; so,
22 there's one for the western side of the city and
23 that's often referred to as the Westside or the
24 Oceanside and then there's also one for the
25 eastern portion of the city and that's referred

1 to as the Bayside. And the dividing line between
2 these two sides of the city is shown in yellow
3 and that's running from north to south. And we
4 permit these sides of the city separately because
5 runoff on the Bayside flows towards the Bay
6 whereas runoff on the Westside flows towards the
7 Pacific Ocean. So, today we're just talking
8 about the Western portion of the city and that's
9 highlighted in blue. And in the next few months,
10 we plan to draft a permit for the Bayside for
11 your consideration. Here's another figure
12 showing San Francisco's wastewater treatment
13 plants and major collection system assets and
14 there is a lot going on here, but we're just
15 going to focus on the Westside and that's shown
16 to the left in pink or brown or whatever that
17 color is. We'll zoom in. San Francisco's
18 collection system is unique because it's
19 predominantly a combined sewer system and San
20 Francisco is one of two cities in California that
21 has a combined sewer system and the other one is
22 located in a small portion of Sacramento.
23 Wastewater and stormwater generally flow towards
24 the perimeter of the city where the flows are
25 collected in large box-like structures and are

1 conveyed to the wastewater treatment plant. The
2 grey arrows show the general flow direction and
3 those dark red lines, those are the major
4 collection system pipelines that collect and
5 convey the flows to three transport storage
6 structures shown as the orange and brown
7 rectangles along the perimeter of the city.
8 Those are to the left there. The biggest
9 transport storage structure is the Westside
10 transport located beneath the Great Highway along
11 Ocean Beach and that's shown in orange and that
12 can store and convey about 50 million gallons of
13 combined wastewater and stormwater to the
14 treatment plant. And to get an idea of the scale
15 of this structure, you can try finding where the
16 five construction workers are located in the
17 photo. It might be easier for those sitting in
18 the front, but two of them are shown inside of
19 that red circle. So, it's a big structure. To
20 the north we have the 12 million-gallon Richmond
21 Tunnel and to the south is the 10 million-gallon
22 Lake Merced Tunnel and those are shown in brown.
23 These boxes convey flows to the Oceanside Water
24 Pollution Control Plant shown in yellow in the
25 bottom left of the screen. The treatment plant

1 is located on the Great Highway near the zoo and
2 it's one of only a few plants in the United
3 States that's built almost entirely underground.
4 The plant treats about 20% of the city's
5 wastewater and discharges to the Pacific Ocean
6 through a deep-water outfall that's more than 3
7 nautical miles from the shore and we issue this
8 permit jointly with EPA because the plant
9 discharges to federal waters that are beyond
10 State jurisdiction. The State also has
11 jurisdiction because when rain overwhelms the
12 capacity of the combined sewer system, combined
13 wastewater and stormwater is discharged through
14 seven near shore outfalls. And from the north to
15 south, we'll take a look at those, so, these
16 discharges occur at Baker Beach, China Beach,
17 Mile Rock and two locations on Ocean Beach and
18 then down at Fort Funston. So, these discharges
19 occur when the collection system storage capacity
20 is exceeded and that's about 73 million gallons
21 in total. So, what is a combined sewer system?
22 A combined sewer system uses a single set -- a
23 single sewer system to collect domestic sewage
24 and stormwater runoff. And this is different
25 from separate sewer systems in which the domestic

1 sewage is conveyed to a treatment plant and one
2 set of pipes and the stormwater is conveyed to
3 surface waters using a different set of pipes and
4 that receives little or no treatment. As shown
5 in the figure, a combined sewer system also
6 collects street runoff to the stormwater drains
7 that can occur during dry weather and this could
8 include vehicle cleaning wash water, motor oil
9 dripping from cars and also trash. And the
10 advantage of a combined sewer system is that
11 stormwater and dry weather street runoff receive
12 treatment. However, during major storms, the
13 combined sewer system may discharge
14 undisinfected, partially treated wastewater and
15 stormwater to near shore outfalls and can also
16 backup into streets, homes and businesses. So,
17 this figure, in particular, shows an example of
18 when the collection system capacity is exceeded
19 and it's discharging to the Pacific Ocean.
20 Here's a flow diagram of San Francisco's
21 treatment system. So, moving from left to right,
22 again, the combined sewer system conveys flows to
23 the treatment plant and then discharge is treated
24 effluent to the deep-water outfall in the Pacific
25 Ocean. The plant typically treats about 11

1 million gallons per day of domestic sewage and
2 dry weather street runoff. The plant can also
3 provide secondary treatment for up to 43 million
4 gallons per day, which is about four times its
5 typical dry weather flow. And that means that
6 during light to moderate rain, the plant provides
7 full secondary treatment for additional
8 stormwater flows. During heavier rain, the plant
9 can provide an additional 22 million gallons per
10 day of primary only treatment and that's blended
11 with the secondary treated water before being
12 discharged and this is similar to what weather
13 blending at some other treatment plants that you
14 might recall. In addition to pumping up to 65
15 million gallons per day over to the plant, the
16 City can also pump up to 133 million gallons
17 directly to the deep-water outfall. And these
18 flows receive equivalent to primary treatment
19 within the combined sewer system. And we call
20 that equivalent to primary treatment because the
21 combined sewer system removes some floatables and
22 solids and that's similar to the primary
23 treatment received at a wastewater treatment
24 plant. And flows exceeding these capacities may
25 discharge from those seven near shore discharge

1 points along the western perimeter of the City.
2 So, these combined sewer discharges also receive
3 equivalent to primary treatment and they occur
4 about one to six times per year on average and
5 that depends on the weather and the exact
6 location. And San Francisco strives to collect
7 and treat all the wastewater and stormwater flows
8 during a three-hour storm that has about 1.3
9 inches of rain. So, how do we regulate combined
10 sewer systems? During dry weather, we regulate
11 these facilities the same way we regulate any
12 other municipal wastewater treatment plant and
13 its collection system and that's with numeric
14 effluent limitations and various narrative
15 requirements. The majority of the time, the
16 system operates under these conditions; however,
17 during wet weather, we take a different approach,
18 so it's based on the Combined Sewer Overflow
19 Control Policy. And to be clear, in this
20 context, wet weather doesn't just mean that it's
21 raining, and the permit wet weather means that
22 San Francisco can't provide secondary treatment
23 for overflows. USCPA adopted the Combined Sewer
24 Overflow Control Policy in 1994 and that was to
25 establish a national approach for controlling

1 combined sewer discharges and overflows and this
2 policy was later written into the Clean Water
3 Act. During wet weather, the policy establishes
4 nine minimum controls as technology-based
5 requirements and requires implementation of a
6 long-term control plan to satisfy water quality-
7 based requirements. The nine minimum controls
8 are short-term controls that can reduce overflows
9 and their effects on receiving water quality
10 without significant engineering studies or major
11 construction. For example, one minimum control
12 is the control of solid and floatable materials
13 and that could include street sweeping or the
14 installation of simple devices like racks,
15 baffles, scradents. And street sweeping could
16 also count as pollution prevention which is
17 another minimum control. A primary objective of
18 the long-term control plan is to develop and
19 evaluate a range of overflow control alternatives
20 sufficient to meet water quality standards,
21 including the attainment and protection of
22 beneficial uses. And this permit would require
23 the City to update its long-term control plan for
24 the first time since the City finished
25 construction of most of its long-term controls in

1 the 1990s and this includes a requirement to
2 consider options to eliminate, relocate or reduce
3 the magnitude or frequency of those near shore
4 discharges. We received numerous comments from
5 San Francisco and 14 members of the public during
6 the public comment period. Members of the public
7 are concerned about the impacts of sewer
8 overflows from the combined sewer system on homes
9 and businesses, including manholes that are
10 dislodged by surcharging. And here are a couple
11 of photographs to illustrate these issues and
12 these photos were taken on the Bayside of the
13 City but are just provided here as context for
14 the public's comments. The photo on the right
15 shows about one foot of street flooding and then
16 the photo on the left shows a geyser of water
17 coming out of a manhole in the middle of the
18 street and that's circled in yellow. It's up to
19 about the height of the buildings nearby, it
20 looks like. And then, if you look more closely,
21 you could see that the manhole cover in that red
22 circle is about one car-length away from the
23 manhole. The public also supports public
24 notification requirements and new requirements to
25 report overflows into the statewide online data

1 base. We, and USCPA, take these concerns very
2 seriously and we're discussing potential
3 solutions with San Francisco. We understand that
4 we're not going to solve the entirety of this
5 problem with this permit reissuance, but we have
6 taken steps to strengthen the existing
7 requirements. So, for example, the new long-term
8 control plan update requires the City to ensure
9 that wet weather operations minimize the
10 frequency, volume and duration of these
11 overflows. It also requires the City to submit a
12 report that characterizes these overflows over
13 the last 10 years. Now, we're going to look at
14 some of San Francisco's comments. San Francisco
15 questions USCPA and Board authority to require
16 the long-term control plan update and San
17 Francisco argues that the requirement is contrary
18 to law and unsupported by facts and prior
19 findings made by USCPA and the Board. We
20 disagree, as we explain in our response to San
21 Francisco's comments. There are several legal
22 bases for the requirement, including federal
23 regulations and the combined sewer overflow
24 control policy. Moreover, the requirements
25 consistent with USCPA guidance and requirements

1 imposed in consent decrees and other combined
2 sewer systems. The response to comments also
3 lists several facts that highlight the importance
4 of this requirement. For example, the City
5 discharges combined wastewater and stormwater
6 through near shore outfalls and these discharges
7 are associated with elevated bacterias and
8 concentrations. Furthermore, not only have the
9 facilities changed since constructed, with
10 additional changes planned, recreational use
11 patterns change too, and we've only begun to
12 understand the impacts of climate change. For
13 example, extreme rain events in California are
14 expected to become more frequent and intense and
15 sea levels are rising, as we talked about
16 earlier. The permit retains the long-term
17 control plan update requirement incorporating
18 many revisions proposed by San Francisco. Of
19 note, the revised permit extends several
20 compliance states. The required update tasks are
21 detailed and specific while also providing
22 flexibility for San Francisco to determine the
23 precise means of compliance. San Francisco also
24 objects to two of our standard provisions.
25 First, San Francisco objects to a receiving water

1 limitation that would prohibit discharges that
2 cause or contribute to violations of water
3 quality standards. Second, San Francisco objects
4 to an existing prohibition against discharges
5 creating pollution, contamination or nuisance.
6 San Francisco argues that these requirements are
7 inconsistent with applicable law and unsupported
8 by facts. San Francisco is also concerned that
9 the requirements create uncertainty with respect
10 to liability. We disagree and we explain this in
11 our response to San Francisco's comments. We did
12 not revise the tentative order because the
13 proposed requirements are consistent with the
14 Clean Water Act, Combined Sewer Overflow Control
15 Policy, NPDS regulations, State water quality
16 standards and State law. Furthermore, the
17 receiving water limitation and discharge
18 prohibition serve as backstops in the event that
19 the effluent limitations and other provisions in
20 the permit prove to be inadequate. A similar
21 receiving water limitation appears in nearly all
22 NPDS permits in the region, including San
23 Francisco's NPDS permit for the Bayside.
24 Similarly, the discharge prohibition has also
25 been in nearly all NPDS permits in the region

1 since at least 1993, including San Francisco's
2 previous permits. When the Board most recently
3 updated the regional standard provisions, it
4 retained this provision. So, as you've seen,
5 it's a complicated facility both physically and
6 from the regulatory perspective. We have worked
7 very closely with USCPA on this and are happy to
8 present the revised tentative Order to the Board
9 for consideration with a couple of minor
10 revisions that are detailed in the supplemental
11 that we passed out. And USCPA is prepared to
12 approve the revised tentative Order when and if
13 the Board approves it. Thanks.

14 JAMES MCGRATH: Are there any questions
15 from the Board of the staff?

16 DR. NEWSHA AJAMI: Can we ask questions
17 about the permit or are we doing that later?

18 JAMES MCGRATH: Well, if you've got
19 questions that would make sense to have asked
20 now, with an opportunity for San Francisco to
21 comment, yes, go ahead and ask those questions
22 now.

23 DR. NEWSHA AJAMI: Okay. I'm actually
24 slightly concerned about the modifications that
25 have been made to the permits, especially the

1 ones that are putting time rather than
2 sunrise/sunset.

3 JAMES MCGRATH: In the supplement?

4 DR. NEWSHA AJAMI: In the supplement.

5 So, I live in the city, people can go to the
6 beach after 4pm. I have taken my kids after 4pm
7 to the beach and I understand there are rainy
8 days and they're wet and obviously not many
9 people go to the beach probably at that day, but
10 I think that I liked what we had before, the
11 whole sunset/sunrise. Also, people surf in these
12 waters way before 8am. Why do we have, like,
13 4pm, 8am? Is this more of a, like, you don't
14 want people to work overtime, so we want to make
15 sure they -- so, I'll let you answer that
16 question.

17 BILL JOHNSON: This is Bill Johnson.
18 I'm the Chief of the NPDS Wastewater Division.
19 We spent a lot of time thinking about that
20 provision as you can tell in the response to
21 comments. We went one way and then we met with
22 San Francisco a little bit more and went a
23 different way. For San Francisco, one of their
24 concerns is the amount of time it takes to post
25 the beach, so this permit really is to just the

1 oceanside of their system, but they also have a
2 southeast system and if there's discharges
3 happening on the oceanside, there's probably also
4 discharges happening on the bay side, so the
5 amount of time it takes them to actually post all
6 the beaches for the entire city is about two
7 hours. So, they need some time in order to do
8 that and for safety reasons, they'd rather not do
9 it after dark and in some locations, they don't
10 actually have access like if it's park service
11 land, they can't actually get to it after dark.
12 So, we talked to them a little bit about it and
13 what I finally came to realize myself, is that
14 these discharges happen primarily during the
15 wintertime when the days are short, and the
16 sunset actually happens pretty soon. So, if you
17 think about 4 o'clock, sunset may be closer to
18 6pm or 7pm so you're not actually -- so if
19 discharge happens after 4, they may or may not
20 get the full two hours to do it. In fact, we
21 were thinking, in fact, that this may give them
22 even less time, but it gives them the certainty
23 in terms of the time, it's just easier for them
24 to know what the expectation is and to know what
25 our -- and in terms of enforcement, it's easier

1 to say, "Hey, it was 4 o'clock" or it wasn't.
2 And so, the next day, in terms of the 8 o'clock
3 time frame, again, how late does it take the sun
4 to come up in the morning during the wintertime
5 and so, at times, it could be, not that much
6 sooner than 8 o'clock, it would be, like, 7, so
7 it's not necessarily giving them the full two
8 hours either.

9 DR. NEWSHA AJAMI: But does this mean
10 that they can't -- so, okay, so there are two
11 things: one is, physically going and posting
12 every one of these locations; the other one is
13 having on-line warnings or sending tweets to
14 people that they don't go do this. I wonder if
15 there's a way to differentiate between an online
16 outreach before, like right after they start
17 releasing rather than -- and then saying, okay,
18 so then posting on the beach -- so, I assume if
19 somebody is a savvy surfer, they might already
20 know this is happening so they may check earlier.
21 So, is there a way we can differentiate between
22 how they are posting? Can it be differentiated
23 between the physical posting and also virtual
24 posting, online posting?

25 BILL JOHNSON: The short answer is yes

1 and if you give me a second, while -- maybe when
2 you break for lunch, I can take a look at that
3 and see if there's something we can do. It also
4 might be worth asking San Francisco, since
5 they've got a number of representatives here and
6 maybe they can tell you exactly what their
7 typical practice is for those two different kinds
8 of notifications. The ones the actual signs on
9 the beaches versus those technology ones, which
10 should be a lot faster. Did you have anything
11 you wanted to add or not?

12 JESSICA WATKINS: We have the
13 electronic notification separately from the
14 warning signs, under (d) on page 18. So, they're
15 separated out, so (d) is: "The discharger shall
16 provide electronic notification --"

17 DR. NEWSHA AJAMI: Can you tell me
18 which page you are looking?

19 JESSICA WATKINS: Page 18.

20 DR. NEWSHA AJAMI: Page 18. Okay.

21 BILL JOHNSON: Does it give a time? It
22 doesn't give a timeframe?

23 JESSICA WATKINS: There's no timeframe
24 for that, but Amy's right here. I don't know if
25 you'd like to say anything.

1 AMY CHASTAIN: I can.

2 DR. NEWSHA AJAMI: Yeah, I mean, it
3 would be good to have timing for that, at least.
4 And I would say they should actually post right
5 after they start releasing. Why wouldn't they?

6 BILL JOHNSON: Right. Right. And I am
7 going to put words into San Francisco's mouth,
8 but I don't think that they would necessarily
9 object to doing it as soon as they can. It might
10 take them a little while, but maybe we can have a
11 conversation with them and find out what kind of
12 timeframe is workable.

13 JAMES MCGRATH: Other questions about
14 the staff presentation? I did have one. There's
15 testimony that we've received about concerns
16 about flooding and backup. Since the City has
17 two different systems, I want to make sure that
18 we know the location of the comments and whether
19 or not they're on the Westside or on the Bayside.
20 There are specific incidents that they refer to
21 and I want to make sure that we know whether or
22 not it's on the area covered by this permit or
23 the area covered by the Bayside permit.

24 JESSICA WATKINS: Yeah, I think that
25 the issues that the public brings up may be more

1 representative of what's happening on the
2 Bayside, but there are flooding -- areas of
3 flooding --

4 JAMES MCGRATH: It does happen on this
5 side, as well.

6 JESSICA WATKINS: Yeah, so if you look
7 at San Francisco's flood planning documentation
8 that's available online, you could see that
9 they're planning or -- I don't know what the
10 stages of the planning are, but, they're aware of
11 areas like 15 th and Wobona and I think San
12 Francisco could give more details, but there are
13 at least two or three locations on the Oceanside.

14 JAMES MCGRATH: Okay. Any other
15 questions? So, let's turn to San Francisco. If
16 they can -- if we can, kind of, hold together and
17 get to their presentations, then we'll look at
18 breaking for lunch. I see Amy, you've got it all
19 organized?

20 AMY CHASTAIN: (indiscernible)

21 JAMES MCGRATH: I have cards from you,
22 Amy Chastain, Greg Norby, and I know the guy that
23 used to work here too, Michael Carlin, so however
24 you want to present it, come on up.

25 AMY CHASTAIN: Thanks. Well, good

1 afternoon. Let me be the first to say good
2 afternoon to you Board members. My name is Amy
3 Chastain. I'm a manager with the Wastewater
4 Enterprise of the San Francisco Public Utilities
5 Commission and I think that -- I just want to
6 point out who we do have here. We have our
7 Deputy General Manager, Michael Carlin, who
8 submitted a card; we have our Assistant General
9 Manager who is the head of wastewater, Greg
10 Norby, who is here; and we also have
11 representatives from the City Attorney's office,
12 John Roddy and Estee -- I'm sorry Estee, I don't
13 know how to pronounce your last name -- so, I
14 want to -- good, I was curious about that. I
15 promise to not take more than 10 minutes, but I'd
16 be really pleased if I could have a little bit
17 beyond the standard three-minute comment time
18 frame. Part of the reason is, I believe that,
19 unless I miss something, which hopefully I won't
20 since all my bosses are in front of me, Greg and
21 Michael will not be speaking today and hopefully
22 I'll be able to answer all your questions. So, I
23 have three issues that I wanted to discuss today
24 and share with you and I'm going to dispense with
25 the very straightforward one first. And that is,

1 if you turn to -- I forget, I had the page number
2 on my permit, but if you look at the shoreline --
3 and Newsha, this is actually touching on some of
4 your concerns, so I'll try to address your
5 questions at the same time I address those. So,
6 Tables E-11 and E-12 of the permit require --
7 they specify the shoreline monitoring
8 requirements for San Francisco. So, we sample,
9 and have for decades, the shorelines weekly and
10 then after every combined sewer discharge and
11 then we also follow standard protocols which are
12 sampled daily until elevated bacteria levels are
13 below an appropriate threshold. So, the issue
14 with that is if you look at the three indicator
15 bacteria and, you know, I like talking to this
16 Board because we have so many technical geeks on
17 it that I can see fecal indicator bacteria and
18 you know what I'm talking about. It's not always
19 true. So, the three fecal indicator bacterias
20 specified for shoreline monitoring, enterococcus,
21 fecal coliform and total coliforms. So, our
22 current permit does not require fecal coliform
23 analysis to be performed.

24 TOM: (indiscernible) because I think
25 the Board members -- on Page E-16.

1 JAMES MCGRATH: I just found it.

2 AMY CHASTAIN: You got it? Thanks Tom.

3 TOM: You're getting a little bit ahead
4 of him.

5 AMY CHASTAIN: So, our current permit,
6 which has been in place for more than a decade at
7 this point, does not require fecal coliform, it
8 requires e-coli. Again, these are all indicator
9 bacteria. So currently, our laboratory is not e-
10 lab certified, which is the certification process
11 they need to go through to be able to do certain
12 laboratory analyses that we submit for client
13 compliance purposes. This is required by a
14 permit and needs to be -- the analyses need to be
15 performed by an e-lab certified lab. Our lab is
16 not currently certified for fecal coliform, but
17 we are initiating that process so that we can
18 become certified. So, our request here, which is
19 not in our comments, is that we be allowed to
20 analyze our samples for enterococcus and total
21 coliform in the interim until we become
22 certified. So, that's the easy part. And
23 Newsha, to answer your question and to provide
24 context for the rest of the Board, so there are
25 multiple mechanisms to notify the public of when

1 there are combined sewer overflows and some of
2 you know that I used to, but now that I moved to
3 East Bay, I don't anymore, swim for the Southend,
4 and so I'm definitely, you know, vested in and
5 care about our water quality. So, there's the
6 physical posting and that is the most time
7 intensive. It's literally going around all the
8 city. All of those signage locations are not
9 owned by the City and County in San Francisco.
10 It's actually mostly federal government, if you
11 think about it and some state parks. We do have
12 concerns about safety at some of these locations
13 and posting at night and access, as, I think,
14 your staff eluded -- or they didn't elude to,
15 they were very articulate about it. So, that's
16 one piece. The other part is, we do have a
17 website that has an interactive map that sounds
18 like -- it looks like Newsha's seen that. That's
19 updated in the office through -- for you geeks,
20 through our laboratory information management
21 system prior to the physical posting. Ditto with
22 the email that goes out. There's an email to a
23 group of folks and then there's also a hotline.
24 And we are in the process of, kind of,
25 holistically evaluating our public communications

1 around these overflows. It's pretty robust, I
2 think, considering they happen seven times a
3 year, but I think savvy people would be going to
4 our website and be checking the hotline and the
5 website is now app -- phone friendly. We used to
6 have an app, but my IT department tells me that
7 you don't need apps anymore, nobody's doing that
8 anymore. They're moving to the web-based
9 platform. So, I think I'd like us to talk a
10 little bit, maybe, at the break with your staff
11 about your concerns. I think, we work closely
12 with our Department of Public Health. We have no
13 concerns at this point based on any information
14 available to us about the efficacy of our public
15 health communication programs. We do have a lot
16 of concerns about the very extensive -- I sound
17 like such a discharger and those of you that knew
18 me, Jim, 15 years ago, would be appreciative of
19 this -- these are really prescriptive permits.
20 These are some of the longest, most prescriptive
21 permits in the country and I just want to caution
22 us against putting too many deadlines into an
23 NPDS permit or maybe we can find other ways to
24 address these concerns and just ask the question:
25 is it appropriate as an NPDS permit requirement

1 versus some other mechanism. So, the two other
2 issues -- and I've struggled with what to say,
3 but you've all, presumably, read our submittals
4 and our comments in response to comments so I
5 think my challenge today -- and I don't know if
6 I'm up to the task, but I'm going to try, is to
7 try to communicate in, like, real-people speak
8 what our fundamental concerns are and so, there
9 are two of them. The terminology here gets
10 really, really confusing quickly, so one relates
11 to what are called: sewer overflows in the
12 combined sewer system and these are instances
13 where sanitary flows or a mixture of sanitary
14 flows and stormwater come out of the combined
15 system like the photos you saw. Those do not
16 reach waters of the U.S. What happens is the
17 surcharge, the main will surcharge and then the
18 waters -- the flow goes back into an adjacent
19 catch basin and goes back into the combined sewer
20 collection system. The second are the combined
21 sewer overflows or combined sewer discharges is
22 what we've been calling them in our permits, and
23 those are the actual discharges seven times a
24 year on average for the past, since 1997, that
25 reached surface waters in our discharge. So, we

1 have concerns about -- we have strong
2 disagreement about the legal bases for the permit
3 requirements related to both sewer overflows in
4 the combined sewer system and also the LTCP
5 update, which relates to the combined sewer
6 overflows that reach surface waters. I think
7 that you can read all of the detail that you need
8 about that in our comments and then also the
9 response to comments, but fundamentally, we have
10 a legal disagreement about whether those are
11 appropriately -- whether you can appropriately
12 regulate sewer overflows in the combined sewer
13 system via an NPDS permit under the Federal or
14 State Clean Water Act. And then secondly, with
15 respect to the combined sewer overflow, that
16 one's a little bit more nuanced. Jessica did an
17 excellent job of presenting our standard --
18 presenting our current level of performance,
19 which is, on the oceanside, we have eight
20 outfalls. On average, since 1997, they have
21 discharged seven times -- discharge in seven
22 storm events. So, we're talking seven to ten
23 days a year, depending on how long the storm
24 lasts, of receiving water quality impacts. So,
25 it was very, very brief when you look at it

1 holistically. We've done extensive recuse
2 surveys that show that the actual recuse except
3 for those nutty, nutty surfers, maybe, is very,
4 very limited. It's what you would expect. Ocean
5 Beach is a dangerous beach with strong riptides
6 and currents and surf during storm events. So,
7 what's not -- what hasn't been -- what is shared
8 with you in the context of the permit and the
9 record before you, but wasn't in Jessica's
10 presentation, is how we got to this point. So,
11 USCPA and the State mandated that the City of San
12 Francisco reduce combined sewer within --
13 combined sewer overflows to no more than eight
14 per year on the ocean side. This was, kind of,
15 the precursor to the CSO Control Policy. So,
16 they say, "This is your performance standard. If
17 you get to eight a year based on the monitoring
18 and modeling that you've done, beneficial uses
19 will be protected." So, San Francisco built that
20 system that includes that huge transport storage
21 box, new ocean side treatment plant, so increased
22 storage and treatment capacity and has been
23 operating it since 1997. The actual performance
24 of the system is better than what was initially
25 predicted, based on modeling. So, where we are

1 today in terms of having to do an LTCP update is,
2 our understanding from all of the information
3 that we've collected and submitted is that the
4 current level of wet weather controls is
5 protecting beneficial uses. So, the requirement
6 to do a long-term control plan is not a rinse and
7 repeat requirement. You do it once, you only re-
8 do it if either, (1) you didn't meet the
9 performance standards that you thought you were
10 going to meet or (2) the information available to
11 you through post-construction monitoring shows
12 that you're not protecting beneficial uses.
13 Neither of those situations is applicable here.
14 So, where we're at is with -- is trying to accept
15 a permit requirement that requires us to update a
16 long-term control plan, which to be blunt about
17 it, is a giant, lengthy, capital process for
18 virtually every other combined sewer system in
19 the country. So, requirement to update that, but
20 it feels a little bit like we don't know why and
21 we don't know how much and I think what we're
22 concerned about -- or not, think, I know one of
23 the things we're concerned about is it will be a
24 "we know it when we see it" approach to
25 regulation, which creates a lot of uncertainty.

1 San Francisco is like every other utility in the
2 Bay area. It's too bad that Jackie Kepkey is not
3 here any longer. We're making massive re-
4 investments in our existing infrastructure and
5 trying to balance those investments against a
6 whole other portfolio of needs. We cannot afford
7 to touch on some of the comments you heard in the
8 resiliency context. We cannot afford, as a
9 community or as a society, to spend any one
10 dollar that only helps us achieve one goal.
11 Every dollar spent on infrastructure needs to
12 make sure that it's in good shape, needs to
13 provide additional environmental benefits, needs
14 to prepare us in some way, shape or form for
15 climate change and so, our fear is, that the LTCP
16 update will focus narrowly on how much volume is
17 discharged or how many times it discharges and
18 completely ignore the public impacts, the costs
19 or other benefits that we could be achieving
20 through a more integrated approach to planning.
21 So that's -- oh wait, Jim, you had a comment. I
22 hope that made sense. It all makes sense in my
23 mind because I've been living and breathing it
24 for so long. Jim, Bayside versus Oceanside,
25 those photos from the website,

1 solutionsnotsandbags, I'd have to check. I
2 believe that most of those were taken on the
3 Bayside.

4 (indiscernible)

5 JAMES MCGRATH: Jane first and then
6 Newsha.

7 JAYNE BATTEY: I just want to try to
8 understand what's involved with the long-term --

9 JAMES MCGRATH: Can you use your mic?

10 JAYNE BATTEY: Sure. I'm sorry. I'm
11 so relaxed I forgot to use the mic. The long-
12 term control plan, I just want to understand a
13 little better what's involved. If -- I think I
14 heard you say the plan is working --

15 AMY CHASTAIN: We have -- we had a plan
16 that was a big capital plan. We constructed it.
17 It is performing -- it's providing the level of
18 weather control that it was designed to perform.

19 JAYNE BATTEY: So, can you say a little
20 bit more about the cost of doing -- updating a
21 plan or doing a new plan and, I guess I'm a
22 little confused about -- I mean, I would assume
23 with all that is going on with sea level rise in
24 the --

25 AMY CHASTAIN: Yeah.

1 JAYNE BATTEY: -- the -- what we're
2 looking at as we go forward, I would think you
3 would want to keep doing long-term planning. I
4 must be confused.

5 AMY CHASTAIN: No, those are -- you're
6 not confused. Those are on point, I think. So,
7 the capital plan that we developed -- that
8 resulted in the construction of our current
9 treatment plants and storage. That is meeting
10 the designed performance expectations today. The
11 -- in terms of capital planning, any long-term
12 control plan is not -- it's just one part of an
13 overall capital plan. The City and County of San
14 Francisco and the Wastewater Enterprise are
15 undertaking massive capital plannings constantly.
16 We have a two-year budget cycle where a 10-year
17 CIP gets revisited on that cycle, so, it's just
18 planning around regulatory requirements is just
19 one piece of our greater capital plan. And maybe
20 it would -- in terms of my point about spending -
21 - the dollars spent on infrastructure, I mean,
22 maybe it would help if I gave a specific example.
23 The Sea Cliff area, which Jessica showed on the
24 presentation, there are three outfalls there.
25 They've discharged very, very small volumes of

1 water and it's -- their discharge is mostly
2 driven by a small stormwater catch mitt that's in
3 the Sea Cliff neighborhood. We know those pump
4 stations need to be rehabilitated. They're on
5 federal land, so that's been challenging.
6 There's easement issues that we -- that's a
7 priority for us to rehabilitate those pump
8 stations. So, we looked at that watershed
9 holistically and asked, "Okay, if we know we have
10 this need to rehab these pump stations, but we
11 also have other objectives, how can we accomplish
12 multiple objectives through that rehabilitation?"
13 and the result is, we're implementing a green
14 infrastructure project in that catch mitt that's
15 going to further reduce stormwater loading to
16 that pump station and provide some water quality
17 benefits and then we also are looking at
18 modifications to the pump station itself to see
19 if we can achieve additional other benefits. So,
20 the driver here is protection of our existing
21 infrastructure. But whenever we look at how
22 those -- what other -- we always want to look at,
23 what are the other objectives that a dollar spent
24 on reinvesting in your infrastructure can help
25 you achieve. That's one example. Thanks.

1 DR. NEWSHA AJAMI: I've got a question.
2 I did not have a question.

3 JAMES MCGRATH: There are certainly
4 questions. I think we understand your argument.
5 I think you've articulated it better than I
6 understood it from reading the response letters
7 and the comments. I'll paraphrase: three things
8 that I've heard, first you're arguing it's not
9 our business if water comes out of the pipe and
10 goes into the street if it goes back into the
11 pipe before it reaches the ocean. So, we'll talk
12 to our lawyers and our staff about whether or not
13 we agree with that when we come to the process of
14 discussing the merits of the project. The second
15 thing you're arguing, which is also, I think a
16 legal issue, but I want to make sure that they're
17 highlighted so they can be discussed, and our
18 lawyers can give us advice. You're arguing
19 something akin to a vested right interest that,
20 because there was a mandate to reduce overflows
21 to eight per year and you built a system pursuant
22 to that that's performing at seven a year, that
23 you have a right to continue to use that and that
24 that's a standard and continues to have some
25 legal authority. I'm simplifying these so I can

1 hold them in my mind and so we can sharpen them
2 up. Is that a -- and then there's the third
3 question of, given that, and given the
4 uncertainty of what might come out, you're
5 worried about a long-term control plan revisions,
6 but you haven't really talked about the cost.
7 Have I got your three issues identified?

8 AMY CHASTAIN: Can I -- I'd like to
9 tweak the first two. I think --

10 JAMES MCGRATH: Sure.

11 AMY CHASTAIN: -- in significant ways.

12 With respect to what's -- it's easier for me if
13 we call it just flooding, like flooding in the
14 combined sewer systems, but the source being the
15 collection system. This is a legal issue, but
16 it's also a policy issue and a governance issue.
17 So, during -- as Jessica's presentation showed,
18 during dry weather, our pipes act like any other
19 separate -- like any separate sanitary sewer
20 system. Their purpose is to convey sewage from
21 homes and businesses to our treatment plant and
22 do that without having it be on the surface of
23 the street. When wet weather hits, our combined
24 sewer system becomes mostly a stormwater
25 conveyance system. If you look at the size of

1 our pipes, they are much larger. Most of our big
2 -- most of our big -- most of our, like, pipes in
3 -- down the middle of the street are the size of,
4 like, other agency's interceptors. I mean, the
5 scale of these is -- it's very apparent they're
6 designed to carry stormwater. So, the question
7 for you guys, it's not apart from the legal
8 argument, it is: do you want to get into the
9 business of mandating or regulating how someone
10 sizes their stormwater conveyance systems because
11 that's the situation that we're faced with here.
12 There are small amounts of sanitary flow and
13 that's why this is a topic here, but the vast
14 majority in wet weather when these events occur,
15 the system is full of stormwater and those pipes,
16 their primary function is to move stormwater, not
17 sanitary flow. So, Jim, that's the one
18 distinction I would make, that's it's not just
19 that this is inappropriate under Clean Water Act
20 framework for regulation, but it's also, kind of,
21 from a policy, good government's perspective, not
22 necessarily -- it's something that we would have
23 concerns about the Regional Water Board getting
24 involved in.

25 JAMES MCGRATH: Okay.

1 AMY CHASTAIN: Ok, sorry, with CSDs,
2 it's not that we're viewing it as a vested right
3 and I'm sorry for not being clear, but the point
4 is that all of the information that we have
5 submitted and is available to us, which is a lot
6 of information, indicates that the current level
7 of overflow control is protecting our Pacific
8 Ocean. That further reductions are not needed to
9 meet the water quality-based requirements of the
10 Clean Water Act. So, not -- the vested right
11 thing -- it always, kind of, make me frazzled
12 because I don't -- I don't think that -- I like
13 to look at people's vested rights with scrutiny,
14 but we're not claiming that we did it and we're
15 one and done. We're saying, the information on
16 the table today shows that we are protecting
17 beneficial uses.

18 JAMES MCGRATH: Okay.

19 AMY CHASTAIN: Thank you.

20 DR. NEWSHA AJAMI: Jim, can I actually
21 ask a question? Sorry, I was trying to go back
22 to some of the tables I looked at a couple of
23 days ago and I found them. Actually, there's on
24 on F-8, which shows your combined sewer overflow.
25 And you can see -- what I see in this table is

1 that every time we get higher than about 30 or 28
2 inches of rain, there is significant sewer
3 overflow.

4 AMY CHASTAIN: The average -- yeah, an
5 average rainfall --

6 DR. NEWSHA AJAMI: For example, 2016-17
7 was a very, very wet year, right?

8 AMY CHASTAIN: Right. Mmm hmm.

9 DR. NEWSHA AJAMI: 13, 13, 13, right?
10 14 in the Seacliff #2, right?

11 AMY CHASTAIN: Mmm hmm.

12 DR. NEWSHA AJAMI: And then -- so, you
13 see that that's, sort of like, very similar to
14 the 2005-06, again, another wet year. 09-10 --
15 sorry, 10-11, the system worked well, I'm
16 assuming because this rainfall was distributed
17 over time by there then being one major
18 rainstorm. But, you know, what makes -- two
19 questions here: one is, you know, living in the
20 city, I see, like, tons of these, like, little
21 medians that are coming up, the roundabouts, all
22 these different green infrastructure, which I'm
23 assuming that's why they're, sort of, being
24 worked around. Have you seen any improvements in
25 -- in the way that street flooding, in addition

1 to, like, overall overflows you have, I would
2 say, from my experience, I have seen some of
3 these streets getting flooded less, but I'm not
4 sure it's that because of that or something else.
5 So -- and also, I mean, 13 is a huge number, 9
6 right above it. They're very large numbers, so,
7 you're still, like, seeing years that they have a
8 lot of overflow -- large number of overflows.
9 I'm expecting more and more of these intense
10 rains, right? That's the issue, right?

11 AMY CHASTAIN: That a -- I knew Newsha
12 was going to ask the difficult questions because
13 of the hydraulic engineering background, so, so,
14 CSDs, the ones that reach receiving waters, they
15 are really driven by the total volume of rainfall
16 with every storm event and the antecedent
17 conditions. So, if it's a -- we get a series of
18 small storms back to back and then we get an El
19 Nino type storm, like, you're guaranteed, based
20 on the circumstances, to max out your treatment
21 capacity -- your treatment capacity and your
22 storage capacity. Flooding is really driven by
23 that peak 5, 10, 15-minute intensity of the storm
24 event. And those are -- so, the hydraulic and
25 the -- what is it -- the rainfall factors --

1 hydraulic and hydrologic, thank you -- factors
2 that drive each of these events are very
3 different, so the way -- I wouldn't want to
4 speculate in front of you guys about performance
5 of the system, but I am going to geek out a
6 little bit. We have really great tools to
7 simulate that. We have an extremely well-
8 calibrated H&H model that contains every single
9 pipe in the entire system. We simulate a typical
10 year storm, which is, kind of, the industry
11 standards for evaluating your CSO performance and
12 then we also simulate design storms based on
13 extensive historic rainfall data sets and as
14 Jessica mentioned, if you go on our website,
15 you'll see flood notification maps and flood
16 hazard communications that are all based on that.
17 The model's been extensively calibrated and
18 validated. So, we use it to answer questions
19 like you just posed, but I wouldn't be prepared
20 to answer that today.

21 JAMES MCGRATH: So, we've heard from
22 San Francisco. Greg, did you have anything to
23 add or are you going to go with Amy here?

24 AMY CHASTAIN: Oh, okay, Michael --

25 JAMES MCGRATH: So, we understand

1 you're not happy. That's clear. So -- and we're
2 not going to have a chance to discuss this before
3 lunch in our closed session, so the question is:
4 we have three more cards. Do we want to hear
5 briefly from them and then take the lunch?

6 DR. NEWSHA AJAMI: As long as you are
7 okay, I'm -- you know, I'm --

8 AMY CHASTAIN: I just want to say thank
9 you --

10 JAMES MCGRATH: Lisa -- Lisa Dunseff.
11 Please try to hold it to three minutes. After
12 that, David Hooper.

13 LISA DUNSEFF: Thank you so much. Good
14 afternoon. Excuse me. Let's see. My name is
15 Lisa Dunseff. I'm a San Francisco resident and
16 I'm here to present -- represent
17 solutionsnotsandbags and to speak in behalf of my
18 neighbors who have suffered for many years from
19 the San Francisco PUC's negligence. The PUC --
20 thank you -- thank you -- sorry. The PUC has
21 knowingly allowed sewage to contaminate my
22 neighbors' homes, businesses, sidewalks and
23 streets for many, many years and my neighbors are
24 all people -- working-class people in my
25 neighborhood with jobs and families and they

1 can't afford to come to these meetings. So,
2 that's why I'm here. The PUC has acknowledged
3 the sewer flooding problem and yes, those two
4 photos were from the Bayside. They even proposed
5 solutions in the past. But for decades, they
6 have over and over again refused to correct the
7 infrastructure problems which cause it. And
8 perhaps many of the staff here today didn't even
9 work here -- work for the PUC then. I don't
10 know. They always say there isn't enough money,
11 but we all know they have a lot of money. The
12 Goliath that is the PUC is a powerful, economic
13 engine. They are used to acting with impunity
14 and they continue to ignore pleas to protect the
15 public health and safety of all of the citizens
16 of San Francisco, including those who live in the
17 Cayuca area, which is on the Bayside. This
18 wouldn't be happening in Pacific Heights, in
19 other words. So, I'm here today just to say to -
20 - I want to appreciate Jessica's report. I
21 really appreciate the staff's work and we look to
22 you for your leadership because we need some
23 leadership. So, please use your authority in any
24 way you can to require the PUC to make public
25 health and safety their first priority in all of

1 their enterprises. Thank you very much for your
2 time and for considering this request.

3 JAMES MCGRATH: Thank you. David
4 Hooper.

5 DAVID HOOPER: Good afternoon. I also
6 serve on solutionsnotsandbags. Commonly when the
7 Winter storms are coming our way, the PUC
8 accommodates the communities affected by it on
9 the west side and Engleside Terrace near Victoria
10 and Urbano at 15 th and Wawona, in particular,
11 regarding this issue today.
12 Solutionsnotsandbags. When the PUC responded to
13 the Water Board's projections, they didn't
14 respond specifically and mention public health.
15 They talk about the minimization -- it's almost
16 all stormwater, it's not fecal matter, but we're
17 supposed to measure fecal matter and figure out
18 just what the problem is. When their people
19 respond to empty out the basements and the ground
20 floors of the homes affected, they are all in
21 hazmat. They have a projection to protect the
22 people who work for them through contractors, but
23 not the homeowners. We're told that we have to
24 have a dollar do more than one thing and if the
25 one thing is protecting these homes, then it

1 isn't going to get done. I -- I can't describe
2 how people can enter a -- having worked for the
3 City myself and retired from them and tried to do
4 my job responsibly, I can't begin to understand
5 the conflicts for people who have to represent
6 the City to you on this basis. It's on the basis
7 of exceptionalism. We are the exception. All of
8 the other cities that have been representing
9 themselves here around the Bay area, especially
10 on the Bay and on the coast, all know they have
11 to work together, but we have an agency that
12 decides that we're going to decide whether or not
13 we report to you. There's no data, there's no
14 accountability and you're told that there is no
15 legal basis for your requiring them to respond
16 and report. This is a dismal situation. It's my
17 city, it's everybody else's city and yet there's
18 no response. Now, what the PUC, Harlem Kelly and
19 Stephanie Johnson, get up there and they
20 acknowledge, yes, it is fecal matter that's
21 entered their homes. They have to tear off all
22 of the sheetrock on the ground floor. The
23 tenants of ground floors have to go. We have to
24 reach an agreement once somebody has to go to the
25 trouble of filing lawsuits and we poo-poo it, but

1 it doesn't become a matter for examination unless
2 there's reporting, unless there's an
3 acknowledgment, unless there's data. So yes,
4 when it comes up into the ground and then it goes
5 into the ground again. My gosh, we have
6 underground creeks still in San Francisco that
7 enter down and those creeks include this water as
8 well. Just because most of it goes back into the
9 sewer system doesn't mean it all goes back into
10 the sewer system. Thank you.

11 JAMES MCGRATH: And last, we have Becky
12 Mitchell. And Becky if you would add your
13 observations of exactly how combined sewer
14 overflow policy was incorporated into the Clean
15 Water Act. I started at EPA before this, but I
16 don't remember that provision of the Clean Water
17 Act that well, so, if you could help me on that.

18 BECKY MITCHELL: Yeah. It's confusing
19 and I might look to Marnie to help me out legally
20 for that. But, good afternoon. My name is Becky
21 Mitchell and I work in the NPDS Permit Section at
22 EPA Region 9 and I'm joined by my supervisor,
23 Elizabeth Sublott and I took the oath this
24 morning. So, to answer your question
25 specifically, I believe in 2000, the Clean Water

1 Act was amended to incorporate the CSO Control
2 Policy, which was drafted in 1994. I'm looking
3 at Marnie.

4 MARNIE: Yes.

5 BECKY MITCHELL: Okay, thank you. So,
6 I'd like to thank the Board staff for their
7 technical assistance provided during the
8 reissuance process and also thank the Board for
9 providing time today for EPA to make a few
10 comments. As explained earlier today, EPA is
11 here because the permit would authorize
12 discharges to federal and state waters.
13 Therefore, the permit is jointly issued by the
14 Board and EPA. EPA has worked closely with your
15 staff during permit development and have
16 responded jointly to all public comments. EPA
17 and the Regional Board Staff also have worked
18 closely with the City and County of San Francisco
19 during the permit reissuance process. For
20 example, since last October, EPA and the Regional
21 Water Board Staff have met nine times with the
22 City. This substantial engagement is reflective
23 of the complexity of the combined sewer system
24 and resulted in revisions to permit requirements
25 that reflect the site-specific nature of the

1 City's combined sewer system. So, I'm here today
2 to express EPA's support for the revised
3 tentative Order as currently drafted. We
4 specifically support the long-term control plan
5 requirements and the receiving water limitation
6 that requires that the discharge shall not cause
7 or contribute to a violation of any applicable
8 water quality standard. We explain in the
9 response to comments that the receiving water
10 limitation is frequently used in NPDS permits for
11 publicly owned treatment works issued by this
12 Regional Board as well as for other combined
13 sewer system NPDS permits, including the City of
14 Sacramento. The revised Order contains the
15 rationale for both of these requirements,
16 including the need to reflect monitoring,
17 continued consideration of sensitive areas at
18 public beaches and compliance with the applicable
19 water quality standards. This concludes my
20 remarks and thank you for your time.

21 JAMES MCGRATH: Thank you. With that,
22 we're going to break for our closed session,
23 which is going to be upstairs. We will not be
24 back in this room before 1:30 at the earliest, so
25 those of you who are hungry can count on that. I

1 won't guarantee we'll be back here at 1:30.

2 WOMAN: Chair McGrath, so we need to
3 specify what we're going into closed session for.

4 JAMES MCGRATH: And you're going to
5 help me with that, aren't you?

6 WOMAN: So, we're going into closed
7 session for personnel and also to discuss the
8 Sweeney vs. Water Board litigation, as well as
9 the Santa Clara Valley Water District vs. Water
10 Board litigation.

11 JAMES MCGRATH: I've had lawyers keep
12 me out of jail for a long time. Thank you.

13 JAMES MCGRATH: (indiscernible) back
14 into session?

15 WOMAN: Yes.

16 JAMES MCGRATH: Marnie, are you ready
17 for me?

18 MARNIE: I am. Hold on. Yes, I'm
19 ready.

20 JAMES MCGRATH: Okay.

21 MARNIE: So loud.

22 JAMES MCGRATH: And Michael and crew is
23 here. Michael and Amy and the others. So, we
24 have had legal issues raised and I want to make
25 sure that the Board understands why we've heard

1 from the City, we want to understand and clarify.
2 So, I've got two questions for you: the first one
3 is, do we have, in your view, authority to
4 regulate water that causes nuisance or public
5 health problems, even if that material goes back
6 into the combined sewer system and does not
7 overflow into waters of the State?

8 MARNIE: I think you would be surprised
9 if I said no. So, yes, I do -- the Regional
10 Board does have authority to regulate those
11 discharges that go into the street. So, I'm
12 sorry -- anyway, so, the permit -- the permit
13 requires monitoring and reporting of those
14 discharges and part of the reason it requires
15 monitoring of those discharges is because it's
16 not clear ex ante whether those discharges go
17 into waters of the U.S. or waters of the State.
18 The reasons why monitoring and reporting is
19 required is to help with implementation of the
20 nine minimum controls to ensure that San
21 Francisco is properly operating and maintaining
22 its system, that their pollution prevention
23 programs are operating properly and in addition
24 to that, capacity related problems are not
25 treated separately or distinctly under the Clean

1 Water Act or under (indiscernible).

2 JAMES MCGRATH: Now, the authority does
3 not necessarily prescribe either a specific
4 solution or any solution at all, but it's the
5 authority. The second -- the second legal issue
6 that has been raised is whether or not the
7 Board's authority is in some way constrained by
8 the agreement to -- which is quite a while in the
9 past -- to treat the few combined sewer systems
10 in a manner that was different than conventional,
11 secondary treatment and that was eventually
12 incorporated into the Clean Water Act. And while
13 I certainly think that has equity implications, I
14 want to know if, in your view, that restricts the
15 Board's authority to require things like the nine
16 measures.

17 MARNIE: So, the CSO -- why does --
18 what's happening?

19 MAN: They're back there messing with
20 the sound. Try that mic next to you.

21 MARNIE: Okay. So, the -- no.

22 MAN: Mic's not working?

23 MARNIE: Mmm mmm.

24 MAN: Check one -- yeah.

25 (indiscernible)

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MARNIE: Testing.

MAN: Is this one working? No.

JAMES MCGRATH: I got -- This one's not working either.

MAN: Testing one, two. Check one, two. Okay.

JAMES MCGRATH: Down it goes.

DR. NEWSHA AJAMI: Now the screen is working. Mic is not working. I think they turned down the cooler, that's why.

JAMES MCGRATH: When we turned up the heat, it killed the electricity for the microphones.

DR. NEWSHA AJAMI: Exactly. There we go. Perfect.

JAMES MCGRATH: Oh, they're back. Are you okay now?

MARNIE: Yes. Okay. Okay, like this? All right. Okay. So, the CSO policy as well as the guidance contemplate updates to the long-term control plans and other municipalities, including Sacramento, have updated their long-term control plans to reflect, you know, changes in the climate and changes in the population density and that sort of thing, so I don't think it's that

1 unusual for long-term control plans to be updated
2 and it's certainly contemplated by the law.

3 JAMES MCGRATH: Thank you. So, I
4 wanted to make sure that we understood that the
5 viewpoint of the City as to our legal authority
6 is not shared by our own attorneys and we can
7 pick which we want to listen to. With that, I'll
8 return it to the Board for their comments,
9 questions and preparing for action. Steve's
10 going to pass.

11 DR. NEWSHA AJAMI: Me too. I just want
12 to say I appreciate the legal explanation that
13 Marnie provided and certainly valuable and
14 informative in the decision-making process, I
15 guess.

16 JAMES MCGRATH: Jayne? I'm not. And
17 so -- I'm probably the only Board member and
18 maybe the only person in the room that's been on
19 the Lincoln overflow structure when it's been
20 running. I took my wife out to look at how nasty
21 things get in a storm and we stood up on top -- I
22 know how to show a girl a good time, I've got to
23 tell you.

24 DR. NEWSHA AJAMI: Was it a date?

25 JAMES MCGRATH: So, I've been there and

1 indeed no-one was in the water or on the beach.
2 There wasn't much beach, it was pretty hairy out
3 there. I've been around this particular issue
4 since my time at EPA many, many years ago and
5 indeed there are -- and I think this is important
6 to recognize when we grapple with the equity
7 issues. There are important benefits that we
8 know now that we didn't understand when we were
9 grappling with the combined sewer system. That
10 in fact, if you look at the total amount of
11 pollutants by mass emissions discharged into our
12 waters, there are benefits in what they treat for
13 freshwater -- for stormwater -- that are
14 significant, and I think are weighed in the
15 equity. And I'll also invoke a personal
16 relationship, I remember beginning to work with
17 the Port of Oakland when Michael Carlin was here
18 and running in any number of problems that had to
19 clean up and my experience was with the Board
20 under Michael's guidance, at the time, was any
21 time the Port of Oakland proposed something to
22 deal with a discharge or a problem that we had
23 that we felt was responsible, we were treated
24 fairly by the Regional Board and reasonably. And
25 I would assure that attitude still exists. It

1 wasn't just you, Michael. So, I think it is
2 important to recognize that we do recognize the
3 equity benefits of that system. On the other
4 hand, that doesn't mean the status quo can extend
5 forever no matter what and that you don't look.
6 I don't think -- I mean, I heard, and I
7 appreciated Amy's comments. I don't see this as
8 prescriptive in solution and I wouldn't support
9 it if it were. I think it is -- it does require
10 that you look and looking at a problem, including
11 flooding, doesn't automatically get us to, this
12 must be fixed -- this must be fixed under -- at a
13 certain period of time. We don't know what it
14 would cost. I think it is in your own advantage
15 to update the long-term look. I think you have
16 capabilities in terms of what you know about
17 monitoring that you can tell us. If in fact the
18 case can be made compelling based on monitoring
19 data, which is robust, that beneficial uses are
20 met with the discharges as the way they are, the
21 fact that we have authority over that doesn't
22 matter. The question is how good the case is and
23 whether the monitoring is sufficient. So, you
24 will take it where you will take it. I
25 understand that. I think it's important that you

1 hear that we understand the equity involved in
2 the investment and we're not talking about
3 separating the sewers at large, but there may be
4 some circumstances where we might be talking
5 about improvements and those discussions are
6 ongoing. I don't think our staff dictates and I
7 think just, as when Michael was around, the
8 Regional Board Staff had some well-articulated
9 arguments. So, that's my comment. I'm going to
10 support the staff recommendation as it is and I
11 want to make it clear that the fact that we have
12 authority does not mean that it requires, at this
13 stage, anything in particular, other than the
14 completion of the studies. So, can we have a
15 staff recommendation? And any further comments
16 that you would like to make?

17 WOMAN: We had a request for
18 (indiscernible).

19 MAN: Can you come to the microphone
20 please?

21 MAN2: Yeah, Bill do you have that?

22 DR. NEWSHA AJAMI: E-coli.

23 (Crosstalk)

24 JAMES MCGRATH: Sure.

25 DR. NEWSHA AJAMI: I think she asked

1 for e-coli because they --

2 AMY CHASTAIN: Yeah, that was it.

3 (Crosstalk)

4 JAMES MCGRATH: We'll take care of
5 that.

6 MAN: So, Bill Johnson has a
7 recommendation for --

8 BILL JOHNSON: Sure. So, thank you
9 Amy. We haven't forgotten you. So, in addition
10 to the revised tentative Order you have in front
11 of you, and of course the supplemental and the
12 various changes that are listed in there, I can
13 propose a few other changes to add footnotes
14 related to fecal coliform. So, to be specific
15 and I'll just read this for the sake of the
16 record. I'm talking about page E-16, Table E-11,
17 where we would add a footnote to the parameter of
18 fecal coliform. It would be footnote #3 and then
19 at the bottom of that table, adding a footnote 3
20 as: "The discharger shall begin monitoring fecal
21 coliform on October 1, 2020." That essentially
22 postpones the need to do the fecal coliform
23 monitoring for this wet season and will have it
24 in place for the next wet season. That is not
25 the only place the fecal coliform comes up. It

1 is also on pages E-16 and E-17 in Table E-12.
2 So, there as well, under the parameter of fecal
3 coliform, we would add a new footnote 4 and then
4 under Standard Observations, that footnote 4
5 would be turned into footnote 5 and then the new
6 footnote 4 that would be added to the footnotes
7 on that Table would read exactly the same: "The
8 discharger shall begin monitoring fecal coliform
9 on October 1, 2020."

10 JAMES MCGRATH: And I guess I have two
11 questions to that: one of you with the
12 enterococci, that's a sufficient interim test to
13 be able to distinguish between human and other
14 sources of e-coli, correct?

15 BILL JOHNSON: Yes.

16 JAMES MCGRATH: And to Amy, is that
17 sufficient time to get your lab up to speed?

18 AMY CHASTAIN: It will be.

19 JAMES MCGRATH: It will be. There are
20 advantages to having a discharger with a good
21 lab, so I appreciate that. Any other comments or
22 changes you want to make, Bill? Michael?

23 BILL JOHNSON: No.

24 MICHAEL MONTGOMERY: So, with that
25 change we recommend that the Board adopt the

1 reissued permit.

2 JAMES MCGRATH: Can I have a Motion?

3 DR. NEWSHA AJAMI: I'll move.

4 JAYNE BATTEY: Second.

5 JAMES MCGRATH: Any further discussion?

6 DR. NEWSHA AJAMI: Can I -- so, as a
7 resident of the City of San Francisco
8 (indiscernible) I want to say, I really
9 appreciate all the work that you guys are doing
10 to deal with the different storms and flood
11 issues and everything. It's not easy to run a
12 water and wastewater system in a very dense area,
13 so there is definitely appreciation for that.
14 And I want you to realize that everything that
15 you are doing is just forward looking and it's
16 just to help everybody who has been
17 (indiscernible) there to be able to see what's
18 coming in the next 20, 30, 40, 50 years. And I
19 know that's how you guys also do capital planning
20 and look ahead and I really want to make sure
21 that, obviously, the public health is protected
22 and also, our City can thrive and as we, sort of,
23 deal with all these issues that are related to
24 climate change. And I'm not going to be
25 surprised to see more bigger storms and larger

1 and more intense storm events in the years to
2 come and it's really important for all the people
3 in different parts of the city to have access to
4 the -- to, you know, proper stormwater management
5 and wastewater system, regardless of which part
6 of the city they live in and what kind of
7 gradients they're building and their houses are
8 on. So, thank you. I really appreciate you guys
9 all coming, giving -- and for your presentation
10 and I also want to acknowledge the residents who
11 took time and came and talked because, you know,
12 we always love to hear from the constituents in
13 any ways we can. Thank you.

14 JAMES MCGRATH: Can we call the roll?

15 CECILIA OGBU: I just wanted to say one
16 thing, sorry.

17 JAMES MCGRATH: Oh, I'm sorry.

18 CECILIA OGBU: This was just -- I
19 realized that we've been talking about all these
20 areas of disagreement, but I just wanted to note
21 that I was -- to thank you for the presentation
22 and everything and also, just note that I was
23 really glad to see the Westside recycled water
24 project and I was really happy to see that in
25 this permit and I don't think anyone's mentioned

1 that and so, I just wanted to bring that up
2 because that's great. So, thank you.

3 JAMES MCGRATH: Now you can call the
4 roll.

5 WOMAN: I guess I say Chair McGrath

6 JAMES MCGRATH: Yes.

7 WOMAN: Vice-Chair Gaddy.

8 VICE-CHAIR GADDY: Yes.

9 WOMAN: Board member Kissenger. Sorry.
10 Board member Ajami.

11 DR. NEWSHA AJAMI: Yes.

12 WOMAN: Board member Lufkowitz.

13 BOARD MEMBER LUFKOWITZ: Aye.

14 WOMAN: Board member Ogbu.

15 CECILIA OGBU: Aye.

16 JAMES MCGRATH: So, ordered. That's
17 kind of fun to say. I think we can adjourn.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

<%12151,Signature%>

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Date: September 18, 2019

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[tell - uncertainty]

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