BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re: City and County of San Francisco Oceanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled Water Plant NPDES Permit No. CA0037861	)	Appeal No. NPDES 20-01

REPLY IN SUPPORT OF SAN FRANCISCO'S SUPPLEMENT TO PETITION FOR REVIEW

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INTRODUCTION

Region 9's Response (Dkt. No. 23) conflicts with a record that unambiguously signaled that EPA and the San Francisco Bay Regional Water Quality Control Board (Regional Board) issued a single, unitary permit for San Francisco's Oceanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled Water Plant (collectively, the Westside Facilities). The Region asks the Board to ignore that the record provided no notice that the two agencies planned to issue separate federal and state permits that would be consolidated. EPA also raises novel arguments—never once made in the administrative record—and makes inconsistent characterizations of the Permit that only underscore the errors highlighted in the Supplement to Petition.

The Response's contentions that the Region properly consolidated separate federal and state permits cannot be squared with EPA's obligations to explain *in the record and prior to issuance* its decision to consolidate and how the putative state and federal permits would differ. The availability of separate state and federal appeals did not, as the Region claims, apprise the public that EPA and the Regional Board planned to issue separate permits. The record's consistent description of a single permit make clear that any reference to different appeal processes only provided notice that the Region and Regional Board each made a decision on a single Permit.

The Response's argument that all of the terms in NPDES Permit No. CA0037681 (the Permit)—even those governing discharges into near-shore waters—should be part of a federally-issued permit further shows that the record provides no support for the Region's post-issuance claim that two permits were issued. The Region identifies no instances during the permitting process when it explained why it has authority to issue permit terms applicable to California-

regulated combined sewer discharge outfalls (CSDs) or a generic receiving water limitation that relies entirely on state law.

The Region could summon no such support in the record because the Two Separate Permits Theory is a fiction formulated by EPA for the purposes of this appeal. As a last resort, the Response makes a half-hearted attempt to claim that its failure to apprise San Francisco or the public of the issuance of separate permits is harmless error. This gambit ignores the injuries—deprivation of the public's ability to comment on the issuance of two separate permits—that the Region has inflicted and underscores the need for the Board to grant review.

SAN FRANCISCO'S REPLY

I. San Francisco had no notice of the issues raised in the Supplement to Petition prior to the comment period's closure.

The availability of separate federal and state appeals processes does not shield from review the Region's failure to even hint in the record at the issuance of two separate permits. *See* Reg. 9 Resp. at 6-7. Each issue raised in San Francisco's Supplement arises solely from the post-issuance revelation that the Oceanside Permit is two distinct permits. That revelation stands contrary to the Region's and the Regional Board's consistent statements in the record that they were issuing a single, unitary permit. The record's consistency with respect to the issuance of a single permit means that the issues that San Francisco now raises were "not reasonably ascertainable" prior to and during the public comment period, such that the Board may and should grant review based on this issues raised in the Supplement. Dkt. No. 16, June 8, 2020 Order at 6.

The Region cannot evade review based on the record's references to the ability to separately appeal the state and federal permitting *decisions*. The Response contends that the Board should not consider any issue raised in the Supplement solely because the record noted

that EPA and the Regional Board have "independent authority for the Oceanside Permit and that San Francisco could independently challenge each agency's separate permit *decisions*." Reg. 9 Resp. at 6 (emphasis added). These references, however, only stated the obvious—that EPA and the Regional Board each made a decision that needed to be challenged in the appropriate state or federal forum.[1] The fact that each agency made a decision, however, does not dictate whether the agencies made appealable decisions on one permit or two. They could have each decided to approve either (a) two separate permits or (b) a single, joint permit.[2]

The record unambiguously communicated that the Region and Regional Board chose this latter option—approval of a single, unitary permit. The Region does not contest that the record and the Permit itself, as described the Supplement, refer uniformly to the issuance of a single permit.[3] *See* Suppl. Pet. at 9-13; *see also* Dkt. No. 14, May 11, 2020 Order at 11 n.10 ("Neither the Permit nor the Fact Sheet describe two permits being issued; … all descriptions in these two documents appear as though one permit is being jointly authorized."). By referring exclusively to a single permit, the record provided no notice to San Francisco of the array of issues raised in the Supplement—consolidation of two permits, conflicting due dates, the potential for different state and federal terms, and different enforcement consequences that could flow from these

[1] Indeed, San Francisco has exercised its right to challenge the Regional Board's decision by pursuing administrative and judicial review under California law, a fact that belies EPA's claim that San Francisco is attempting "to have the State Permit invalidated by the EAB." *Compare* Reg. 9 Resp. at 16, *with* AR No. 140, State Water Resources Control Board Petition for Review, *and* AR No. 144, 1st Am. Pet. for Writ of Admin. Mandate & Compl. for Decl. Relief.

[2] The Region itself appears to acknowledge that the existence of two permitting decisions does not necessarily mean that separate permits were issued; its response brief refers to "each agency's separate permit decisions" on "the Oceanside Permit [singular]." Reg. 9 Resp. at 6.

[3] The Region even admits that the pre-issuance record consistently refers to the Permit as a unitary authorization. *See* Reg. 9 Resp. at 8 ("it was not necessary to refer to the Federal and State Permits separately *until San Francisco challenged* the RWQCB's decision on the State Permit with the State Water Board and Region 9's decision on the Federal Permit with the EAB." (emphasis added)). The Region thus appears to concede that its conclusion that two separate permits were issued rests on an erroneous finding of fact. Suppl. Pet. at 8-14.

different terms. Due to this lack of notice, the Board possesses authority to grant review based on the errors raised in the Supplement.

II. The Region's failure to provide any pre-issuance indication of consolidation warrants remand.

The Region attempts to save its consolidation of two permits—a concept it never raised until ten months after the close of the public comment period—by misconstruing its own authority.[4] The Region inaccurately disclaims that consolidation is a discretionary act that it must explain in the record, and instead asserts consolidation happened by "operation of law." Reg. 9 Resp. at 4, 7-8. This audacious position enjoys no support in Part 124 and the Board's own decisions, and it cannot cure the Region's failure to provide adequate notice to San Francisco and to the public.

A. Basic principles of administrative law required the Region to explain its decision to consolidate the permits.

The Region attempts to insulate from review its after-the-fact revelation that it "consolidated" two permits by claiming that consolidation occurred automatically. Region 9 relies on this proposition to argue that San Francisco could have inferred that the Region planned for two, consolidated permits and that discussion of consolidation in the record would have served no purpose. Reg. 9 Resp. at 7-8. Consolidation, however, is not automatic.

40 C.F.R. § 124.4 makes clear that consolidation two or more permits is a discretionary act, not one that EPA is obliged to take or that happens automatically. San Francisco does not contest that, pursuant to 40 C.F.R. § 124.4(c)(2), "the Regional Administrator and the State

[4] The Region did not make the claim that two permits had been consolidated until March 16, 2020, when it filed its Response to Motion to Stay Contested Permit Conditions Pending Appeal or, in the Alterative, Motion to Remand Notice of Stayed Contested Permit Conditions, and Motion for Leave to Amend Petition for Review. *See* Dkt. No. 8 at 1, 3, 6-8, 10.

Director(s) *may* agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State." (emphasis added).[5] The key word in this provision is "may," which necessarily means that any decision to consolidate is discretionary. *See, e.g., Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1401 (D.C. Cir. 1995) ("When a statute uses a permissive term such as "may" rather than a mandatory term such as "shall," this choice of language suggests that Congress intends to confer some discretion on the agency ….").

As with any other discretionary act, basic principles of administrative law demanded that the Region explain its decision to consolidate. *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 397 (EAB 1997) ("[a]cts of discretion must be adequately explained and justified"); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) ("[w]e have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner"). Remand is necessary because the Region shirked this fundamental obligation by making no mention of consolidation in the record, and never even addressing consolidation until this appeal.[6]

B. The Region violated Part 124 by failing to address consolidation on the record.

In addition to violating basic norms in administrative law, the Region's failure to address consolidation during the permitting process violated 40 C.F.R. § 124.10(d)(1)(x) and § 124.8. 40 C.F.R. § 124.10(d)(1)(x) requires that all notices contain "any additional information considered necessary or proper." Despite the Region's mischaracterizations, the claim that the Region was

[5] *See also* 40 C.F.R. § 124.4(a)(1) ("processing of two or more applications for those permits *may* be consolidated" (emphasis added).

[6] Furthermore, if there is a separate State permit, as the Region claims, the procedures outlined in the *NPDES Memorandum of Agreement between the United States Environmental Protection Agency and the California State Water Resources Control Board* ("MOA") should have been followed. *See* Suppl. at 27-28. The Region does not dispute that it failed to adhere to the procedures in the MOA, which on its own provides a basis for remand.

issuing two consolidated permits is necessary and proper information that the Region was required to notice in the permit process, along with which terms belong in each of the respective permits and the legal basis for that determination. *See* Suppl. Pet. at 21-23.

Likewise, 40 C.F.R. § 124.8 requires that the Fact Sheet accompanying the draft permit "briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit," and include "a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits)." 40 C.F.R. § 124.8(a), (b)(4). Again, if two consolidated permits had been issued as EPA now claims, the Region was required to provide notice of this in the Fact Sheet—which it did not—and explain its legal basis for doing so. Taken together, the Region's erroneous, post hoc claim that the issuance of two separate but consolidated permits occurred by operation of law, does not absolve the Region from its responsibility to indicate in the record that there were two permits, that they were distinct, and that they were being consolidated.

C. The Region failed to address San Francisco's arguments regarding different permit terms and enforcement.

The Region's Response focuses at length on what it imagines to be San Francisco's attempt to re-litigate aspects of the Board's May 11, 2020 Order. Reg. 9 Resp. at 9-10. The Region, however, fails to rebut San Francisco's argument that EPA failed completely to discuss in the record the issuance of two different permits containing different terms that carry different enforcement consequences. In particular, the Region does not contest that the versions of the Permit signed by each of the agencies contain different effective dates, or offer clarity on this point. Instead, the Region recommends that if "San Francisco is concerned about having different effective dates pursuant to the Federal and State Permits, San Francisco may submit

deliverables to EPA early at the same time they are submitted to the RWQCB." Reg. 9 Resp. at 5, 11. Inherent in this statement is an admission that the permit provided no notice with respect to the deadlines, and these differing requirements are not discussed on the record.[7]

The imposition of different deadlines (or the early submission requirement that the Region suggests in the Response) is "additional information [] necessary or proper" that needed to be disclosed during the permitting process, and explained in the Fact Sheet. 40 C.F.R. §§ 124.10(d)(1)(x), 124.8(a), (b)(1). At a minimum, the permit should differentiate between what is a federal requirement and what is a state requirement, so that San Francisco can ascertain when submissions are due and to whom they must be submitted. San Francisco was entitled to notice of what the applicable deadlines are, on the record. The Region cannot, as it has tried to do here, cure this defect by suggesting an alternative means of compliance during this appeal.

The Region also misconstrues San Francisco's argument by asserting that San Francisco has requested the Board to rule on potential future enforcement actions. Reg. 9 Resp. at 17-18. San Francisco has made no such request. Instead, San Francisco requests that the Board recognize that the lack of clarity about state and federal permit terms makes San Francisco susceptible to enforcement actions in unusual ways that it could not have anticipated based on the pre-issuance record.[8] *See* Suppl. Pet. at 11, 31. Therefore, the Board should remand the

[7] This statement also contradicts the Region's assertion, elsewhere in its Response, that the putative state and federal permits "used the same terms to avoid inconsistency." Reg. 9 Resp. at 10; *id.* at 19 (". . . the permit terms were the same to avoid conflicting requirements."). This contradiction in the Region's positions and characterization of the record is, in and of itself, a basis for remand. *See In re Chukchansi Gold Resort*, 14 E.A.D. 260, 280 (EAB 2009) (inconsistent or conflicting explanations typically warrant "remand[] for further clarity."); Suppl. Pet at 13-14.

[8] San Francisco similarly raised how the ambiguity over which terms make up the putative state and federal permits constitutes a violation of its constitutional right to fair notice of its compliance obligations. Suppl. Pet. at 28-29. The Region makes no attempt to show how this ambiguity does not harm San Francisco's rights, opting instead to highlight San Francisco's opportunity to review and comment on the deficient record below. Reg. 9. Resp. at 12. That San Francisco had these opportunities does not cure the lack of fair notice provided to San Francisco with respect to which terms belong in each of the two alleged permits, nor does it cure the Region's

Permit to require that the Region develop a proper record to support consolidation, which includes proper notice of the compliance deadlines with which San Francisco must comply.

III. The Record does not support the Region's attempt to federalize all of the contested permit conditions.

A. Neither the record nor the CWA support the Region's position.

The Region's attempt to include *all* permit terms—even those that regulate near-shore CSDs—in a "federal-only" permit relies on a flawed theory created solely for the purpose of responding to the Supplement. Until filing its Response, the Region never once relied on the Westside Facilities' "interrelated nature" or CWA § 402(q)'s command to implement the 1994 Combined Sewer Overflow Control Policy (the Policy) to justify issuing *federal* permit terms covering CSDs. The Region's reading of Section 402(q)—as a command that EPA must exercise authority over all of the Westside Facilities—also improperly ignores the Regional Board's concurrent obligations under the Act to implement the Policy. *See generally* 33 U.S.C. § 1342(b); 40 C.F.R. part 123. The Region's newly-articulated defense compounds the legal errors that already provided a basis for review, Suppl. Pet. at 16-20, and provides another ground for the Board to remand the Permit. *See In re Amoco Oil Co.*, 4 E.A.D. 954, 964 (EAB 1993) (remand necessary when rationale articulated for the first time on appeal).

1. The Region never relied on the CSO Control Policy to assert jurisdiction over all of the Westside Facilities.

The record contains nothing that supports the Region's after-the-fact theory that the Westside Facilities' characteristics and CWA § 402(q) justify the assertion of federal permitting authority over near-shore discharges. Instead, the Region creates this position out of whole cloth, making a series of assertions about the need to "evaluat[e] San Francisco's entire

failure to provide San Francisco with notice of the existence of separate permits that potentially contained different requirements.

combined system" and issue permitting terms covering all of the Westside Facilities. Reg. 9 Resp. at 15-16. The Region makes this argument without citing anything in the Fact Sheet, Response to Comments, or some other portion of the record that would show why the Region intended all terms governing the Westside Facilities to be part of a "federal" permit.

The Region was unable to muster such a citation because none exists. Instead, the Region's position relies solely on isolated portions of the Fact Sheet that discuss Section 402(q) and the CSO Control Policy in general terms. Not one of these citations supports—or even hints at—EPA's assertion of federal permitting authority over near-shore discharges.[9] The Region's failure to muster any support in the Fact Sheet confirms that the Board should grant review and remand the Permit.[10] *See* Suppl. Pet. at 16.

2. Section 402(q) does not require CSO-related terms to be in an EPA-issued permit.

In addition to lacking record support, the Region's contention that CWA § 402(q) extends EPA's permitting "authority to include all of the Westside Facilities" misconstrues the CWA's text and structure. Reg. 9 Resp. at 13. Section 402(q) does not require that EPA—to the exclusion of the Regional Board—"ensure the whole combined sewer system" system conforms to the CSO Policy," such that a putative federal permit would necessarily need to cover all of the

[9] *See* AR No. 17, Attachment F – Fact Sheet at F-12 to -13 (describing the CSO Control Policy and CWA § 402(q) generally without reference to federal permitting authority); *id.* at F-18 (describing the CSO Control Policy's general requirements for Long-Term Control Plans); *id.* at F-25 (describing how the Long-Term Control Plan serves as narrative WQBELs); *id.* at F-30 to -31 (describing relationship between the CSO Control Policy and the Permit's LTCP update provisions); *id.* at F-32 (mentioning the CSO Control Policy's requirement to monitor "to ascertain the effectiveness of controls and to verify compliance with water quality standards and protection of beneficial uses").

[10] The Region also erroneously claims that San Francisco "implicitly concede[d] there is both authority and record support for" provisions of the Permit addressing isolated sewer overflows. Reg. 9 Resp. at 15 n.15. San Francisco did no such thing. In support of this claim, the Region cites two statements that reflect only San Francisco's willingness to voluntarily implement reporting processes. *See* Dkt. No. 1, Pet. for Review at 39 n.7 (San Francisco is willing to "develop a workable framework for the monitoring and reporting" of a subset of sewer overflows); AR No. 10b, RTC Attachment 1 at 5 (San Francisco "is amenable … to reporting the occurrence, cause and location" of certain overflows). Neither statement addresses whether EPA—as opposed to California—has authority to regulate isolated sewer overflows.

Westside Facilities. *Id.* Instead, this provision requires that each "*permit*, order, or decree" conform to the CSO Policy. 33 U.S.C. § 1342(q)(1) (emphasis added).

The Region thus ignores how Section 402(q) imposes obligations that would not fall solely on EPA. By requiring *permits* to conform to the CSO Policy, Section 402(q) makes NPDES-authorized state agencies, like the Regional Board, responsible for implementation of the CSO Policy. *See* 33 U.S.C. § 1342(b); May 11, 2020 Order at 3-4 (California's authorized program covers discharges within 3 miles of the shore; San Francisco's CSDs discharge to near-shore waters). Thus, the Regional Board and EPA *both* possess authority to ensure that the Westside Facilities operate consistent with CSO Policy, and the Region cannot argue that Section 402(q) demands that a federally-issued permit must cover all of the Westside Facilities.[11]

EPA's claim of authority over *all* of the Westside facilities would also expand the Region's jurisdiction to discharges over which, as a matter of law, EPA has no permitting authority. Section 402(c)(1) automatically suspended EPA's authority to issue NPDES permits for the CSDs—or any other nearshore discharge—when California received NPDES program authorization. 33 U.S.C. § 1342(c)(1); 40 C.F.R. § 123.1(d)(1). Section 402(q) contains no indication that Congress intended the codification of the CSO Policy to nullify Section 402(c)'s mandatory suspension of federal permitting in authorized states. This statutory silence, read in light of the strong presumption against implied repeals,[12] lays bare the error in EPA's reliance on

[11] That the State also has its own obligations under Section 402(q) also makes the Region's position absurd. If the Westside Facilities' integrated design and Section 402(q) required California to regulate the entire combined sewer system, the Regional Board would necessarily have to issue permit terms that apply to the Deepwater Outfall because it is—as the Region repeatedly emphasizes—part of a highly-interrelated system. This outcome would be inconsistent with the limits of California's sovereignty and the record; the State has explicitly disclaimed any authority to regulate the Deepwater Outfall. AR No. 134, Oct. 29, 2019 Regional Board Letter at 4-5.

[12] *E.g.*, *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) ("repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest." (internal quotations omitted)).

Section 402(q) to support the issuance of a separate federal permit covering all of the Westside Facilities.

B. The Record provides no foundation for the Region's defense of the generic water quality limitations.

The Region's argument that the record discusses its reliance on CWA § 403(c) as the basis for the Permit's generic receiving water limitations in Attachment G, Section I.I.1 rewrites history. *See* Reg. 9 Resp. at 16 n.17. This fiction rests on one section of the Fact Sheet that discusses the Permit's compliance with Section 403(c) but makes no reference to the generic receiving water limitations.[13] Fact Sheet at F-14.

Where the Fact Sheet actually discusses the generic limitations, it makes no reference to Section 403(c) or the extent of federal permitting authority. Instead, the Region and the Board only discussed state water quality standards and the CWA generally. *Id.* at F-26. Had the Region intended to rely on 403(c) to issue generic limitations, it could and should have said so in the Fact Sheet. *See* Suppl. Pet. at 16-17; 40 C.F.R. § 124.8(b)(4). By failing to do so and inventing this new rationale on appeal, the Region's actions require a remand. *In re Amoco Oil Co.*, 4 E.A.D. at 964.

IV. The Region cannot escape Board review by downplaying the magnitude of significant procedural errors.

A. The Region's failure to allow comment on two separate permits is not harmless error.

Faced with a pre-issuance record that provided no indication of the existence of separate and distinct state and federal permits, the Region seeks to avoid the Board's review by trying to minimize the consequences of its failures. *See, e.g.*, Reg. 9 Resp. at 5 (review should be denied

[13] The response also cites the Region's Section 403(c) memorandum to the file, but this document neither refers to Attachment G, Section I.I.1 nor contains any discussion of the Region's authority to issue this term as part of any alleged "federal" permit. *See* AR No. 123.

"because San Francisco failed to articulate any consequences allegedly arising from the Region's post-petition characterization of the Oceanside Permit as two permits"). Without explicitly doing so, the Region appears to invoke the "harmless error" doctrine.

The "harmless error" doctrine bears no resemblance to the Region's simplistic 'no harm, no foul' argument. As the Board has explained, an error is harmless only "if the permit issuer … did not run afoul of the procedural regulations under 40 C.F.R. part 124 or prejudice a petitioner's ability to meaningfully participate in the permitting process." *In re Windfall Oil & Gas, Inc.*, 16 E.A.D. 769, 791 (EAB 2015). The Ninth Circuit has further found that "[f]ailure to provide notice and comment is harmless only where the agency's mistake clearly had no bearing on the procedure used or the substance of the decision reached." *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1220 (9th Cir.2004).

In this case, San Francisco has shown in great detail the harms inflicted upon it by the Region failing to adhere to Part 124's requirements and more generally providing inadequate notice or explanation of its purported decision to issue two separate permits. *See* Suppl. Pet. at 15-27. This failure prevented San Francisco from commenting on a multitude of critical issues, including which terms properly would belong in each of the alleged permits and the legal basis for that determination; the consequences of the Westside Facilities being regulated under two similar but different permits; and the novel consequences that could arise from disparate enforcement actions seeking to apply two different permits that govern a single facility. San Francisco's inability to comment on these issues are the very "consequences" that warrant the Board's review. The Region's failure to recognize how San Francisco has been harmed only underscores why the Board must intervene.

B. The two separate permits theory raises important policy considerations that lack adequate record support.

The Region's attempt to claim that the Supplement raises no important policy considerations similarly seeks to minimize the gravity of its failure to mention the existence of separate permits in the record. Instead of addressing the deficiencies in the record, the Region seeks to redirect the Board's attention to a series of issues—like the possibility that San Francisco can muddle through inconsistent due dates—that have no bearing on whether review is warranted. Reg. 9 Resp. at 18-20.

The Board's review is warranted whenever the agency abuses its discretion in embarking on important questions of policy. *See In re MHA Clean Fuels Refining*, 15 E.A.D. 648, 652 n.12 (EAB 2012) ("In reviewing … an important policy consideration, the Board applies an abuse of discretion standard …."). None of the Region's arguments provide a reason for the Board to overlook the Region's abuse of its discretion in charting a new, confusing path in how EPA should handle joint federal-state permitting actions.

As explained in the Supplement, the record's silence on the existence of two separate permits raises an array of policy issues relating to the writing, interpretation, and ultimate enforcement of two separate permits governing a single set of facilities. *See* Suppl. Pet. at 30-31. This silence—showing that Region failed to discuss or even consider these important questions—is a textbook example of an abuse of discretion that demands review. *See State Farm*, 463 U.S. at 48; *In re Ash Grove Cement Co.*, 7 E.A.D. at 397. The Board itself has already indicated as much, having found the need for "greater clarity for permittees in future permitting decisions." May 11 Order at 12 n.10. This deficient record provides the Board an ideal vehicle for instructing Region 9 and its sister Regions on how to achieve this clarity.

CONCLUSION

For the foregoing reasons, San Francisco requests that the Board grant the relief requested in the Supplemental Petition. Suppl. Pet. at 32-33.

Dated: September 11, 2020

Respectfully submitted,

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

In accordance with 40 C.F.R. § 124.19(d)(1)(iv) and the Board's June 18, 2020 order, I certify that this Reply in Support of San Francisco's Supplement to Petition for Review does not exceed 5,000 words. Based on the word count feature in Microsoft Word 2016 and not including those portions of this Brief excluded from the word limitation by 40 C.F.R. § 124.19(d)(3), this Brief contains 4,643 words.

/s/ Andrew C. Silton
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CERTIFICATE OF SERVICE

I certify that on September 11, 2020, a true copy of the foregoing Reply Brief in Support of San Francisco's Supplement to Petition for Review was filed electronically using the EAB eFiling System and served via e-mail at the following addresses:

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