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Via Email and FedEx

October 1, 2019

Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
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Dear Administrator Wheeler,

On September 26th, you sent a letter to Governor Newsom expressing concerns with California's implementation of federal environmental laws, including the Clean Water Act (CWA). We were surprised to see San Francisco featured prominently in your letter. I am concerned that you may not have been fully briefed on the history and technical aspects of our City's combined sewer system in advance of sending your letter. This letter provides important information in response to a number of inaccuracies and mischaracterizations in your letter. I hope the U.S. Environmental Protection Agency (EPA) will carefully consider this information and, if the EPA has questions, meet with my staff before taking any further action.

The City is proud of its combined sewer system, which captures and treats all of the combined sanitary and storm water flow during the Bay Area's wet winters. The combined sewer system ensures the capture of motor oil, pesticides, metals, trash and other street litter that would otherwise flow directly into San Francisco Bay and the Pacific Ocean during storms. Not only does the existing performance of our combined sewer system comply with the CWA, but San Francisco also led the way nationally in spending billions of dollars to construct its system to reduce combined sewer overflows associated with large wet weather events. EPA has affirmatively recognized San Francisco's historic investment in its system, reporting to Congress in 2001 that:

> San Francisco has been engaged in [combined sewer overflow (CSO)] planning and management since 1970, and its [Long Term Control Plan] was fully implemented in the late 1990s. The city has an ongoing sampling program to evaluate the problems caused by overflows and to assess the environmental improvements gained from the program's

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implementation since 1972. CSO volume and frequency and CSO pollutant loads have been reduced substantially since CSO controls were implemented. Beach closings were reduced, directly benefitting the city's swimming, surfing, and sailboard enthusiasts.[1]

Further, as you know, the City embarked on a multi-billion-dollar capital improvement program in 2012 that proactively re-invests in our combined sewer system. Finally, we have a long-standing, collaborative partnership with EPA. As recently as 2018, your Assistant Administrator Dave Ross lauded San Francisco for its program saying the "scale and complexity" of its water infrastructure projects represent "the determination, coordination, and creativity" of San Francisco.[2]

I trust that we can agree that any EPA actions should be made based upon facts, after a reasonable opportunity and effort to collect relevant information, and in cooperation with the State. To that end, to assist your fact gathering efforts, I provide the following initial response to the most concerning inaccuracies and mischaracterizations in your September 26 letter:

EPA Has Been Directly and Intrinsically Involved in the Permitting of San Francisco's Combined Sewer System for Decades

- EPA has been directly involved in the issuance of all relevant permits relied upon by San Francisco for decades – either as a joint issuer with California or via concurrence authority under the 1989 Memorandum of Agreement (MOA) between EPA and the California State Water Resources Control Board (State Board).

- EPA is not a mere bystander in the implementation of the Clean Water Act; *EPA* permits a significant number of San Francisco's discharges, in partnership with California. EPA has jointly issued the National Pollutant Discharge Elimination System (NPDES) permit for the Oceanside treatment plant with California for decades. This permit, developed by EPA and California, authorizes the volume and frequency of discharges that your letter now criticizes California for authorizing.

- EPA staff and the San Francisco Bay Regional Water Quality Control Board (Regional Board) worked extensively together over the course of 2019 to prepare a draft NPDES permit renewal (No. CA0037681) for the Oceanside

[1] *Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy*, U.S. EPA (EPA 833-R-01-003) (December 2001) ("2001 EPA Report to Congress").

[2] *See* EPA Recognizes Excellence and Innovation in Clean Water Infrastructure, available at https://www.epa.gov/newsreleases/epa-recognizes-excellence-and-innovation-clean-water-infrastructure-6 (last visited Oct. 1, 2019).

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treatment plant and combined sewer discharge system.[3] The Regional Board voted to adopt that permit on September 11, 2019.[4] During the State adoption hearing, an EPA representative testified that the Agency "worked closely with" California on the permit and noted "EPA's support for the [permit]."

EPA Mischaracterizes Wet Weather Discharges and Ignores the Extensive Treatment Capacity of San Francisco's Combined Sewer System

- Your letter mischaracterizes wet weather discharges by alleging that San Francisco is somehow in violation of the CWA by "routinely discharging more than one billion gallons of combined sewage and stormwater into the San Francisco Bay and the Pacific Ocean on an annual basis." The City has combined sewer overflows at 36 permitted discharge points on the perimeter of the City only during large winter storm events. The frequency is limited, depending upon the location, to between one and ten discharge events in an average year. As discussed below, all combined sewer overflows are subject to equivalent-to-primary treatment before discharge. The frequency and volume of combined sewer overflows is consistent with the expected performance of the City's combined sewer system and has been specifically authorized – for decades – by permits either issued jointly by EPA and California or by permits that have received EPA's concurrence.

- Further, your letter omits the successful and substantial volume of treatment accomplished by the City's combined sewer system. The City's three treatment facilities provide primary treatment, secondary treatment and/or disinfection prior to *any* discharge and have the capacity to treat 575 million gallons per day during wet weather. On an annual basis, the City's three treatment plants treat approximately tens of billion gallons of sanitary and storm water flow prior to discharge.[5] Only a very small percentage of the total annual discharge is discharged via combined sewer overflows, the vast majority which consists of stormwater. However, these discharges receive equivalent to primary treatment in accordance with CWA and the City's permits.

All Wet Weather Discharge from San Francisco's Combined System Receives Equivalent to Primary Treatment to Remove Debris and Floatables

- In his September 18th comments, President Trump alleged there are "tremendous things that we don't have to discuss pouring into the ocean. You

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[3] *See* https://www.epa.gov/ca/draft-npdes-permit-city-and-county-san-francisco-oceanside-facilities (last visited Oct. 1, 2019).

[4] Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit for City and County of San Francisco Oceanside Water Pollution Control Plant, Wastewater Collection System, and Westside Recycled Water Project (NPDES Permit No. CA0037681).

[5] *See* https://sfwater.org/modules/showdocument.aspx?documentid=5801.

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know there are needles, there are other things."[6] Your letter similarly alleges that "untreated sewage" and "floatables" are "being dumped into San Francisco Bay and the Pacific Ocean." This is false and is, in fact, inconsistent with decades of statements and findings by EPA. During dry weather, all flow is captured in San Francisco's collection system and is subject to secondary treatment at wastewater treatment plants prior to discharge. During wet weather, the substantial majority of flow is captured in the collection system and is similarly treated at the City's wastewater treatment plants. During certain larger storm events, the system is designed and permitted to allow combined sewer overflows at designated discharge points. However, as noted above, even combined sewer overflows receive equivalent-to-primary-treatment prior to discharge. This treatment is described in the currently operative permit for the Oceanside treatment plant, issued jointly by EPA and California, as follows: "[T]he Westside Wet Weather Facilities ... provide the equivalent of wet weather primary treatment through solids settling, skimming of floatable solids, and screening at pump stations."[7]

- In 1997, for example, after San Francisco completed construction of its combined sewer capture and treatment facilities, EPA performed an assessment and concluded that the performance of combined sewer overflows "was not markedly different from that of a primary treatment plant" and that "[b]each deposition of CSO floatables has therefore been largely eliminated."[8] All NPDES permits since 1997 – adopted or approved by EPA – confirm these findings. EPA also recognized the successful removal of debris and waste prior to discharge by San Francisco's combined system in its 2001 Report to Congress, stating "[d]uring wet weather, excess flow is stored in structures that remove sediment and floatable before the flows are transported to the plant for treatment."[9]

- Contrary to your letter, as recently as 2016, EPA worked hand-in-hand with California to approve a Statewide trash policy that was recognized as leading the nation and specifically recognized as a proven success for the San Francisco Bay region:

> [T]he State Water Resources Control Board adopted an innovative first-of-its kind statewide policy designed to keep trash out of all streams, lakes, bays, estuaries, and coastal and ocean waters. California's new Trash Control Policy includes a water quality standard for trash. EPA approved the standard in January 2016.

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[6] *See* https://www.washingtonpost.com/climate-environment/epa-tells-california-it-is-failing-to-meet-its-obligations-to-stem-water-pollution/2019/09/26/b3ffca1e-dfac-11e9-8dc8-498cabc129a0_story.html (last visited Oct. 1, 2019).

[7] NPDES No. CA0037681 at 6.

[8] Determination of Technology Based Requirements for NPDES Permit No. CA0037581: Westside Wet Weather Facilities and Southwest Ocean Outfall, City and County of San Francisco.

[9] 2001 EPA Report to Congress at 6-12.

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> The new trash policy prohibits the discharge of trash to state waters through storm drain systems, transportation corridors, and industrial and construction sites that are regulated under stormwater permits. ... This approach has already proven successful in the San Francisco Bay region[] ... The recently updated San Francisco Bay stormwater permit has a target date of 2022 for zero trash. ... California's success in reducing trash in waterways has led EPA to start a national Trash Free Waters program ...[10]

Lack of a Consent Decree for San Francisco's Combined Sewer System Is Evidence of the City's Extensive and Pro-Active Investment in Protecting the Environment

- The letter states, "San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law." The EPA adopted the CSO Control Policy – the applicable CWA legal framework for combined sewer systems – in 1994. By 1994, San Francisco was already decades into the design and construction of its combined sewer system at a cost of billions of dollars. System construction was completed in 1997.[11] EPA has described the results of San Francisco's investment as follows:

> CSO discharges have decreased in volume and frequency for ... San Francisco ... since controls were implemented. The reductions for San Francisco have ranged from 80 to 90% compared with the 1970s, prior to implementation of the program. The City has huge underground rectangular tanks or tunnels that ring the City like a moat. During rainstorms, these tanks prevent untreated shoreline discharges.[12]

Because San Francisco was decades ahead of other combined sewer systems in building infrastructure and reducing combined sewer overflows, no consent decree was necessary because the City was and is in compliance with the CWA. Not only did EPA approve the design of the combined sewer system constructed by the City – for decades – EPA found San Francisco's performance, based on that design, protects receiving waters.

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[10] EPA Progress Report 2016 (Pacific Southwest, Region 9) (EPA-909-R-16-001) at 8.

[11] *See, e.g., National Pollutant Discharge Elimination System (NPDES) Program Review Summary for Region 9* (September 23, 2008) at 50 ("As a result of early planning for CSO control, San Francisco was not required to develop a new LTCP") (available at: https://www.epa.gov/sites/production/files/2015-09/documents/pqr_region_9_report.pdf) (last visited Oct. 1, 2019).

[12] *Id.* at 35.

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EPA Has Recently Concluded that San Francisco's Combined Sewer System is Not a Significant Source of Bacteria in the Bay

- The letter alleges that San Francisco's discharges "may be contributing to the state's failure to meet water quality standards." This is not accurate. For example, the Total Maximum Daily Load and Implementation Plan for Bacteria at San Francisco Bay Beaches (Bacteria TMDL) concluded that San Francisco's discharges "are not a significant source of [bacteria]" to receiving waters.[13] In fact, the Bacteria TMDL specifically identified other sources of bacteria as impacting the Bay, *e.g.*, pets at the beaches, vessels, and wildlife.[14] EPA approved the Bacteria TMDL on Feb. 24, 2017.[15]

- In approving the Bacteria TMDL in 2017, EPA concluded that the implementation of the TMDL will "result in the attainment of the bacteria water quality objectives" in the San Francisco Bay.[16] EPA recognized that this would be accomplished without requiring any additional controls on discharges from San Francisco's combined sewer system. This EPA finding contradicts the unsubstantiated statement in your letter that San Francisco "must invest billions of dollars to modernize its sewer system to meet CWA standards."

- In your letter, you allege there are "significant public health concerns" associated with San Francisco's discharges. This is not accurate and is, in fact, directly contrary to recent EPA actions and statements. For example, as part of California's statewide review of its CWA Section 303(d) list of impaired waters, the State proposed de-listing certain receiving waters for bacteria because all available evidence demonstrated "applicable water quality standards for [bacteria] are not being exceeded."[17] The de-listing explicitly included receiving waters offshore Baker Beach in northern San Francisco. EPA approved the Regional Board's de-listing of Baker Beach, on April 6, 2018, concluding the de-listing was "due to *improved water quality*."[18]

San Francisco's Combined Sewer System Is Not Routinely Exposing Residents to Raw Sewage due to Failed Infrastructure

- The letter claims that "raw sewage" is entering homes and businesses because of San Francisco's failure "to maintain its sewer infrastructure." This is false. Operation and maintenance deficiencies do not result in routine exposure to raw

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[13] *See, e.g.*, Bacteria TMDL, Staff Report at 20, 24, 27, 47, and 49.
[14] Bacteria TMDL, Staff Report at 40; *see also* Basin Plan at 7.2.5.2.
[15] Letter from T. Torres to B. Wolfe, Approval of San Francisco Bay Beaches TMDL (Feb. 6, 2017).
[16] *Id.*
[17] Clean Water Act Sections 303(d) and 305(b) 2016 Integrated Report for the San Francisco Bay Region Staff Report.
[18] Letter from T. Torres, California 2014-2016 CWA Section 303(d) List of Impaired Waters at Enclosure 1 (April 6, 2018) (emphasis added).

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sewage across the City. As with any combined sewer system, the City has designed and constructed its system to provide a certain level of service in response to storm events. During extreme wet weather events, parts of San Francisco are susceptible to a risk of flooding. Many of these areas have flooded for a century or more. The City's combined sewer system has, in many cases, decreased the extent or likelihood of flooding in these areas but cannot eliminate it for every possible storm. The continued risk of flooding in some areas is the result of many factors, including precipitation patterns in the Bay Area, the topography of the City, and development in areas that were historically rivers, wetlands and San Francisco Bay. San Francisco is well aware of these concerns and has been actively developing and implementing a multi-pronged flood resiliency program. The foundation for long-term solutions is land use planning, utility-specific levels of service, and other factors that are in the purview of local governments, not the federal government.

San Francisco has worked closely with U.S. EPA Region 9 and the Regional Board for decades as our local partners. And, as I am sure you know, we have recently been working directly with EPA staff here in San Francisco to discuss the future of our combined sewer system. Given that effort, it was surprising to see San Francisco singled out in your letter. Nonetheless, upon request, my staff is available to meet with you or other EPA representatives to further discuss the issues raised above and provide any additional information EPA may require as it determines how it may proceed in pursuing its regulatory obligations under the CWA. And, as always, I would welcome meeting with you in Washington, DC to discuss any remaining concerns that you may have about this matter. It is my sincere hope that we can continue a collaborative relationship with EPA and work cooperatively with you to correct these misunderstandings about our City's combined sewer system.

Sincerely,

Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

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cc: Governor Gavin Newsom, State of California
Attorney General Xavier Becerra, California Office of the Attorney General
U.S. Senator Dianne Feinstein, California
U.S. Senator Kamala Harris, California
Jared Blumenfeld, California Environmental Protection Agency
Mayor London Breed, City of San Francisco
City Attorney, Dennis Herrera, San Francisco Office of the City Attorney
E. Joaquin Esquivel, Chair, California State Water Resources Control Board
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Laurel Firestone, California State Water Resources Control Board
Michael Stoker, U.S. EPA Region 9 Administrator

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