Attachment C

November 15, 2021

Mr. Michael Montgomery
Executive Officer, San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612

Dear Mr. Montgomery:

As Mayors of San José and Oakland, two of the largest cities in the United States, we represent the front line in the advocacy, legislation, and response necessary to protect the environment. We hear from our constituents and fellow leaders that environmental stewardship is a priority. Our residents demand better solutions from us, including clean parks, streets, and waterways. As local officials, we listen and answer to them. However, this is not exclusively a local problem. It is imperative that decision makers at all levels of government work together to confront the global challenges of protecting the environment. At this critical juncture in history, we request the next Municipal Regional Stormwater Permit (MRP) contain feasible and achievable mandates to enable our cities to make meaningful progress toward bettering our environment.

The Municipal Regional Stormwater Permit (MRP) Tentative Order released on September 10, 2021 (Tentative Order) contains provisions which impede, rather than facilitate, our cities' progress toward a better environment. Additionally, our cities continue to face unprecedented economic and humanitarian devastation due to the COVID-19 pandemic and are likely to face pandemic-related challenges far beyond this permit term. The size, diverse demographics, and social economic status of our communities present unique challenges that we must overcome in our respective watersheds, with limited funding. Our local governments need time to evaluate all available tools to improve water quality in an effective, efficient, and equitable way for our communities. If the Tentative Order is adopted as it is currently written the cities of San José and Oakland, in addition to other cities, will encounter significant obstacles as outlined below.

Green Stormwater Infrastructure (GSI) Requirements

The Tentative Order proposes unduly burdensome new requirements for treating stormwater runoff with GSI in the public right of way, including increasing the number of road reconstruction projects that would be considered regulated and require stormwater treatment, and establishing a numeric minimum of GSI implementation. Although roadways can be a significant

source of stormwater pollution, we are concerned about the number of planned projects that would be affected, and the additional funding that would be required to construct, operate, and maintain GSI at numerous and dispersed sites. Proposition 218 severely restricts cities' ability to raise ongoing stormwater funding that would be needed to cover the additional costs. Existing funding sources for these roadway projects, such as grants, do not include the cost of stormwater treatment and maintenance, and can have restrictions including not combining with other roadway grants that focus on safety. New roadway projects should only required to incorporate GSI features where it is technically feasible.

Based on a population-based metric for GSI implementation in the Tentative Order, Oakland would need to treat 10 acres of runoff through non-regulated GSI projects where currently there is no mandate for projects that do not meet the triggers to be considered regulated. Based on the acreage of non-regulated GSI that Oakland has been able to install to date, and the number of projects that have been built to treat that acreage, Oakland would have to identify, plan for, fund, and build between 20-32 new capital projects in the five-year permit that are not technically prohibited from incorporating GSI. Instead, we recommend a cap of 5 acres requiring treatment by non-regulated projects. This metric, which was suggested by permittees during negotiations with Water Board staff, would be much more achievable during the permit term.

Trash Load Reduction

Currently, the Tentative Order requires municipalities to achieve mandatory 100% trash load reduction in the waterways by 2025 relying heavily on limited engineered (structural) storm control methods (i.e. full trash capture devices) and phases out credits for direct discharge programs, creek and shoreline cleanups, and source control bans (i.e. single use plastic bag and polystyrene bans).

Direct Discharge Programs, Creek Cleanups and Source Controls

According to the San Francisco Bay Area Receiving Water Trash Monitoring Report, the overall countywide source of approximately 85% of trash by volume in waterways is encampments and illegal dumping. Since the Water Board's approval of the City's Direct Discharge Trash Control Program (DDTCP) in 2016, San José continues to invest substantial resources to implement the DDTCP along with multi-agency, multi-departmental, non-profit and contractor partners, allocating millions of dollars each year to address the impacts that result from people living along waterways. Similarly, through its DDTCP, Oakland prioritizes and devotes additional resources to addressing illegal dumping and discharges associated with encampments within 500-feet of a waterway. In addition to addressing trash in waterways, these programs, unlike structural trash controls, have numerous co-benefits such as addressing blight in disadvantaged communities and deterring future illegal dumping. Also, the creek cleanups and direct discharge programs offer an opportunity to educate and engage our residents in a way that can create long lasting support and stewardship for our local watersheds. On-land control methods and reliance on engineered solutions alone will not work in San José and Oakland. Volunteer-powered creek cleanups are instrumental in helping improve the health of the waterways as both cities address our unhoused community living in waterways.

Source control actions adopted in San José and Oakland address single-use products that do not break down in the environment and have significantly decreased the prevalence of these items in our storm sewer systems and waterways. San José Trash characterizations conducted before and after plastic bag and polystyrene bans, found that 69% fewer single-use bags and 73% less polystyrene from foodware were observed in the storm sewer system. These programs work. San José and Oakland continue to invest in enforcement of these programs which provide ongoing benefits that are not recognized in the Tentative Order.

The City of San José and the City of Oakland request that percent reduction credits and offsets be retained at the current levels in the next MRP. The benefits to our waterways from not only trash removal from creeks, but also increased community awareness and engagement demonstrate the need to retain these credits and offsets. Both of our cities need the Water Board's support as we continue to address the monumental challenge of providing shelter and resources to our unhoused community.

Trash Generation Area Management – Private Properties

The Tentative Order states that all private properties in Very High, High, or Moderate Trash Generating Areas that directly connected to the City's storm drain system (via pipe) will be required to implement full trash capture or equivalent controls. The City of San José has identified 1,400 parcels that would be subject to this requirement at the 10,000 square feet threshold identified in the current permit. Approximately 74% of these parcels have the lowest three median household income ranges and highest percentage of people of color according to the San José Equity Atlas. The City of Oakland has identified 606 properties that would be subject to this requirement with the 10,000 square feet threshold. Both cities will be impacted significantly if the requirement is amended as proposed to include all private parcels of any size. This will include many small businesses that have been fiscally and economically impacted by the pandemic. The cost of full trash capture device design, installation, and inspection can exceed $130,000. While our cities have not fully analyzed the current fiscal impacts in addition to the operational and equity impacts associated with implementing this provision at all private properties, we can see it will be problematic especially since the impacts of the COVID-19 pandemic are not fully understood.

The City of San José and the City of Oakland request that the Water Board refrains from amending this requirement to allow more time for consideration of the impacts and feasibility. Given the economic impacts of the COVID-19 pandemic, private property owners may not be able to bear the burden of installing full trash capture by July 1, 2025. Property owners will need more time to allow for some level of economic recovery to take place prior to implementing costly requirements. It is also important that we consider whether this type of burden on private properties in disproportionately disadvantaged communities is necessary to meet the goals of the permit.

Polychlorinated Biphenyls (PCBs) Controls

The Tentative Order proposes much more prescriptive requirements to achieve PCBs load reductions such as a requirement to broadly implement PCBs controls in old industrial areas that have not been redeveloped, regardless of whether they have elevated levels of PCBs. Previous analyses conducted by permittees show only a minor percentage (approximately 14%) of old industrial areas to have moderate or high levels of PCBs. In addition, the Tentative Order does not consider that PCBs in old industrial areas largely reside on private properties, and not within the public right of way or public properties. Implementing and enforcing programs to address PCBs in the right of ways of old industrial areas will be challenging and potentially cost prohibitive for the cities. The Tentative Order proposes that South Bay permittees address approximately 600 acres in untreated old industrial areas, with roughly half of those acres estimated to be in the City of San José. Assuming cost of approximately $213,000 per acre, it would cost an estimated $63,900,000 to implement treatment. In Alameda County, 937 acres would need to be addressed, of which Oakland would be responsible for 356 acres. Assuming the same estimated cost per acre, it would cost Oakland at least $75,828,000 to implement that level of treatment. Both cities would be responsible for an infeasible mandate and an unreasonable cost burden to treat areas that may not even have elevated levels of PCBs. Additionally, the three-month time given in the Tentative Order to develop a detailed plan and schedule for implementation that will require all treatment to happen within the five-year permit term is unrealistic and unreasonable given the magnitude of proposed acreage to be addressed.

Both cities are limited in funding and we owe it to our communities to use their dollars in targeted and cost-effective ways that result in practical and tangible impacts to water quality. Requiring significant investment in stormwater control measures in old industrial areas without allowing our cities time to identify and plan for the areas with moderate or high levels of PCBs would be financially detrimental to cities and to local businesses. In addition to our municipal budget constraints, local businesses in San José and Oakland are still experiencing economic hardship due to the COVID-19 pandemic. Impacts to industrial businesses are of particular concern because they are critical to the City of San José and City of Oakland for providing jobs that do not necessarily require a degree and. We ask for more time for our cities and Water Board staff to jointly collaborate and to identify effective and efficient ways to hone limited resources on the most critical sites that impact waterways while minimizing the impact to all businesses.

Homelessness

The Tentative Order includes a new separate provision that requires permittees to map and report homelessness activity. Homelessness is an extremely complex and challenging issue beyond the function of the MRP and solutions cannot be achieved within a short timeframe (5-year period). We recognize the intent of this provision is to address potential illicit discharges from any human activity within the waterways, but we are concerned that it adds unnecessary administrative burden and diverts limited staff resources and funding from creek cleanups and provide no benefit to our unhoused community.

We recommend keeping the Direct Discharge Trash Control Program credits and increasingly scale these credits when cities demonstrate partnership with other stakeholders to address the social and economic needs of our unhoused community while providing additional services to address water quality impacts.

Discharge Type – Emergency Discharges of Firefighting Water and Foam

Fire Departments in both San José and Oakland respond to several thousand fires throughout the year (SJFD = 3,700 fires in FY19-20, OFD = 429 fires in the month of September 2021 alone) and provide mutual aid response throughout the state of California for large scale disasters. Both agencies commit considerable resources and personnel to support the State's efforts in combating wildland fires that have been increasing in size and frequency because of climate change. In both San José and Oakland, fires can occur simultaneously and late into the night, drawing down resources and potentially impacting emergency response times. The vacancy rate at San José is 3.7%. There are significant budget impacts to these departments and expanding resources to address stormwater runoff at fire incidents will not be feasible nor practical.

The primary mission for both these departments is to protect life, property, then the environment. To protect life, the San José Fire Department response time goal to a priority emergency is 7:59 minutes. More consideration is needed for the potential consequences of these new requirements. Most importantly, the impact to firefighter's health and safety needs to be considered. Implementing discharge controls and limiting foam use during emergency fire suppression activities forces firefighters to remain in toxic environments longer which exposes them to increased levels of known carcinogens. The Fire department recommends the opportunity to collaborate with the Water Board. In addition, both agencies will help educate its members to the appropriate uses of PFOS/PFAS and recommends collecting more data to better understand the different types of PFOS/PFAS and how they are best used in a safe and effective manner.

We appreciate your consideration of the concerns we have expressed regarding the Tentative Order. Our comments are driven by our need to maximize our limited resources and prioritize actions that have the greatest impact on environment and our communities. We look forward to our continued work together with Water Board to achieve our mutual goal of improved water quality.

Sincerely,

Sam Liccardo
Mayor
City of San José

Libby Schaaf
Mayor
City of Oakland