

## RESOLUTION NO. 1764

### RESOLUTION OF THE MONTARA WATER AND SANITARY DISTRICT IDENTIFYING ACTIONS BY CITY OF HALF MOON BAY WHICH WILL CAUSE SEWER AUTHORITY MID-COASTSIDE TO FAIL TO COMPLY WITH JUDICIAL CONSENT DECREE

**WHEREAS**, the Sewer Authority Mid-Coastside (“SAM”) is a public entity established under the Joint Exercise of Powers Agreement (“Agreement”) entered into among Granada Community Services District, City of Half Moon Bay and Montara Water and Sewer District (collectively “Member Agencies”, individually “Member”), to carry out the Authority’s purpose to use the common powers of its Members to construct, maintain and operate a common publicly owned treatment works for the treatment and disposal of wastewater generated by the collection systems of the Member Agencies.

**WHEREAS**, five years ago, on or about May 7, 2018, Ecological Rights Foundation (ERF) provided Sewer Authority Mid-Coastside (SAM) with a Notice of Violations and Intent to File Suit under Section 505 of the Federal Water Pollution Control Act (“Clean Water Act”); and provided this notice to the Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of the State Water Resources Control Board (“State Water Board”); the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”); and

**WHEREAS**, ERF as a nonprofit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California’s waters, filed suit to protect our coastal environment (“Action”); and

**WHEREAS**, ERF’s 2018 lawsuit identified SAM’s operation of the wastewater sewage collection system in the City of Half Moon Bay, El Granada, Montara, Moss Beach and Princeton by the Sea to have caused at least 65 separate discharges of inadequately treated or raw sewage in the last 5 years alone. Over 557,103 gallons of sewage illegally released, the vast majority of it released into the Pacific Ocean and Half Moon Bay. The inadequacy of the wastewater sewage collection system and the serious ecological problems resulting therefrom have been known to SAM for years; and

**WHEREAS**, SAM, through its Member Agencies, agreed to resolve the Action and enter into a Consent Decree; and

**WHEREAS**, under the Consent Decree, SAM, by and through its Member Agencies, agreed to comply with the requirements of its National Pollutant Discharge Elimination System Permit and the Clean Water Act, and complete the following SAM system improvement projects on or before the deadlines set forth:

- (a) Granada Force Main. SAM shall complete the replacement of the fourth

and final original segment of the Granada Force Main, by June 30, 2020;

(b) Montara Force Main. SAM shall complete the replacement of the original Montara Force Main by June 30, 2024;

(c) Princeton Force Main. SAM shall implement the feasible recommendations of the Princeton Force Main condition assessment and the pump station feasibility study by no later than June 30, 2024; and

**WHEREAS**, SAM completed the Granada Force Main project within the required time deadline set forth in the Consent Decree, and was and is capable of adhering to the required time deadline for completing construction of the Montara Force Main project, which SAM Member Agency Montara Water and Sanitary District voted to fund as part of SAM's General Budget (FY2023-24); however, the City of Half Moon Bay consciously and deliberately delayed and obstructed this project by 1) disapproving the necessary General Budget (FY2023-24) funding, 2) insisting on the creation of an engineer's committee to prepare a Request for Proposals (RFP) instead of utilizing SAM's engineering consultant SRT, 3) attempting to expand the work into a new project requiring time-consuming CEQA review and creating an opt-out for the City, and 4) disapproving the full SRT suggested scope of work, all in an effort to circumvent the obligations of the Consent Decree; and

**WHEREAS**, Montara Water and Sanitary District is committed to protection of this community and coastside, and is cognizant of its duty to strengthen SAM's infrastructure to serve its environmental and public health protection mission and comply with the Consent Decree; and

**WHEREAS**, since 2009, the City of Half Moon Bay has continuously obstructed SAM system improvements, including repairs and maintenance of the Intertie Pipeline System (IPS), a SAM asset, the failures of which led to SSO spills and the ERF lawsuit; and

**WHEREAS**, in 2009, SAM was provided with an evaluation of the IPS condition by SRT Consultants which clearly identified the high risk of the IPS failures and resulting Sewer System Overflows (SSO) such that SAM 'must consider options for improving the IPS condition...Based on the Report analyses, the large number of high risk pipelines sections identified, and the high cost of emergency repairs and SSO fines, SAM needs to conduct activities to rehabilitate or replace the force mains.'; and

**WHEREAS**, the 2009 SRT IPS condition evaluation stated 'Sanitary Sewer Overflow (SSO) is a violation of SAM's National Pollutant Discharge Elimination System (NPDES) permit. In 1995, SAM had been fined by the Regional Water Quality Control Board (RWQCB), received a warning letter and a cease-and-desist order for its WWTP in 1996, underwent a federal investigation in 2003, and was once threatened with a \$212-million-dollar fine by the United States Environmental Protection Agency (USEPA). Any future SSOs will likely expose SAM and its member agencies to high risk of fines and litigation due to potential public health impacts.'; and

**WHEREAS**, since 2009, despite the clear need identified in the SRT evaluation, the City of Half Moon Bay has continuously and intentionally obstructed SAM system improvements to the IPS by deliberate omission or removal of agenda items, by refusal to approve budgets with necessary funding for required improvements, or through delays under guise of requests for new information, studies, or redesign; and

**WHEREAS**, as early as 2011, to fully daylight obstructive actions by the City of Half Moon Bay, the District adopted Resolution 1497 putting the City of Half Moon Bay on notice that it be held fully answerable for all adverse consequences arising from its refusal to approve the funding of essential IPS repair/replacement projects for FY2011-12, designated by SAM staff as Priority One projects due to the risk of losing a significant asset and facing high-cost emergency repairs, fines and endangering public health, welfare and safety; and

**WHEREAS**, in 2017, the City of Half Moon Bay took further obstructive action and filed a lawsuit against its SAM partners attempting to recharacterize work on the IPS so as to avoid paying its fair share under the Agreement. The City lost said suit, but has continued the fight with an appeal of the ruling. To date, this lawsuit has caused more than \$600,000 in legal fees for the District, all while preventing critical work on the IPS; and

**WHEREAS**, obstructive actions by the City of Half Moon Bay continue in 2023 as evidenced by a May 8, 2023 letter from City Manager Matthew Chidester indicating approval of the 2023/2024 SAM Budget by Half Moon Bay Board members only if funding for the Montara Force Main is removed; and

**WHEREAS**, Montara Water and Sanitary District is compelled to identify and daylight actions that prevent the protection of the Coastside and will likely cause not only significant financial, but environmental harm; and

**WHEREAS**, this Board desires to place the City of Half Moon Bay on notice that it shall be held fully answerable for all adverse consequences arising from SAM's failure to comply with the Consent Decree as well as the City's refusal to fund necessary IPS projects that benefit all Member Agencies.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE MONTARA WATER AND SANITARY DISTRICT, A PUBLIC AGENCY IN THE COUNTY OF SAN MATEO, CALIFORNIA, AS FOLLOWS:**

1. The forgoing recitals are hereby incorporated as true statements of fact, findings and conclusions of this Board.
2. The approval hereby is made and restated with reservation of all rights by this District to recover from the City of Half Moon Bay all other consequential damages from said City's failure to participate in the Consent Decree and/or fund essential IPS projects.
3. The City of Half Moon Bay is hereby notified that it shall be held fully answerable for any and all SSOs, or other adverse occurrences and the

consequences thereof arising from its failure to approve funding to comply with the Consent Decree including, without limitation, liability for personal injuries and property damage, citizen suits, civil penalties and liabilities, assessments and criminal liability.

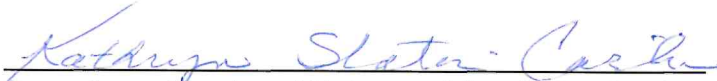
4. Authorize the Manager to distribute information related to this Resolution to the communities served by SAM.

5. The District Secretary is hereby authorized and directed to transmit a certified copy of this resolution to Sewer Authority Mid-Coastside, the Granada Sanitary District and the City of Half Moon Bay.



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President, Montara Water and Sanitary District

COUNTERSIGNED:



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Secretary, Montara Water and Sanitary District

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I HEREBY CERTIFY that the foregoing Resolution No. 1764 was duly and regularly adopted and passed by the Board of the Montara Water and Sanitary District, San Mateo County, California, at a regular meeting thereof held on the 18<sup>th</sup> day of May 2023, by the following vote:

AYES, Directors: Boyd, Dekker, Slater-Carter, Softky, & Young

NOES, Directors: None

ABSENT, Directors: None



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Secretary, Montara Water and Sanitary District