Attachment A

Settlement Agreement

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT AND MUTUAL RELEASE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2008-0100 IN THE MATTER OF C&H SUGAR COMPANY, INC CROCKETT CONTRA COSTA COUNTY

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2008-0100 (this "Agreement") is made and entered into by the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and C&H Sugar Company, Inc. ("C&H Sugar") (collectively referred to below as the "Parties") with reference to the following facts:

RECITALS:

A. On or about December 12, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2008-0100 (Attachment A). The Complaint alleged that C&H Sugar's discharge of treated wastewater, cooling water and stormwater did not meet effluent limits established in NPDES Permit No. CA 0037541 (which was incorrectly cited and the operative Permit No. is CA0005240) for the reporting period of July 1, 2005, through October 31, 2008. The Complaint proposed that C&H Sugar pay a penalty in the amount of $490,000.

B. C&H Sugar subsequently provided the Assistant Executive Officer with evidence including that the sugar refinery and Joint Treatment Plant do not share a common deepwater outfall, that a number of the alleged violations were not separate and independent discharges, that these discharges were from a complex system that made it difficult to pinpoint causes of excess BOD.

C. The Regional Water Board reviewed the evidence submitted by C&H Sugar and met with representatives of C&H Sugar to discuss the Complaint, and concluded that it was appropriate to pursue penalties pursuant to the Complaint under Water Code Section 13385.

D. Since the time the Compliant was issued, C&H Sugar has had eight additional discharges that based on monitoring and reporting are alleged to have exceeded the same permit limits. A list of these additional discharges is provided at Attachment B. The penalty action has been adjusted to include these eight additional discharges.

E. The Parties have reached this settlement for the violations alleged in the Complaint. This settlement is subject to public comment as provided below.

F. The Parties agree that full compliance with this Agreement constitutes settlement of all claims arising out of the alleged violations specified in Complaint No. R2 2008-0100 and the additional discharges identified in Attachment B.

G. The general terms of the settlement are that C&H Sugar will pay a total penalty of $490,000 as follows:

a. C&H Sugar will pay administrative civil liability of $258,500 to the State Water Resources Control Board's Cleanup and Abatement Account, which includes $27,000 for Regional Water Board staff costs.

b. In lieu of the remaining $231,500 penalty, C&H Sugar agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than $231,500 towards acquisition and restoration projects proposed by the Muir Heritage Land Trust as described in Attachment C, which includes a schedule for implementation. C&H Sugar will comply with the specific terms and conditions detailed in Attachment C, which is incorporated into this Agreement.

H. As a material condition of this Agreement, C&H Sugar represents and warrants that the SEP is not and was not previously contemplated, in whole or in part by C&H Sugar for any other purpose except to partially satisfy C&H Sugar's obligations in settling the violations alleged in Complaint No. R2-2008-0100. C&H Sugar further warrants that its contributions to the project that serves as the SEP would not be made in the absence of this enforcement action.

I. Subject to the qualifications set forth in paragraph 6 below, the Assistant Executive Officer has the authority to settle this matter in accordance with Water Code Section 13323 and Government Code Section 11415.60. C&H Sugar's representative signing this Agreement confirms that he has the authority to bind C&H Sugar to the terms of this Agreement.

NOW THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Both Parties agree to comply with the terms and conditions of this agreement.

2. The Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached as Attachment D. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment D before the Regional Water Board, the State Water Resources Control Board, or any court.

3. Paragraph 2 does not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantive way from the proposed Administrative Civil Liability Order attached as Attachment D. In that event, the Parties will have full rights to a hearing and any applicable appeals process.

4. The Assistant Executive Officer agrees that this settlement fully resolves the allegations in the Complaint and assesses civil penalties for all violations for the discharges listed in Attachment B and D, and once the Administrative Civil Liability Order in Attachment D ("Order") is approved, will not pursue any further administrative or judicial action of any kind against C&H Sugar for those discharges. However, the Regional Water Board also maintains the ability to initiate other administrative or judicial enforcement actions against C&H Sugar for violations of the Order or for future violations.

5. C&H Sugar agrees to pay $258,500 to the Cleanup and Abatement Account as an administrative civil liability payment not later than 30 days following approval by the Regional Water Board or its Executive Officer of the settlement described in this Agreement and the Order attached as Attachment D. That time period shall be extended during the time in which any review is sought by any third party under Water Code Sections 13320 or 13330. C&H Sugar agrees to undertake a SEP for not less than $231,500 and will comply with the specific terms and conditions set forth in Attachment C. The Parties agree that the SEP set forth in Attachment C complies with the State Water Resources Control Board's SEP policy.

6. In the event that any of the following occur, C&H Sugar agrees to immediately pay an administrative civil liability amount of $231,500 to the Waste Discharge Permit Fund:

   a. C&H Sugar determines that it does not wish to perform the SEP,

   b. The Executive Officer determines that the SEP is being not performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment C, or

   c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another acceptable SEP proposal is not proposed to and approved by the Regional Water Board or the Executive Officer in a reasonable time frame.

   Additionally, in the event that the SEP is completed, but expenditures were less than $231,500, C&H Sugar shall immediately pay the remaining balance to the Cleanup and Abatement Account.

7. The Parties understand that this settlement and the proposed Administrative Civil Liability Order attached as Attachment D must be noticed for a 30-day public review period. In the event that objections are raised during the public comment

period for the proposed Administrative Civil Liability Order, the Regional Water Board or the Board's Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances.

8. In the event that this Agreement does not take effect because the Executive Officer and/or the Regional Water Board does not approve the attached Administrative Civil Liabilities Order, or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing.

9. The Parties agree that in the event that the Regional Water Board does not approve a settlement of this matter, they waive any and all objections related to their attempt to settle this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors. In that event they further agree to waive any objections that are premised in whole or in part on the fact that the Regional Water Board members and their advisors were exposed to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to scheduling an evidentiary hearing on the merits of the Administrative Civil Liability Complaint.

10. The Parties intend that this Agreement reflects adequate procedures to be used for the approval of the settlement by the Parties and review by the public. In the event that objections to the procedures are raised during the public comment period for the proposed Administrative Civil Liability Order, the Parties agree to meet and confer concerning any such objections and agree to revise or adjust the procedure as necessary or advisable under the circumstances.

11. Performance of paragraph 5 (and if applicable, paragraph 6) shall effect a mutual release and discharge of the Parties and their respective assigns, agents, attorneys, employees, officers and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses interests, costs, or expenses of whatever nature, character, or descriptions that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the Complaint, or the discharges addressed in the Complaint and the list of additional discharges on Attachment B.

12. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

13. This Agreement shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.

14. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

15. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

16. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

17. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.

18. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

California Regional Water Quality Control Board
San Francisco Bay Region

By: _____
Thomas E. Mumley
Assistant Executive Officer

C&H Sugar

By: Thomas K. Merritt - Refinery Manager

Date: 7/1/09

APPROVED AS TO FORM:

By:_____

Yuri Won
Counsel for Regional Water Board Prosecution Team

By:_____

List of Attachments:

A. Complaint No. R2-2008-0100
B. Additional Discharges November 2008 to March 2009
C. Supplemental Environmental Project
D. Proposed Administrative Civil Liability Order

Attachment B

Supplemental Environmental Project

C&H SUGAR COMPANY, INC.
Tanya Akkerman
Environmental Compliance Manager

June 3, 2009

<u>VIA PDF submittal to RWQCB FTP site</u>

Executive Officer
Attn: Derek Whitworth
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Revision #2: Proposed Supplemental Environmental Project
ACL R2-2008-0100

Attention: Surveillance Division
File #2119.1006 – C&H Sugar Company, Inc.

Dear Mr. Whitworth:

Attached is the revised Proposed Supplemental Environmental Project (SEP) developed as part of the resolution of ACL R2-2008-0100. These additional revisions were requested by your office in an e-mail dated May 27, 2009.

The revised document includes the following items:

- The SEP funding will be for $231,500; and
- Third-party oversight of the SEP will be provided by the San Francisco Estuary Partnership. The oversight fee is $2,520 which will be paid to the Association of Bay Area Governments (ABAG).

If you have questions regarding the attached proposal, please contact myself or Steve Ball at (510) 787-4343.

Sincerely,

Tanya Akkerman

Tanya Akkerman
Environmental Compliance Manager

Attachment

830 Loring Ave
Crockett, CA 94525
Tel 510.787.4352
E-Fax 415.796.1061
Tanya.Akkerman@chsugar.com

PROPOSED SUPPEMENTAL ENVIRONMENTAL PROJECT
LAND ACQUISITION THROUGH MUIR HERITAGE LAND TRUST
June 1, 2009

C&H Sugar Company, Inc. proposes to undertake a Supplemental Environmental Project (SEP) in cooperation with the Muir Heritage Land Trust (MHLT) for participation in property acquisition in the Franklin Canyon area. The MHLT is seeking to acquire the property to preserve it as open space for habitat protection and for watershed environmental quality protection.

Various land acquisition and restoration projects proposed by the MHLT were listed on the Regional Water Quality Control Board's list of potential SEP's in June of 2003, and that entry remains on the Board's listing of projects at this time.

This proposal is submitted by C&H Sugar Company, Inc. (C&H) to the San Francisco Bay Regional Water Quality Control Board (RWQCB) for approval of their Executive Officer as part of the resolution of Complaint R2-2008-0100. The proposal reflects a project that has been developed in cooperation with the MHLT under the Policy on Supplemental Environmental Projects dated February 3, 2009. If approved, C&H will provide funding for MHLT for their land acquisition project. It is proposed that oversight of the project be provided by the San Francisco Estuary Partnership as described in the email from Derek Whitworth to Tanya Akkerman dated May 27, 2009.

Background

The Muir Heritage Land Trust has been acquiring and protecting important habitat and watershed lands since 1988 in the northern and central portions of Contra Costa County. The mission of the MHLT is:

> "to ensure a lasting quality of life for future generations by preserving and stewarding open space and fostering environmental awareness."

One of the immediate objectives of the MHLT is to acquire a 423 acre parcel of property in the Franklin Canyon area east of Hercules. This area is adjacent to the Fernandez Ranch property that has already been purchased by MHLT. The area includes riparian habitat in both the Rodeo Creek and Refugio Creek watersheds. Important fauna species for which this property provides appropriate habitat include the California red legged frog, the Alameda whipsnake, the western pond turtle, and the Cooper's hawk. A wide variety of other species is found in the grasslands and riparian plant communities. A map of the proposed land acquisition is attached.

The MHLT has entered into a purchase agreement by which it can acquire the Franklin Canyon property for $1,780,000. Additional costs associated with the acquisition and basic development will require $620,100 in funding. The agreement requires the purchase to be completed by late June, 2010. Approval may be required from some of the other contributors to the proposed land purchase before the MHLT can accept funding from this proposed SEP. The MHLT is initiating the process for obtaining that approval as necessary.

The MHLT is known throughout the Bay Area as a responsible and effective non-profit organization. Its contribution to the community through acquisition of land, development of visitor access, and educational programs is well known. Its success is obvious from its history of land acquisition and from the high quality of its sponsors.

The project has an environmental justice component. The West Contra Costa County area served by the proposed acquisition is traditionally underserved with parks and open space, and is the portion of the county associated with the lowest per capita income.

Proposal

C&H Sugar Company, Inc. proposes to enter into an agreement to direct $231,500 from the administrative civil liability payment associated with the resolution of Complaint No. R2-2008-0100 to the Muir Heritage Land Trust to cover a portion of the purchase and development cost for the Franklin Canyon property. The single payment to MHLT by C&H of $231,500 and the application of those funds to the Franklin Canyon property purchase will comprise the entire SEP.

It is proposed that the RWQCB suspend payment of $231,500 from the penalty until the actual purchase of the property by MHLT. If the acquisition of the land should fail to occur as planned, or if the MHLT should be unable to agree with other contributors to receive funding from this SEP, the agreements will provide for C&H to withdraw from supporting the Franklin Canyon property acquisition. At that time, the penalty funds will be submitted to the State of California Water Pollution Cleanup and Abatement Account.

The success of the project will be measured by the actual payment of the funds associated with the acquisition of the Franklin Canyon property. No other criteria for success are proposed for the project.

It is proposed that C&H will submit a check for $2520 to the Association of Bay Area Governments (ABAG) within 45 days following approval of this SEP. This funding will cover the required third-party oversight of the project. C&H has been advised that ABAG will establish an account for this funding and will make progressive payments to the San Francisco Estuary Partnership from the account according to a pre-determined schedule of payments.

The contact person for this project is:

Tanya Akkerman, Environmental Manager
C&H Sugar Company, Inc.
830 Loring Ave.
Crockett, CA, 94525
Phone 510-787-4352
tanya.akkerman@chsugar.com.

An alternative contact person is:

Steve Ball, Compliance Manager
Phone 510-787-4343
steve.ball@chsugar.com

Milestones

If the project is not withdrawn for reasons stated in this proposal, C&H will bear responsibility for the project meeting the following milestones:

- By March 5, 2010 C&H remits a check to the MHLT for deposit in a segregated account to be held until the property sale closes.
- By October 31, 2010 the MHLT has completed the close of the purchase of the Franklin Canyon property. The full $231,500 suspended liability is to be waived with certification that this milestone has been fulfilled.

Reporting

It is proposed that the following reports be submitted to the (SFEP) as the full required documentation of the project under the Policy on Supplemental Environmental Projects:

- A progress report will be provided by C&H to the SFEP quarterly during the first 20 days of March, June, September, and December of each year beginning in September 2009 and continuing until the project is completed. It should be noted that the reports will be identical up to the first milestone, scheduled for March 2010. Copies of these reports will also be submitted to the Division of Financial Assistance of the California State Resource Control Board.
- A final report will be submitted to the SFEP within 60 days of the close of purchase of the property or within 60 days of withdrawal from the project and payment to the Cleanup and Abatement Account. If the project is completed as planned, this report will declare under penalty of perjury that the project has met the criteria for success described in the Proposal section above.
- A financial report and proof of payment will be appended to the final report and certified as required. It is proposed that the RWQCB determine that a final, certified, post-project accounting of expenditures (an independent third-party audit) is unduly onerous for a project such as this that requires just a single payment and that the audit is not required because the proof of payment provides the RWQCB with other means to verify the expenditures.

Supplemental Environmental Project Qualification Criteria

SEP's must "only consist of measures that go above and beyond the otherwise applicable obligations of the discharger" (section C.1.). C&H has no legal obligation to contribute to the purchase of property by the MHLT.

The SEP must "benefit or study ground water or surface water quality or quantity, and the beneficial uses of the waters of the State" (section C.2.). This project benefits water quality and beneficial uses of waters of the State, and is consistent with the examples provided in C.2.f, g, and l. The MHLT project will remove a large parcel of land from potential development, ensuring protection of the riparian environment in two watersheds. Protection of the existing riparian areas will provide pollution protection for

the streams in the purchased area. The project also has the potential to support environmental education by providing visitor access to the acquired property. The property has extensive flora and fauna that is appropriate subject matter for environmental education.

The nexus criteria (section E.) is met by the location of the project. The discharger's plant is located in the Edwards Creek watershed, approximately two miles north of the north boundary of the proposed purchase property. The Edwards Creek watershed is small and was not directly involved in exceedences associated with the administrative civil liability. The exceedences involved the Carquinez Strait, and less extensively the east end of San Pablo Bay. The watersheds involved in the acquisition area (Rodeo Creek and Refugio Creek) also drain into the west end of the Carquinez Strait and the east end of San Pablo Bay. The benefits of this project will be easily accessible by the residents of the local watershed where the discharger's plant is located.

Conclusion

C&H Sugar Company appreciates the opportunity to submit this SEP proposal. Please feel free to contact either of the listed contacts with questions or suggestions.