

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT
AND MUTUAL RELEASE
FOR
COMPLAINT NO. R2-2009-0027

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOW
MT. VIEW SANITARY DISTRICT
CONTRA COSTA COUNTY

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2009-0027 (this "Agreement") is made and entered into by the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and the Mt. View Sanitary District (the "District") (collectively referred to as the "Parties") with reference to the following facts:

RECITALS:

- A. On March 30, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2009-0027 (Attachment A). The Complaint alleged that there was a sanitary sewer overflow (SSO) of 586,000 gallons from the District's collection system that occurred between January 4, 2009 and January 5, 2009. The spill violated Regional Water Board Order No. R2-2006-0063 (NPDES Permit No. CA0037770). The Complaint proposed that the District pay a penalty in the amount of \$498,000.
- B. The District subsequently provided the Assistant Executive Officer with evidence that the January 4-5, 2009, 586,000 gallons SSO did not result in irrecoverable damages to the fish community in Vine Hill Creek. Although the SSO resulted in some fish mortality, the evidence submitted indicates that the fish community in Vine Hill Creek is up to 74% recovered and is in a trajectory toward full recovery (based on bioassessment field data collected by the District's contractor on April 27-28, 2009).

Additionally, the District provided the Assistant Executive Officer with evidence that it should not be culpable for the SSO based on its failure to install PLC surge protection at pump station no. 4. The District submitted an engineering opinion dated April 23, 2009, from credible and qualified engineers to support this claim. The engineering opinion states that the District "should not be held culpable for the PS4 [Pump Station No. 4] SSO on the basis that they did not install a PLC surge protection system at Pump Station No. 4 even though they installed one at the treatment plant". The reasoning for this opinion was provided to the Assistant Executive Officer and is summarized below:

- a. The District, based upon sound technical information, reasonably believed that the pump station had a functioning backup system that would activate should the PLC fail for any reason.
 - b. When the partial failure of a PLC system occurred at the treatment plant in 2008, there was neither backup equipment nor backup controls in the event of PLC failure. Thus, it was more critical to install surge protection at the treatment plant.
 - c. The pump station has been subjected to power surge(s) in its 15 years of operation and none of these power surge(s) resulted in PLC failure. This history would lead the District to believe they had a functioning backup system.
 - d. Although surge protection may have prevented this SSO, PLC systems can fail for many other reasons. It was the lack of a backup system independent of the PLC that could have ultimately prevented this SSO. The District believed its backup system was wired independently of the PLC.
- C. The Regional Water Board's Prosecution Team reviewed the evidence submitted by the District in light of the factors under Water Code section 13385(e) for the SSO. The Prosecution Team and the District agree that the gravity and culpability factors should be lower; therefore, the penalty associated with this SSO should be lower.
- D. The Parties have reached this settlement for the violation alleged in the complaint. This settlement is subject to public comment as provided below.
- E. The Parties agree that full compliance with this Agreement constitute settlement of all claims arising out of the alleged violation specified in Complaint No. R2-2009-0027.
- F. The general terms of the settlement are that the District will pay a total penalty of \$270,000 as follows:
- a. The District will pay administrative civil liability of \$145,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
 - b. In lieu of the remaining \$125,000 penalty, the District agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than \$125,000 towards a levee sealing project to improve water control and management including restoration and enhancement of the native plant species in Peyton Slough and McNabney Marsh as is described more particularly in Attachment B which includes a schedule for its implementation. The District will comply with the specific terms and conditions described in Attachment B, which is incorporated into this Agreement. Any public information on outreach materials produced by the District concerning the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.

- G. As a material condition of this Agreement, the District warrants and represents that the SEP was not budgeted or included in any approved District program prior to the ACL and that it has no current plans or future legal obligation to undertake this project except to partially satisfy the District's obligations in settling the violation alleged in Complaint No. R2-2009-0027.
- H. Subject to the qualifications set forth in paragraph 8 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. The District's representative signing this Agreement confirms that s/he has the authority to bind the District 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 C. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment C 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 substantial way from the proposed Administrative Civil Liability Order attached as Attachment C. In that event, the Parties will have full rights to a hearing as set forth in the Notice for this Proceeding.
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 SSO from January 4, 2009 to January 5, 2009. The Assistant Executive Officer further agrees that once the Administrative Civil Liability Order in Attachment C is approved, not to pursue any further administrative or judicial action of any kind against the District for those discharges. The Regional Water Board maintains the ability to initiate other administrative or judicial enforcement actions against the District for spills that are not subject to this Agreement.
5. The District agrees to pay an administrative civil liability of \$145,000 to the Cleanup and Abatement Account in accordance with a payment plan described as follows: 50% of the administrative civil liability amount to be paid within 30 days of approval by the Regional Water Board or its Executive Officer of the Settlement Agreement, and the remainder to be paid by September 30, 2010. If the District fails to comply with the terms of the payment plan, the entire amount shall be paid not later than 30

days following any such failure to comply. The payment obligation shall not accrue during the time in which any review is sought by any third party under Water Code sections 13320 or 13330. The District agrees to undertake an SEP for not less than \$125,000 and will comply with the specific terms and conditions in Attachment B.

6. Subject to Paragraph 5 above, in the event that any of the following occur, the District agrees to promptly pay an administrative civil liability amount of \$125,000 (in addition to the amount of \$145,000 described in Paragraph 5 above) to the Cleanup and Abatement Account:
 - a. The District determines that it does not wish to perform the proposed SEP and an alternative SEP of at least \$125,000 is not approved by the Regional Water Board or the Executive Officer, or
 - b. The Executive Officer determines that the SEP is not being performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment B, 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 District expenditures on the SEP are less than \$125,000, the District shall pay any 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 C 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 this 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 other 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 of the Parties made during the course of settlement

discussions, except this Agreement, will not be admissible as evidence in the hearing; however, nothing in this Settlement Agreement precludes either party from presenting any documentary evidence which it presented during the settlement discussions at 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 this 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 description 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 sanitary sewer overflows alleged in the Complaint.
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.

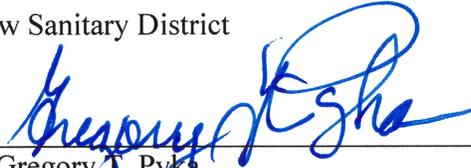
16. The Parties shall execute and deliver all documents and perform all further acts that may reasonably be necessary to effectuate the provisions of this Agreement.
17. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall 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

Mt. View Sanitary District
By: 

Gregory J. Pyka
President, Board of Directors

APPROVED AS TO FORM:
By: 

Kenton L. Alm
Counsel for Mt. View Sanitary District

- List of Attachments
Attachment A: ACL Complaint R2-2009-0027
Attachment B: Supplemental Environmental Project
Attachment C: ACL Tentative Order

Attachment A

ACL Complaint R2-2009-0027

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0027

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOW
MT. VIEW SANITARY DISTRICT
CONTRA COSTA COUNTY

This Complaint is issued to Mt. View Sanitary District (hereinafter “Discharger”) to assess administrative civil liability pursuant to California Water Code (“CWC”) Section 13385 and Section 13323. The Complaint addresses a discharge of untreated wastewater resulting from a sanitary sewer overflow (SSO). The Discharger violated Order R2-2006-0063 (NPDES Permit No. CA0037770). The violation cited herein occurred January 4, 2009 through January 5, 2009.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the “Regional Water Board”) hereby gives notice that:

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385 and Section 13323. This Complaint proposes to assess \$498,000 in penalties for the violation cited based on the considerations described in this Complaint. The deadline for comments on this Complaint is May 1, 2009, 5 p.m.
2. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 108 miles of gravity sewer pipe, 2 miles of force mains, and 4 pump stations. The Discharger’s collection system covers an area of approximately 5 square miles and serves an approximate population of 18,250 consisting primarily of residential customers and some light industrial/commercial customers.
3. This Complaint is issued to address a 586,000 gallon SSO caused by electrical equipment failure and faulty wiring. The SSO originated from the Discharger’s collection system and occurred from January 4, 2009, through January 5, 2009.
4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its June 10, 2009, meeting, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is May 1, 2009, 5 p.m. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

5. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$240,500 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

ALLEGATIONS

1. On January 5, 2009, the Discharger reported to the Regional Water Board an SSO to waters of the state from its sewer collection system at pump station no. 4.
 - a. The SSO was discovered by contractors working on a sewer line repair at the Shell Martinez Refinery property near pump station no. 4 who reported the SSO to the Discharger around 10:00 am on January 5, 2009.
 - b. The SSO ceased at about 10:15 a.m. when the Discharger arrived at the pump station and manually turned on the pumps that had shut down.
 - c. The Discharger determined that the SSO began at approximately 9:10 am on January 4, 2009.
 - d. The total SSO volume was approximately 586,000 gallons of raw sewage. There was no wet weather during the entire period of the SSO.
 - e. The Discharger later determined that the cause of the SSO was due to electrical system failure and faulty wiring at the pump station.
 - f. The SSO entered Vine Hill Creek via a storm drain adjacent to pump station no. 4, and ultimately reached a brackish marsh located east of the intersection of I-680 and Arthur Road in Martinez, Contra Costa County.
 - g. The SSO caused significant fish mortality in the impacted surface waters.
 - h. The Discharger began efforts to recover the SSO approximately 3 hours after the SSO was discovered and about 28 hours after the SSO began. The Discharger was able to recover approximately 18% (105,060 gallons) of the total SSO volume.
2. An SSO is a discharge from a collection system of raw sewage consisting of domestic wastewater as well as industrial and commercial wastewater, depending on the pattern of land uses in the area served by the collection system. An SSO contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, discharges to surface waters and/or seeps to ground waters. SSOs pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

REQUIREMENTS APPLICABLE TO THE DISCHARGER

1. The Discharger is subject to Regional Water Board Order No. R2-2006-0063 (NPDES Permit No. CA0037770). Order No. R2-2006-0063 prescribes waste discharge requirements for the Discharger's discharges.

2. Order No. R2-2006-0063 includes the following prohibition:

Section III. Discharge Prohibitions

B. The bypass of untreated or partially treated wastewater to waters of the State, either at the Discharger's Wastewater Treatment Plant (Facility) or from the collection system or pump stations tributary to the Facility, is prohibited, except as provided for bypasses under the conditions stated in 40 CFR 122.41(m) (4), in A.12 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993...

WATER CODE PROVISIONS RELEVANT TO THESE DISCHARGES

1. Pursuant to CWC Section 13385(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement issued pursuant to Chapter 5.5, which is the Water Code chapter that applies to the Board's issuance of NPDES permits. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) in an amount not to exceed the sum of both of the following:
- Ten thousand dollars (\$10,000) for each day in which a violation occurred.
 - Ten dollars (\$10) for each gallon exceeding 1,000 gallons of discharge and not cleaned up.

If this matter is referred to the Attorney General for judicial enforcement, a higher liability of \$25,000 for each day of violation and \$25 for each gallon exceeding 1,000 gallons of discharge and not cleaned up, may be imposed by a superior court.

VIOLATIONS

1. The SSO that occurred on January 4 and 5, 2009 resulted in the discharge of untreated wastewater to waters of the State. The SSO originated from the collection system or pump stations tributary to the Discharger's Facility, and thus violated Prohibition III.B. of Regional Water Board Order No. R2-2006-0063.

MAXIMUM LIABILITY

The maximum administrative civil liability the Regional Water Board may impose for the violations is \$3,560,000 based on the following calculations:

Two days of violation for SSO = 2 days x \$10,000/day/violation = \$20,000
Discharge exceeding 1000 gallons and not cleanup = (586,000 gallons - 105,060 gallons - 1000 gallons) x \$10/gallon = \$4,799,400
Total: \$4,790,000 + \$20,000 = **\$4,819,400**

CONSIDERATION OF FACTORS UNDER CWC 13385

1. In determining the proposed amount of civil liability to be assessed against the Discharger, the Regional Water Board's prosecution staff has taken into consideration the factors described in CWC Section 13385. The factors described include
 - The nature, circumstances, extent, and gravity of the violation or violations,
 - Whether the discharge is susceptible to cleanup or abatement,
 - The degree of toxicity of the discharge,
 - With respect to the discharger, the ability to pay and the effect on ability to continue in business,
 - Any voluntary cleanup efforts undertaken,
 - Any prior history of violations,
 - The degree of culpability,
 - The economic benefit or savings, if any, resulting from the violation, and
 - Other such matters as justice may require.

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

2. **The nature, circumstances, extent, and gravity of the violation or violations**

Nature

The violation involved approximately 586,000 gallons of raw sewage undiluted by any stormwater that discharged into Vine Hill Creek, and a brackish marsh. The violation occurred for a period of about 25 hours.

Circumstances

The cause of the SSO was due to an electrical system failure compounded by incorrect wiring at the pump station. The electrical system failure shutdown the primary pumps. Because the control for both the backup pump and the alarm notification system were also wired to the same electrical system that failed, neither system activated. In essence, when the pumps stopped because of the electrical system failure, wastewater collected in the pump station's wet wells. Because of the incorrect wiring, the backup system and alarms did not trigger. So when the two wet wells reached hydraulic capacity, raw sewage from the wells overflowed through the manhole.

The electrical system that failed was the programmable logic controller (PLC). A PLC is a digital computer used for automation of electromechanical processes. A PLC automatically controls the sequencing of pump motors and remote devices at pump stations including alarm functions. At pump station no. 4, the PLC controls the high-level alarms for both the primary and backup wet wells. When raw sewage levels in either wet well reach a predetermined high level, the pump(s) are signaled to turn on by the PLC. In addition, when the PLC accepts an alarm signal from either wet well, it notifies Discharger staff via an auto-dialer

system programmed to page, call, and fax. The PLC's wiring was incorrect because the primary wet well, the backup wet well and the float control system at pump station no. 4 were not configured independently. So when the PLC failed and the wet wells reached capacity, neither the primary pump nor the backup pump was signaled to turn on. Additionally, no high level alarms were transmitted via the auto-dialer system to notify the Discharger of the SSO.

The PLC failed due to a defective circuit of the central processing unit (CPU) module. An investigation into the specific causes of the defect is being conducted by a Discharger contractor. The Discharger has preliminarily concluded that the circuit defect was highly likely caused by a PG&E momentary power interruption that supplied transient voltage to pump station no. 4. PG&E confirmed that on January 3 and 4, 2009, two power outages occurred that impacted customers on the same circuit that supplies power to pump station no. 4. Although power was not interrupted to pump station no. 4, it is highly likely a dip in power resulted in failure of the PLC.

Extent

The SSO impacted approximately one mile of Vine Hill Creek and 13,000 square feet (0.3 acres) of the marsh.

Gravity

The gravity of this SSO was high. The SSO resulted in the discharge of a large volume of raw sewage to waters of the state. Since this SSO occurred during dry weather conditions, it was undiluted and posed a high level of toxicity to surface waters resulting in significant fish mortality. The fish killed included primarily mosquito fish and sticklebacks common to drainage channels. No endangered or threatened species were impacted by the SSO. The water bodies impacted were not drinking water sources. Also, there was no evidence of impact to water contact recreation due to limited public access to these water bodies.

3. Whether the discharge is susceptible to cleanup or abatement

During dry weather, either all or a portion of an SSO can be contained and returned to the sanitary sewer for treatment. The Discharge was not able to contain or return to the sanitary sewer any portion of the SSO prior to it reaching surface waters. The Discharger recovered about 18% of total SSO volume (105,060 gallons) from Vine Hill Creek approximately 3 hours after the SSO was discovered. However, this was about 28 hours after the SSO began and the discharge had caused toxicity in the surface waters.

4. The degree of toxicity of the discharge

The SSO's degree of toxicity was high. The SSO created a localized toxic environment in the water column as a result of discharge of oxygen-demanding pollutants that lowered dissolved oxygen levels and elevated ammonia concentration which is a demonstrated fish toxicant. Water quality monitoring results conducted by the Discharger demonstrated

dissolved oxygen levels as low as about 0.34 mg/l in Vine Hill Creek and 0.6 mg/l in the marsh. These levels are significantly lower than the minimum level of 5 mg/l¹ needed by more aquatic organisms to survive. Un-ionized ammonia levels were detected as high as 36 mg/l as N in Vine Hill Creek. This level is significantly greater than the maximum level 0.16 mg/l as N² above which acute toxicity to fish occurs. As noted above, the SSO caused significant fish mortality.

5. The ability to pay and the effect on ability to continue in business

The Discharger is financially stable and has the financial resources to provide for debt service obligations and financial needs, including this proposed administrative civil liability.

In 2008, the Contra Costa County Local Agency Formation Commission (LAFCO) prepared a Water and Wastewater Municipal Services Review for Central Contra Costa County (MSR) as required by Government Code §56000 et seq. LAFCO reviewed several service providers including the Discharger with respect to the need for and adequacy of current services and each agency’s ability to continue to provide adequate services in the future. Based on their review, LAFCO determined that the Discharger has the financial resources to provide for operations and maintenance and capital needs of the wastewater system, as well as debt service obligations. LAFCO also determined that the Discharger is financially stable, and has the capacity to continue to provide services within its boundaries.

The Discharger provided financial information including annual budgets (summarized in *Table 1* below) and sewer rate fees. The Discharger’s net assets at the end of fiscal year (FY) 2007/2008 were \$21.82 million. The Discharger’s primary sources of revenue are service charges and connection and franchise fees. The Discharger also receives some property tax revenue as well as grants and interest income on investments.

Table 1: Discharger’s Financial Summary

	FY 2005/2006 Actual	FY 2006/2007 Actual	FY 2007/2008 Actual	FY 2008/2009 Budgeted
Revenue	\$4,509,895	\$5,469,597	\$5,460,149	\$7,554,042.78
Expenses	\$4,340,167	\$4,303,251	\$4,995,644	\$11,123,655.59
Change in Net Assets	\$169,728	\$1,166,346	\$1,464,505	\$(3,569,612.81) Estimated
Net Assets, Beginning of Year	\$19,021,263	\$19,190,991	\$20,357,390	\$21,821,895
Net Assets, End of Year	\$19,190,991	\$20,357,390	\$21,821,895	\$18,252,282.19 Estimated

¹ January 2007 San Francisco Bay Basin Water Quality Control Plan (Basin Plan) establishes this numerical water quality objective for dissolved oxygen concentrations in nontidal waters designated as warm water habitat (minimum of 5 mg/l).

² Basin Plan establishes this numerical water quality objective for un-ionized ammonia concentrations in the Central Bay and upstream (maximum of 0.16 mg/l as N).

Note: Revenues/Expenses include both operating and non-operating revenues/expenses. All reserves are designated to meet projected needs, long-range projects and debt service requirements. For FY 2008-2009, the Discharger's expenses will exceed expected revenues. However, the Discharger has maintained reserves to cover such shortfalls.

The Discharger has the authority to adjust its sewer rate scale to provide for financial needs. In 2006, the Discharger implemented rate increases to ensure that adequate financial resources are available to implement the Sewer System Management Plan (SSMP) and capital improvement projects. The rates were increased for a period of three fiscal years starting with FY 2006/2007. The monthly rate went up to \$39.95/month for FY 2008/2009, about a 44% increase from FY 2005/2006. This rate is now on par with the average sewer rates for Contra Costa County (about \$37/month in FY 2007/2008).

As a result of the sewer rate increase, the Discharger now has approximately \$1.1 million more for FY 2008/2009 than they collected in FY 2006/2007. This additional revenue would allow them to borrow approximately \$11 million (assuming an interest rate of 5% for 15 years). Therefore, with this additional revenue alone, the Discharger has the ability to pay up to \$11 million. The Discharger could also raise its monthly sewer rate fees by \$0.36 per equivalent dwelling unit (EDU) to raise sufficient funds to pay for a loan that would cover the proposed penalty (assuming an interest rate of 5% for 15 years).

6. Any voluntary cleanup efforts undertaken

The Discharger began efforts to recover the SSO from Vine Hill Creek approximately 3 hours after the SSO was discovered and about 28 hours after the SSO began. The Discharger recovered approximately 18% (105,060 gallons) of the total SSO volume. On January 6, 2009, after recovery efforts were completed, the Discharger, upon consultation with California Department of Fish and Game, flushed Vine Hill Creek with 56,000 gallons of advanced secondary, ultra-violet disinfected effluent water from the Discharger's Facility. Beginning on January 9, 2009 and continuing through January 11, 2009, the Discharger successfully implemented aeration activities to raise the dissolved oxygen levels in the marsh.

7. Any prior history of violations

The Discharger had several SSOs prior to this SSO. Regional Water Board records show that the Discharger had approximately 45 SSOs totaling about 273,000 gallons since December 2004. Regional Water Board's records prior to 2004 are not complete or accurate; however, it is likely the Discharger had SSOs prior to this time.

Prior to this SSO, the majority of the total SSO volume discharged (two events totaling 203,000 gallons) resulted from severe storm events in December 2005 which caused backup in the sanitary sewer system. The remainder of the SSO volume discharged (about 70,000 gallons over a 4 year period) was caused by grease, root and unknown blockages.

8. The degree of culpability

The Discharger's degree of culpability is medium. The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system. The SSO at pump station no. 4 could have been prevented with (1) circuit upgrades to the pump station control system to ensure adequate independent redundancy between the primary and backup wet wells, and (2) implementation of measures to protect sensitive electrical equipment from power variations (i.e. surge protection). However, it was not until this SSO occurred that the Discharger became aware of the fact that the PLC, the backup wet well pump, and the float control system were not wired correctly to provide adequate redundancy. The Discharger would not have been able to detect the incorrect wiring unless it had disassembled the PLC and conducted an engineering review of the device. This type of analysis is not a standard O&M procedure.

Nonetheless, the Discharger did not adequately implement measures to protect electronic equipment at pump station no. 4 as it had done four months prior at the Discharger's Wastewater Treatment Plant (Facility). On September 8, 2008, the Discharger had an unauthorized discharge event (bypass of partially treated wastewater) at the Facility. The event occurred as a result of a PG&E momentary power interruption. PG&E supplied transient voltage in the power grid causing multiple shutdowns of major process pumping systems in the Facility. As a result of this event, the Discharger implemented measures to protect sensitive equipment at the Facility from power variations. Specifically, the Discharger installed surge protection with uninterruptible power supply (UPS) on the PLC which provides control logic to all three primary pumping systems at the Facility. Similar surge protection measures should have been implemented at pump station no. 4.

9. The economic benefit of savings

The Discharger identified and already implemented some upgrades (e.g., purchase of and rewiring of new PLC, purchase of Smart Cover®) to the pump station to prevent similar failures in the future. These upgrades cost about \$8,500, and the cost savings from not completing this change until just recently is minimal (about \$6,700 assuming 6% interest rate over a 10 year period).

10. Other such matters as justice may require

The Discharger has proactively taken steps to prevent reoccurrence of a similar SSO event in the future. On January 8, 2009, the Discharger made modifications to the circuitry of the PLC, backup wet well pump and float control system to add independent redundancy at the pump station. In case of a malfunction of the PLC, the new circuit will turn on the pump if the backup wet well level reaches the high level float switch. An alarm signal will also be sent to the autodialer. If the float control system loses power, an alarm signal will also be sent to the autodialer. The autodialer is powered by AC and backed up by battery.

In addition, the Discharger plans to install a Smart Cover® at pump station no. 4 in the hinged hatch cover over the inlet channel to the primary wet well. This will provide

additional independent back-up by monitoring water levels and alarms at pre-set high level water conditions. The Discharger has also commissioned an audit of all its pump stations to assess adequacy of and identify vulnerabilities related to pump station capacity, redundancy, and alarm and control systems. The audit will also assess surge protection needs at all the pump stations.

11. Staff Time

Regional Water Board Staff time to prepare the Complaint and supporting evidence is estimated to be about 100 hours. Based on an average cost to the State of \$170 per hour, the total staff cost is \$17,000.

CEQA EXEMPTION

This issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

March 30, 2009

Date



Thomas E. Mumley
Assistant Executive Officer

Attachment: Waiver of Hearing

WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Regional Water Board meeting but there will be no hearing on the matter, unless a) the Regional Water Board staff receives significant public comment during the comment period, or b) the Regional Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than May 1, 2009, 5 p.m.**

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No.R2-2009-0027 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability.

- Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No. R2-2009-0027, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$240,500 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. The SEP proposal shall be submitted no later than **May 15, 2009**. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 3, 2009, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

- Waiver of right to a hearing within the 90-day hearing requirement in order to extend the hearing date.

By checking this box, I hereby waive my right to have a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the prosecution team can discuss settlements. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

Name (print)

Signature

Date

Title/Organization

Attachment B

Supplemental Environmental Project

Supplemental Environmental Project Description

1. The name of the project proponent(s), contact person(s), and contact person's information (address, telephone, email, etc.):

Mt. View Sanitary District
Michael D. Roe, District Manager
Irene M. Chang, Technical Services Manager
P.O. Box 2757
3800 Arthur Road
Martinez, CA 94553
(925) 228-5635 x32
mroe@mvsd.org
ichang@mvsd.org

2. The project title: Peyton Slough Levee Sealing Project

3. The location of project, including a description of the watershed where the project will be completed, and the latitude and longitude, if known.

The project is located on both banks of the Peyton Slough channel that traverses McNabney Marsh, immediately east of I-680 between the Pacheco Boulevard and Marina Vista exits in Martinez.

The Peyton Slough watershed is composed of urban Peyton Creek and minor tributaries, managed runoff from the Shell Oil Refinery, both west of I-680, and urban runoff from the relatively small Arthur Road neighborhood east of I-680, as well as portions of I-680. The watershed includes the terminal reservoir of the Contra Costa Canal, the Martinez Reservoir, which has a spillway connected to Peyton Creek. This creek is a highly modified urban creek with a combination of open concrete channels, natural channels, and a 1,000-foot long underground concrete culvert through the Shell Oil Refinery. Peyton Creek is an intermittent creek, mostly drying up by the summer. Dry weather flows in Peyton Slough through the marsh are mostly effluent from Mt. View Sanitary District's treatment plant. Advanced secondary effluent from the treatment plant discharges into a wetlands project called Moorhen Marsh, which subsequently flows into Peyton Slough. Moorhen Marsh provides wildlife habitat and polishes effluent.

Latitude = 38.0259, Longitude = -122.1027

Lat = 38 degrees, 1.6 minutes North

Long = 122 degrees, 6.2 minutes West

4. A brief description of the project.

The levee sealing project will be the third construction project in recent years intended to improve water management and control in McNabney Marsh. The other two recent projects

were the installation of two water control structures on side channels and channel dredging to - 4.0' mean sea level. These two projects were completed in the fall of 2007.

The ground level of the marsh area is subsided and relatively distant from Suisun Bay, thus overall water control and management of Peyton Slough and McNabney Marsh are important considerations in restoring the water quality and habitat of the area to as much of its natural state as possible. The proposed project will assist in hydraulically isolating Peyton Slough from McNabney Marsh and therefore aiding the management of the type of water that enters the marsh during certain seasons, especially when done in concert with initiating tidal action via the tidegate owned by Rhodia, Inc. Due to erosion, aging, and rodent burrowing, the levees on either side of the slough are porous and overtime will become more porous. The project proposes to permanently seal the levees. Specifically, the project will prevent crawdads, muskrats and other rodents from burrowing through the levee on either side of Peyton Slough to areas of McNabney Marsh. These burrows cause hydrologic connections between the slough channel and the surrounding marsh areas on both sides of the channel. These connections allow leakage of the fresh water and urban runoff of Peyton Slough into McNabney Marsh, which undermines management of the water in the area.

The project proposes to install interlocking barriers approximately 1,900 feet in length along Peyton Slough in McNabney Marsh. The barriers are PVC piling or equivalent that are 5 feet in height, inserted into the levees between 5 to 10 feet back from the edge of banks, running parallel to Peyton Slough. The top of the piling will be 6 inches to one foot below finish elevation and well above water surface elevation. The pilings will not be visible at the completion of construction. The pilings terminate into dry ground adjacent to the petroleum pipelines at the north end, and into dry ground near the I-680 culvert at the southwest end. The pilings will tie-in to the recently constructed water control structures on each side of Peyton Slough. Three small Waterman gates installed over 20 years ago, long out-of-service, will be removed and backfilled with clean clay or bay mud soil.

5. A description of the need for the project.

As mentioned above, the ground level of the area is subsided and relatively distant from Suisun Bay; therefore, water control and management of Peyton Slough and McNabney Marsh are important considerations in restoring the water quality and habitat of the area to as much of its natural state as possible. Proper water management of the entire McNabney Marsh system is necessary to restore and enhance wetland habitat for the benefit of resident and migratory fish and wildlife, including the endangered salt marsh harvest mouse. Water management is equally necessary to restore and maintain native plant species such as pickleweed, which provides habitat for the salt marsh harvest mouse. To achieve the goal of a more natural state, the marsh should be managed to maintain a diverse assemblage of brackish to salt tolerant vegetation adapted to a brackish marsh. In McNabney Marsh, a more natural state will better support the four beneficial uses of warm freshwater habitat, estuarine habitat, wildlife habitat and preservation of rare and endangered species.

The development of management objectives for Peyton Slough and McNabney Marsh have been the focus of the Peyton Slough Wetlands Advisory Committee (Committee) since its inception as

the McNabney Marsh Management Committee. The current proposed levee sealing project has been discussed and approved since 2003 by the Committee. The Mt. View Sanitary District facilitates and co-chairs the Committee. In addition, the Committee is composed of many interested parties, some of which are most notably the California Department of Fish and Game Office of Spill Prevention and Response (OSPR) and Bay Delta Region, the San Francisco Bay Regional Water Quality Control Board, the East Bay Regional Park District, the Contra Costa Mosquito Vector Control District, Shell Oil Company, Rhodia Inc., and Mt. Diablo Audubon Society. The Committee has developed detailed marsh management plans and implemented restoration projects to enhance the habitat of the Peyton Slough marshes. The levee sealing project is one of the three construction elements mentioned above that allows marsh managers to proactively control water flow between the marsh and slough with the intent of achieving the hydraulic and biological objectives as outlined in the *Peyton Slough Wetlands Complex Natural Resources Management and Monitoring Plan*, September 2008 (Marsh Management Plan).

Additionally, in the highly unlikely event of a spill from the adjacent Shell Oil Refinery, other adjacent businesses, and the Mt. View Sanitary District, it is useful to have the ability to isolate Peyton Slough from McNabney Marsh in order to protect the marsh for a limited amount of time. The tide gate on Rhodia property allows for some isolation of material in Peyton Slough for a limited amount of time, which would protect Suisun Bay. McNabney Marsh used to be known as the Shell Marsh, the location of the notorious 1988 oil spill. Isolation of the slough would assist in protecting and managing the habitat within McNabney Marsh.

A recent survey of the channels in McNabney Marsh found only two native fish species. A potential long term benefit of effective tidal water management could be increased species diversity with saline tolerant species such as Sacramento Splittail that is found in the tidal portion of Peyton Slough. With the bidirectional operation of the Peyton Slough tide gates which commenced in June 2009, the conditions in McNabney Marsh are on the cusp of change. The levee sealing project is a contributing component of this positive change and will complement the operation of the tide gates. The 130-acre marsh already provides important habitat for both resident and migratory water birds, including ducks, shorebirds, large wading birds as well as passerine species (Edgar 2008). In the long term, the marsh has the potential to expand its native fish population. Since these benefits are long term and represent a potential benefit, no performance monitoring for fish is included in this project.

The historic lack of saline water exchange from the bay similarly has not allowed for an abundance and diversity of salt-tolerant native plant species. The water in Peyton Slough and McNabney Marsh has been mostly fresh water and urban runoff. Year-round fresh water tends to benefit plant species such as cattails. Cattails thrive in fresh water and are so aggressive in McNabney Marsh that if allowed to grow unchecked, they will choke out desirable and native brackish plant species such as pickleweed. The water management improvements provided by the levee sealing project are considered by experts to be one of the elements required to restore and maintain native plant species such as pickleweed, which provides habitat for the endangered salt marsh harvest mouse. Water movement and vegetation performance monitoring are included in this project and further discussed below.

6. A detailed project timeline and tasks, including project milestones.

A detailed project timeline is attached. A list of major project milestones is summarized below.

Table 1. Project Milestones

Task	Timeline
Conduct Baseline Salinity Monitoring	September 2009
2010 Quarterly Progress Reports	Due January 20, April 20 , July 20 and October 20, 2010
75% Project Design Completion	November 30, 2009
2011 Quarterly Progress Reports	Due January 20, April 20, July 20 and October 20, 2011
Complete CEQA Documentation	February 28, 2010
Obtain Federal and State Permits	October 29, 2010
100% Project Design Completion	January 29, 2011
Complete Project Construction	August 31, 2011
2012 Quarterly Progress Reports	Due January 20, April 20, July 20 and October 20, 2012
Conduct Post-Construction Salinity Monitoring	September 2012
Conduct Vegetation Monitoring	October 2012
2013 Quarterly Reports	Due January 20 and April 20, 2013
Draft Final Project Report	June 3, 2013
Final Report	July 1, 2013

7. A detailed project budget

Design, Permitting, Construction Review, Construction, approximately \$125,000
 Third Party Oversight will be by San Francisco Estuary Project at a total estimated cost of \$10,668 (see attached cost estimate)

8. A description of the project’s performance standards and identified measures or indicators of performance.

Water Movement Performance Measure

The project proposes to install a hydrologic barrier along an elevation high point of historic sidecast spoils in the midst of a brackish-fresh wetlands system. The project’s goal is to proactively maintain water management over the waters that enter McNabney Marsh and therefore effectively manage water quality in the McNabney Marsh. Peyton Slough carries approximately 1.5 million gallons per day (mgd) of dry weather flow consisting primarily of secondary treated effluent from the Mt View Sanitary District wastewater treatment plant. Due to the porous levees along the slough, this fresh water source enters the adjacent wetlands, and in particular during desired drying periods, compromises the marsh management objectives established in the Marsh Management Plan. Therefore, one of the measures of performance of the levee sealing project is to monitor water movement from the slough to the marsh. The

specific water movement performance goals for this project are (1) no visual evidence of water seepage through the proposed barrier from Peyton slough channel to the adjacent marsh area and (2) a statistically significant difference in salinity between the slough channel and the adjacent marsh area (with higher salinity in the marsh area).

Vegetation Performance Measure

The establishment of effective water management control in the marsh, in part through the proposed levee sealing project, is anticipated to provide benefit to the marsh plant habitat. In particular control of invasive cattails and encouragement of other salt tolerant native plant species such as pickleweed. In such a dynamic marsh system, these biological benefits will take time to manifest. A performance indicator of the overall water management would be to monitor the change in vegetation in the marsh. Since the potential biological benefits can only be confirmed over long periods of time the final report describing project performance is scheduled to be completed two years after construction is completed. It should be noted that this vegetation performance indicator is influenced by all three of the recent and proposed construction projects in the marsh – the recent dredging and flap/slucice gate installation performed in 2007, the opening of the tide gates this year, and sealing of the levee. Any observed changes in vegetation reported in accordance with this SEP cannot be solely attributed to the levee sealing project.

Thus, the specific vegetation performance goals for this project are a 10% decrease in cattails and a 10% increase in pickleweed within McNabney Marsh by October 2012. The McNabney Marsh 2007 Aerial Imagery Collection and Vegetation Mapping, which focused on nine (9) vegetation types including cattail and pickleweed, will provide a valid baseline from which to measure the above stated performance goals. The October 2007 vegetation mapping will be more than adequate for a vegetation cover baseline because the water regime has been consistent in the intervening years since the installation of the water control structures in November 2007. The Rhodia tide gates allowed outflow of Peyton Slough flow but prevented tidal flow upstream. This has resulted in marsh vegetation types slowly changing from salt tolerant to freshwater species. Conducting the vegetation monitoring one year after the installation of the barriers will allow for one growing season between completion of the levee sealing and the vegetation mapping.

9. A description of how the project's performance standards will be measured and monitored.

Water Movement Monitoring

The Mt. View Sanitary District staff will observe the performance of the levee sealing project based on visual evidence of seepage from the slough through the levee barrier to the adjacent marsh areas. If seepage is documented, staff will notify the Water Board and other appropriate agencies and mobilize efforts to repair the damaged PVC barrier piling. Such defects are considered highly unlikely, but in a dynamic marsh soils environment, these structures could move differentially over time and lead to defects in the hydrologic barrier. Thus, the District is committed to observing the structures' performance as part of its regular surveillance activities. The effect of the levee sealing will also be evaluated by measuring salinity within the Peyton

Slough channel and measuring salinity, at the same time, at a site 10 – 15 feet within the marsh opposite the measurement in the channel. If the seal is effective, there will be a distinctly lower salinity in the channel than in the marsh proper. This would be done during the summer, when tides are allowed to flow up Peyton Slough. The monitoring would be along both the east and west banks of the slough, from the Waterfront Road bridge to the I-680 bridge. Monitoring will be performed at four (4) sites on each side of the barrier to provide a basis for evaluating the effectiveness of the seal (see attached map for proposed monitoring locations). Baseline salinity monitoring will be conducted in August or September 2009. Post-project monitoring will be conducted in the same month of 2012.

Vegetation Monitoring

To assess the anticipated plant habitat improvements, vegetation monitoring will be performed through mapping. Aerial photographs will be taken of the McNabney Marsh system. These aerial photographs will closely follow the image processing that was performed in the 2007 aerial images. The 2007 images were taken at a scale of 1:8400, between the hours of 2:00-4:00pm. The photography included two tiles of both true color and color infrared imagery and was scanned at 1200 dots per inch (dpi), giving the resulting imagery a pixel size of 0.67 feet or 0.2 meters. Other details are contained in the attached 2007 aerial images report. The 2007 aerial maps will be used as a baseline for vegetation monitoring. Another set of aerial maps will be taken one year after the project construction is complete and will closely follow the same process. A report comparing the two sets of maps will be generated and included with the final report for this SEP.

10. A plan for reporting, at least quarterly, to the Regional Water Board about the progress of the project, and a plan to report to the Regional Water Board upon completion of the project.

A progress report shall be provided to the Regional Water Board quarterly on the 20th day of January, April, July, and October from the start of the project up until a final report is submitted (a total of approximately fourteen reports). Copies of these reports will also be submitted to the oversight/audit organization.

A final report will be provided to the Regional Water Board, the Division of Financial Assistance of the State Water Board, and the oversight/audit organization as outlined in Section H.3 of the State Water Board Policy on SEPs, dated Feb. 3, 2009. The final report will be submitted by July 1st approximately two years after installation of the barriers. The final report will describe the tasks completed, an accounting of funds expended, and describe whether the measures of success identified were met, and if not met, identify possible reasons for why they were not met and suggestions for changes to project elements and strategies to guide future efforts by the District and others. The final report will also present and analyze monitoring data including vegetation mapping, salinity monitoring and other monitoring efforts conducted as discussed in Section 9 above.

11. The company or organization that has been or will be retained to audit the implementation of the project.

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Partnership (SFEP). All reports must be sent to the following:

Carol Thornton
Contractor to SFEP
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2419
cthornton@waterboards.ca.gov

12. The plan, if any, to continue and/or maintain the project beyond the SEP-funded period

None

13. Not Already Required of Discharger

The proposed project is not required to be implemented by any permit, but represents a recommendation for incremental improvement of water management in McNabney Marsh to meet non-regulatory Committee goals.

14. Benefit to Water Quality and Beneficial Uses

As discussed above under Section 5, Project Need.

15. Benefit to Public

As discussed above under Section 5, Project Need and is part of the Marsh Management Plan in Section 8, which is supported by multiple stakeholders, public and private.

16. Direct benefit to Water Board Fiscal Function

No benefit to Water Board fiscal function.

17. Nexus of Violation and SEP

The proposed hydrologic barrier in McNabney Marsh will benefit biological resources similar to those affected by the Pump Station No. 4 spill. As the spill impacted brackish habitat and associated resources, the proposed SEP will benefit an adjacent brackish habitat and its associated resources. Projects that aid in water management of the Peyton Slough-McNabney Marsh complex are considered a priority for effective brackish marsh management. The proposed SEP will contribute to expanding and sustaining available habitat for plant, fish, and wildlife typical of brackish marshes. The improved water management capacity enabled by the

SEP will improve water quality control in McNabney Marsh.

18. Documented Support

The California Dept of Fish and Game, Office of Spill Prevention and Response submitted a letter to the Regional Water Board on June 12, 2009 expressing support for the proposed project. In addition, the multi-stakeholder Committee supports the project because it meets the goals of the Marsh Management Plan.

19. Direct Benefit to Area Harmed or Regionwide Benefit

See Section 17 above.

20. Comply with CEQA

The levee rebuilding is included in the scope of the Mitigated Negative Declaration and Initial Study for the Shell Marsh Restoration Project of 1997, which will be submitted with our 401 certification application.

21. Project as Basis for Additional Funding

The proposed project could be the basis for funding assistance. The District will be pursuing other funding alternatives.

22. Institutional Stability

Mt. View Sanitary District is almost one hundred years old and as a special district is financially stable.

23. Success Criteria

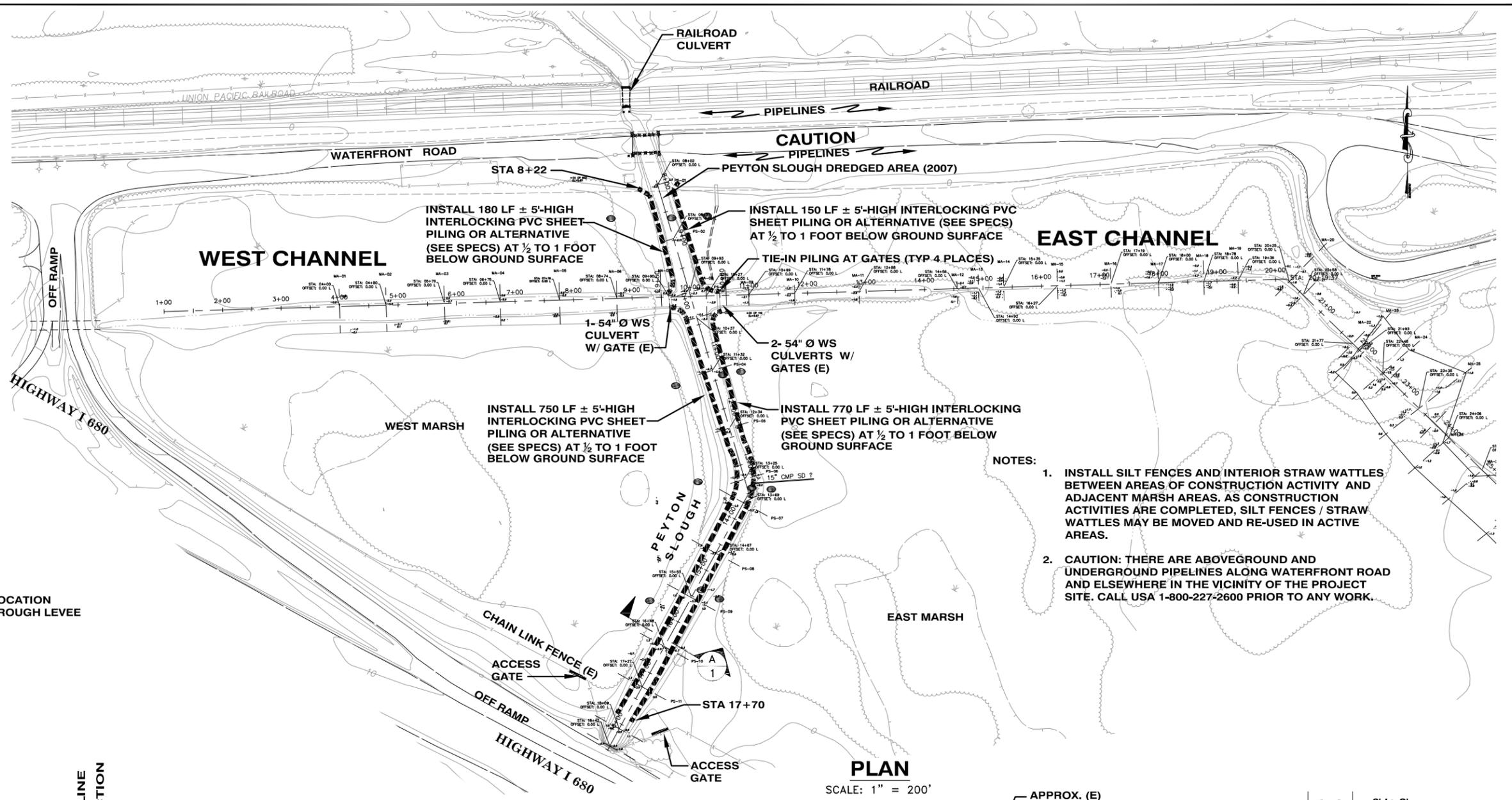
See Sections 8 and 9 above pertaining to performance standards.

**MT VIEW SANITARY DISTRICT OVERSIGHT/AUDIT COST ESTIMATE
CIWQS REGULATORY MEASURE No. 366664**

Oversight Tasks based on Milestones in SEP	No. of tasks	Est. Hours/task	Est. Hours
CIWQS entry of SEP milestones/deliverables into Regulatory Measure for ACL Order	1	2	2
Update CIWQS when milestones/deliverables are met as necessary	24	0.25	6
Review and file (in ECM) 14 progress reports; assess progress and appropriate expenditure of funds; identify any problems, and prepare memo to Water Board staff describing problems with a recommendation for resolution. If no problems identified, memo should so note. Memo should also be filed in ECM.	14	2.5	35
Inspection of site to verify activities were completed (shortly after construction completion and two site inspections during monitoring efforts).	3	4	12
Prepare memos to Water Board staff describing observations made during site inspections, identify any problems and provide a recommendation for resolution. If no problems identified, memo should so note. Memo should also be filed in ECM.	3	8	24
Review and file (in ECM) 1 final report (both draft and final) documenting completion of SEP; audit appropriate expenditure of funds; identify any problems, prepare memo to Water Board staff describing problems with a recommendation for resolution, and prepare documentation approving or denying completion of project.	1	48	48
SUBTOTAL			127
Contingency to deal with unpredictable matters that arise such as discharger forgetting to submit progress reports, or its requests for budget changes and schedule adjustments. (10% of SEP oversight time/cost)			12.7
SFEP Director's time to manage oversight contract and other management costs. (10% of SEP oversight time/cost)			12.7

TOTAL SEP Oversight Staff Time (hours) 152.40
(ABAG staff cost range of \$60-\$70/hr) \$70.00
TOTAL SEP Oversight Cost (dollars, using ABAG \$/hr) **\$10,668**

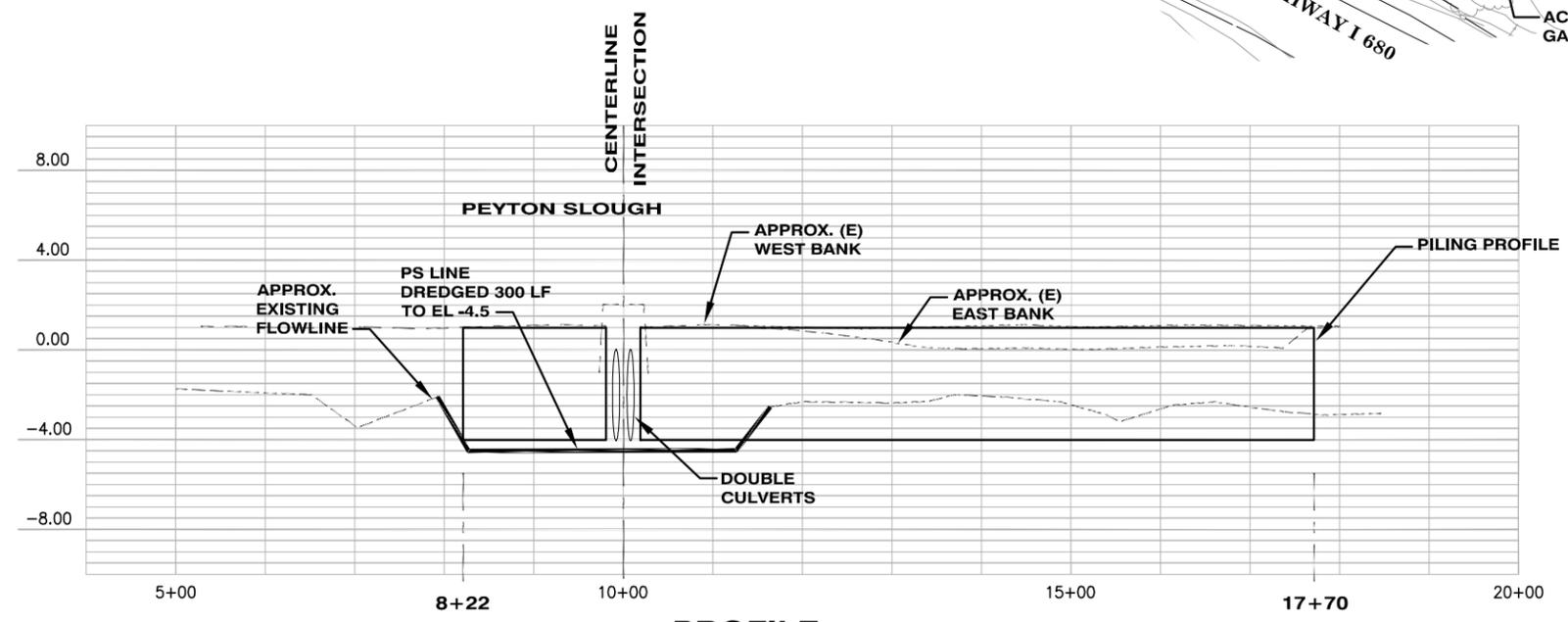
Timeframe for SEP completion (2 years to complete construction and baseline salinity monitoring, plus vegetation and salinity monitoring about one year after construction completion plus ten months for final report preparation and completion, Total= ~4 years)	
(SEP Oversight Staff Time) / (SEP Completion Time) in hr/yr	4 38



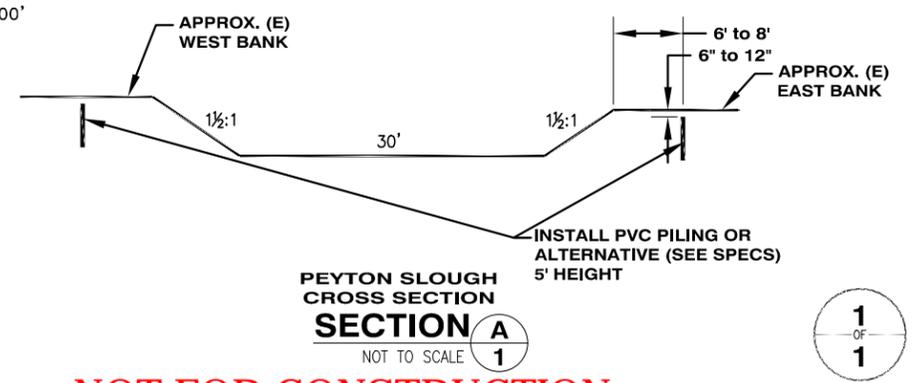
- NOTES:**
1. INSTALL SILT FENCES AND INTERIOR STRAW WATTLES BETWEEN AREAS OF CONSTRUCTION ACTIVITY AND ADJACENT MARSH AREAS. AS CONSTRUCTION ACTIVITIES ARE COMPLETED, SILT FENCES / STRAW WATTLES MAY BE MOVED AND RE-USED IN ACTIVE AREAS.
 2. CAUTION: THERE ARE ABOVEGROUND AND UNDERGROUND PIPELINES ALONG WATERFRONT ROAD AND ELSEWHERE IN THE VICINITY OF THE PROJECT SITE. CALL USA 1-800-227-2600 PRIOR TO ANY WORK.

● SALINITY MONITORING LOCATION TO DETECT LEAKAGE THROUGH LEVEE

PLAN
SCALE: 1" = 200'



PROFILE
SCALE: HORIZ 1" = 200'
VERT 1" = 8'



PEYTON SLOUGH CROSS SECTION SECTION A
NOT TO SCALE
1 OF 1

NOT FOR CONSTRUCTION

MT. VIEW SANITARY DISTRICT Contra Costa County, California		
PEYTON SLOUGH LEVEE SEALING PROJECT		
PLAN AND PROFILES		
NUTE ENGINEERING 907 MISSION AVE., SAN RAFAEL, CALIFORNIA TEL 415-453-4480		
Drawn by: PM	Job No.: 7823	Scale: AS SHOWN
Checked by: WEN		Date: JULY 2009

L:\District\Mt. View\7823 McNobney Marsh Levee Sealing\7823 McNobney Marsh Levee Sealing Plan-Profile.dwg Layout: Simplified Plan-Profile Jul 27, 2009 17:02
Xrefs: McNobney-Marsh-Drained-2004.dwg; McNobney-Marsh-Drained-2004-ITB.dwg

Attachment C

ACL Tentative Order

DRAFT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER NO. R2-2009-XXXX

ADMINISTRATIVE CIVIL LIABILITY FOR:

**MT. VIEW SANITARY DISTRICT
CONTRA COSTA COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") investigation of a discharge of untreated wastewater resulting from a sanitary sewer overflow ("SSO") by the Mt. View Sanitary District ("Discharger") and the issuance of Administrative Civil Liability Complaint No. R2-2009-0027. The parties to the proceeding are the Regional Water Board's Prosecution Team and the Discharger.

The Regional Water Board has been presented with a proposed settlement of the claims alleged in Complaint No. R2-2009-0027. The proposed settlement is set forth in a Settlement Agreement (Attachment 1) that represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability under California Water Code ("CWC") section 13385 in the amount of \$270,000 to the Cleanup and Abatement Account (\$125,000 of which will be suspended provided it is satisfied through completion of a Supplemental Environmental Project ("SEP") as provided in the Settlement Agreement).

Having provided public notice of the proposed settlement and an opportunity for comment, the Regional Water Board finds that:

1. The Discharger owns and operates a sanitary sewer collection system (collection system) consisting of approximately 108 miles of gravity sewer pipe, 2 miles of force mains, and 4 pump stations. The Discharger's collection system covers an area of approximately 5 square miles and serves an approximate population of 18,250 consisting primarily of residential customers and some light industrial/commercial customers.
2. There was a 586,000 gallon SSO caused by electrical equipment failure and faulty wiring. The SSO originated from the Discharger's collection system and occurred from January 4, 2009, through January 5, 2009. It entered Vine Hill Creek via a storm drain and ultimately reached a brackish marsh where some fish were killed.
3. The Discharger is subject to Regional Water Board Order No. R2-2006-0063 (NPDES Permit No. CA0037770). Order No. R2-2006-0063 prescribes waste discharge requirements for the Discharger's discharges.

4. 2. Order No. R2-2006-0063 includes the following prohibition:

Section III. Discharge Prohibitions

B. The bypass of untreated or partially treated wastewater to waters of the State, either at the Discharger's Wastewater Treatment Plant (Facility) or from the collection system or pump stations tributary to the Facility, is prohibited, except as provided for bypasses under the conditions stated in 40 CFR 122.41(m) (4), in A.12 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993...

5. The SSO is a violation of the Discharge Prohibition III B of Order No. R2-2006-0063.
6. Pursuant to CWC Section 13385(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement issued pursuant to Chapter 5.5, which is the Water Code chapter that applies to the Board's issuance of NPDES permits. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each day in which a violation occurred plus ten dollars (\$10) for each gallon exceeding 1,000 gallons of the discharge that is not cleaned up.
7. On March 30, 2009, the Regional Water Board's Assistant Executive Officer issued an Administrative Civil Liability Complaint in the amount of \$498,000 for public notice and comment.
8. The Discharger submitted evidence that showed that the SSO did not result in irrecoverable damages to Vine Hill Creek and that the Discharger was not culpable for the PLC failure. The evidence indicates that the fish community in Vine Hill Creek is up to 74% recovered and is in a trajectory toward full recovery. Additionally, the evidence indicates that it was not necessary for the Discharger to install PLC surge protection at pump station no. 4 because (a) the pump station had a backup system in place and (b) the PLC has been subjected to power surge(s) in its 15 years of operation and none of these power surge(s) resulted in PLC failure. For these reasons, the gravity of the SSO and the Discharger's culpability is low; as a result, the penalty is lower.
9. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public, including the revised penalty amount discussed in the attached Settlement Agreement, and has determined that the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has taken into consideration the factors described in CWC Sections 13385(e), as applicable. The Executive Officer finds that the penalty amount

agreed to by the Parties is reasonable based on the factors in CWC Sections 13385(e).

10. This issuance of this order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

IT IS HEREBY ORDERED that:

1. The Settlement is approved;
2. The Discharger shall pay the sums agreed to under the Settlement Agreement (Attachment 1), which are:
 - A. The Discharger will pay a total penalty of \$270,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
 - B. In lieu of \$ 125,000 of that penalty, the Discharger agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than \$125,000 towards a levee sealing project to improve water control and management in Peyton Slough and McNabney Marsh. This SEP is described in Attachment 2 and includes a schedule for implementation. The Discharger will comply with the specific terms and conditions detailed in Attachment 2. Any information produced from the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.
3. In the event that the Discharger does not complete the SEP, then the Discharger shall pay \$125,000 in accordance with the terms of the Settlement Agreement.
4. Fulfillment of the Discharger's obligations under the Settlement Agreement constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Settlement Agreement.

Date: _____

Bruce H. Wolfe
Executive Officer

List of Attachments

Attachment 1: Settlement Agreement, dated XX

Attachment 2: Supplemental Environmental Project