CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

IMPOSING ADMINISTRATIVE CIVIL LIABILITY upon:

JOHN D. SWEENEY AND POINT BUCKLER CLUB, LLC
POINT BUCKLER ISLAND
SUISUN MARSH, SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds, with respect to John D. Sweeney (Mr. Sweeney) and Point Buckler Club, LLC, (Club; collectively Dischargers), that:

1. Mr. Sweeney purchased Point Buckler Island (Island) in 2011. Mr. Sweeney established Point Buckler Club, LLC (Club) in 2014 and is the president and manager. In October 2014, Mr. Sweeney transferred ownership of the Island to the Club.

2. The Dischargers are subject to the requirements of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) that prohibit discharges into surface waters that affect or threaten to affect beneficial uses and to sections 301 and 401 of the federal Water Pollution Control Act (Clean Water Act) that regulate discharges of pollutants and permitting of dredge and fill activities into waters of the United States.

3. Cleanup and Abatement Order No. R2-2016-0038 identifies Mr. Sweeney and the Club as responsible parties as owners and operators of the Island. Mr. Sweeney performed unauthorized work on the Island that resulted in discharges of fill material into waters of the State and United States and the fill remains in place today.

4. Mr. Sweeney performed unauthorized levee construction beginning approximately March 2014, in violation of the Basin Plan and the Clean Water Act requirements in Finding 2. As president and manager of the Club, Mr. Sweeney continued unauthorized activities on the Island, including excavating and discharging earthen fill and placing structural fill on behalf of the Club after it took ownership in October 2014.

5. Mr. Sweeney started levee construction in early 2014 and discharged approximately 8,586 cubic yards of fill (1,490,186 gallons) into waters of the State and United States. The fill remained in place for a total of 1,013 days (as of December 14, 2014) and remains in place today.

6. The Regional Water Board Assistant Executive Officer issued a Notice of Violation (NOV) on July 28, 2015, for filling waters of the State and United States and advised the Dischargers to cease and desist the unauthorized activities. The NOV noted that the Club was subject to a monetary penalty of up to $10,000 per day in which the violation occurs and up to $10 per gallon of material discharged pursuant to Water Code section 13385.

7. Regional Water Board staff inspected the Island with experts and licensed surveyors on March 2, 2016. The observations and conclusions from the inspection were provided to the Dischargers in an inspection report dated April 19, 2016, and in the "Point Buckler Technical Assessment of Current Conditions and Historic Reconstruction since 1985" expert report, dated May 12, 2016.

8. On May 17, 2016, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2016-1008 (Complaint) alleging that Mr. Sweeney and the Club had violated Prohibition 9 of the San Francisco Bay Basin Water Quality Control Plan and sections 301 and 401 of the federal Water Pollution Control Act. The Complaint proposed an administrative civil liability of $4,600,000. The Complaint was noticed for 30 days.

9. On August 10, 2016, the Regional Water Board adopted Cleanup and Abatement Order No. R2-2016-0038 requiring interim corrective action, restoration, and mitigation for the violation alleged in the complaint and other violations.

10. The Regional Water Board, in a duly noticed public hearing on December 14, 2016, heard and considered all relevant evidence and testimony regarding the Complaint and whether to issue an administrative civil liability order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement.

11. A person who violates an Administrative Civil Liability Order issued by the Regional Water Board shall be civilly liable under Water Code section 13385.

12. The Regional Water Board may impose administrative civil liability for discharge violations on a per gallon and per day basis. The maximum civil liability for each gallon of discharge is $10 and for each day of violation is $10,000 under Water Code section 13385, subdivision (c).

13. A $4,600,000 administrative civil liability is appropriate. In determining the amount of civil liability, the Regional Water Board has taken into consideration the following criteria from Water Code section 13327: the nature, circumstance, extent, and gravity of the violation or violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The Regional Water Board has taken into consideration these factors as discussed in Attachment to the Complaint (Exhibit A), and written evidence and oral testimony before the Regional Water Board supporting each of these factors, in accordance with the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy

14. This is an action to enforce the laws and regulations administered by the Regional Water Board and is exempt from the provisions of the California Environmental Quality Act, Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

15. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the Regional Water Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday, or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at the link below or will be provided upon request:

    http://www.waterboards.ca.gov/public_notices/petitions/water_quality

IT IS HEREBY ORDERED pursuant to California Water Code sections 13385 and 13323 that John D. Sweeney and Point Buckler Club, LLC is subject to administrative civil liability for the violation(s) as set forth above and shall pay an administrative civil liability in the amount of $4,600,000. The administrative civil liability shall be paid by check payable to the State Water Resources Control Board no later than 30 days following the issuance of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order issued by the Regional Water Board on December 14, 2016.

_____

Bruce H. Wolfe
Executive Officer

Attachment: Administrative Civil Liability Complaint No. R2-2016-1008