

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)	
)	
SAN FRANCISCO PUBLIC UTILITIES COMMISSION)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY
)	
October 21, 2010, Discharge to San Andreas Reservoir, San Mateo County; January 5 and 10, 2011, Discharges to San Mateo Creek, San Mateo County; May 21, 2011, Discharge to Alameda Creek, Alameda County; October 2, 2012, Discharge to San Mateo Creek, San Mateo County; Mandatory Minimum Penalties)	ORDER NO. R2-2014-1003

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board San Francisco Bay Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and the San Francisco Public Utilities Commission (SFPUC) (collectively Parties), and is presented to the Regional Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation resolves the violations alleged herein by the imposition of administrative civil liability against SFPUC in the amount of **\$608,310**.

Section II: RECITALS

2. During all relevant periods, SFPUC owned and operated the Harry Tracy Water Treatment Plant near the San Andreas Reservoir in San Mateo County, and the Sunol Valley Water Treatment Plant along Alameda Creek in Alameda County. Regional Water Board NPDES No. CAG382001, Order No. R2-2009-0033 (Treatment Plant Order), issued pursuant to Chapter 5.5 of Division 7 of the California Water Code (Chapter 5.5), establishes waste discharge requirements for these plants.

3. During all relevant periods, SFPUC owned and operated a series of potable water transmission pipelines located throughout the San Francisco Bay Area, including pipelines along San Mateo Creek in San Mateo County. Regional Water Board NPDES No. CA0038857, Order No. R2-2008-0102 (Transmission Pipeline Order), issued pursuant to Chapter 5.5, establishes waste discharge requirements for these pipelines.

4. Water Code section 13385, subdivision (a)(2), provides that any person who violates a waste discharge requirement issued pursuant to Chapter 5.5 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs, and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

5. Water Code section 13385, subdivisions (h) and (i) require assessment of mandatory minimum penalties for certain discharge violations and state, in part, the following:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385, subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. **Violation 1.** The Prosecution Team alleges that SFPUC violated Specification IV.B, Group B Effluent Limitations for “Short-Term or Seasonal” Discharges (Table 2), of the Treatment Plant Order by discharging approximately 180,900 gallons of low pH and elevated total suspended solids (TSS) to San Andreas Reservoir from the Harry Tracy Water Treatment Plant on October 21, 2010. The discharge occurred when a plant operator inadvertently drained a flocculation basin containing ferric chloride into an overflow structure that drains into San Andreas Reservoir.
7. **Violation 2.** The Prosecution Team alleges that SFPUC violated Specification IV.A, Effluent Limitations of Discharges to Freshwater Creeks (Table 4), of the Transmission Pipeline Order by discharging a combined total of approximately 37,500 gallons of chlorinated and high pH wastewater to San Mateo Creek on January 5 and 10, 2011. The discharges occurred during chlorinated water disinfection of a newly installed transmission pipeline when crystallization of the dechlorination chemical in a feed line caused temporary blockages of the feed line resulting in inadequate dechlorination of the disinfection water prior to discharge to San Mateo Creek. SFPUC has not determined the cause of the high pH in the discharges. The discharges killed five rainbow trout.
8. **Violation 3.** The Prosecution Team alleges that SFPUC violated Prohibitions 1 and 2 of the Treatment Plant Order by discharging 2.32 million gallons of chlorinated potable water from its Sunol Valley Water Treatment Plant to Alameda Creek over 47 minutes on May 21, 2011. The discharge occurred when a plant operator inadvertently closed a valve causing water to overflow from the treatment plant into Alameda Creek. SFPUC estimated the volume of the discharge using a USGS gauge immediately downstream of the discharge point.
9. **Violation 4.** The Prosecution Team alleges that SFPUC violated Specification IV.A, Effluent Limitations of Discharges to Freshwater Creeks (Table 4) of the Transmission Pipeline Order by discharging approximately 16,500 gallons of chlorinated water to San Mateo Creek on October 2, 2012. The discharge occurred during SFPUC’s planned discharge of approximately 3.6 million gallons of treated (dechlorinated) super-chlorinated water following the disinfection of newly installed sections of the Crystal Springs Drinking Water Transmission System. The discharge was discovered on October 3, 2012, when SFPUC staff observed dead fish immediately downstream of the discharge in San Mateo Creek. Surveys conducted by SFPUC and contractor biologists on October 3 and October 4, 2012, revealed a total of 64 dead fish, including approximately 28 steelhead trout (a state and federally listed threatened species), in San Mateo Creek immediately downstream of the discharge point. SFPUC determined that a temporary spike in chlorine through the dechlorination system caused the fish kill. The spike could have occurred for as long as 15 minutes between when SFPUC operators took measurements. The discharge flow rate was steady at 1,100 gallons per minute. Thus, the discharge volume responsible for the fish kill was approximately 16,500 gallons.
10. As shown in Exhibit A, Violations 1 through 4 trigger penalties under Water Code section 13385, subdivision (a)(2), totaling **\$461,310**, including staff costs.

11. **Mandatory Minimum Penalties 1.** As shown in Exhibit B, according to self-monitoring reports, SFPUC committed three serious Group II violations of the Chlorine, Total Residual Instantaneous Maximum (mg/L) effluent limitations contained in the Treatment Plant Order at the Harry Tracy Water Treatment Plant on March 28, 2011. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in the Treatment Plant Order by twenty percent or more. These violations are subject to mandatory minimum penalties under Water Code section 13385, subdivision (h), totaling **\$9,000**.

12. **Mandatory Minimum Penalties 2.** As shown in Exhibit C, according to self-monitoring reports:

- a. SFPUC committed 44 serious Group II violations of the Chlorine/Total Residual Instantaneous Maximum effluent limitations contained in the Transmission Pipeline Order at the Crystal Springs Drinking Water Transmission System during October 24 and 25, 2012. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by twenty percent or more. These violations are subject to mandatory minimum penalties under Water Code section 13385, subdivision (h).
- b. SFPUC committed two violations of the pH Instantaneous Maximum effluent limitations contained in the Transmission Pipeline Order at the Crystal Springs Drinking Water Transmission System on October 24, 2012. These violations are subject to mandatory minimum penalties under Water Code section 13385, subdivision (i)(1)(A).
- c. The violations listed in Exhibit C are subject to mandatory minimum penalties totaling **\$138,000**.

13. As shown in Exhibits B and C, SFPUC is subject to Mandatory Minimum Penalties totaling **\$147,000**.

14. The Parties have engaged in settlement negotiations and agree to fully settle certain alleged violations set forth herein without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

15. The liability imposed by this Order for Violations 1, 2, 3 and 4 is consistent with a reasonable liability determination using the penalty methodology in the State Water Resources Control Board's (State Water Board's) Water Quality Enforcement Policy (see Exhibit A). The liabilities imposed by this order for Mandatory Minimum Penalties 1 and 2 are consistent with California Water Code section 13385 (see Exhibits B and C).

16. The Prosecution Team believes that the resolution of the alleged violations set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no

further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

17. To resolve by consent and without further administrative proceedings the alleged violations set forth herein, the Parties have agreed to the imposition of administrative civil liability in the amount of **\$608,310** against SFPUC.

Section III: STIPULATIONS

The Parties stipulate to the following:

18. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged herein and personal jurisdiction over the Parties to this Stipulation.

19. **Administrative Civil Liability:** SFPUC shall pay a total of **\$608,310** in Stipulated Administrative Civil Liability, which includes \$32,550 for the costs incurred by Regional Water Board staff to investigate and prosecute the matters. Of the Stipulated Administrative Civil Liability, \$277,982 shall be suspended pending completion of the Supplemental Environmental Project described in paragraph 20 and Exhibit D. The remainder, \$330,328, shall be submitted by check made payable to the State Water Resources Control Board, no later than thirty (30) days following execution of this Order by the Regional Water Board or its delegee. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to Andrew.Tauriainen@waterboards.ca.gov) and the Regional Water Board (email to Brian.Thompson@waterboards.ca.gov).

Division of Administrative Services
Attn: Accounting, 18th Floor
P.O. Box 100
Sacramento, CA 95812

20. **Supplemental Environmental Project:** The Parties agree that \$277,982 of the Stipulated Administrative Civil Liability shall be suspended pending completion of the Supplemental Environmental Project (SEP) described in this paragraph and Exhibit D. The suspended portion shall be referred to as the SEP Amount.

a. **Description**

Eden Landing Pond E8X Tidal Marsh Transition Zone Habitat Restoration. The goal of this project is to restore the habitat for flora and fauna on approximately two and a half acres in the transition zones surrounding the former salt ponds within the Eden Landing Ecological Reserve (ELER). This SEP is to be implemented by Save the Bay

(Implementing Party), with the San Francisco Estuary Partnership (Oversight Party) providing oversight. SFPUC (or the Implementing Party on behalf of SFPUC) shall provide the final report, including vegetation monitoring, by April 30, 2016 (SEP Completion Date). Detailed plans including milestones, budget, and performance measures are provided in Exhibit D.

b. Representations and Agreements

SFPUC understands that its promise to implement the SEP outlined in this paragraph and Exhibit D is a material condition of this Stipulation. SFPUC represents: (1) that the Implementing Party shall utilize the funds provided to it to implement the SEP in accordance with the Project Milestones and Budget set forth in the Exhibit D; (2) SFPUC (or the Implementing Party on behalf of the SFPUC) shall provide written reports certified under penalty of perjury to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP, and (3) within 30 days of the completion of the SEP, SFPUC shall provide written certification, under penalty of perjury, that SFPUC and the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the Clean Water Act and the Porter-Cologne Act. SFPUC agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

c. Publicity

Whenever SFPUC or its agents or subcontractors or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Regional Water Board against SFPUC.

d. Progress Reports

SFPUC and/or the Implementing Party shall provide quarterly progress reports as described in Exhibit D. SFPUC and/or the Implementing Party shall permit inspection of the SEP by Regional Water Board staff at any time without notice.

e. Certifications and Audits

i. Certification of Expenditures

On or before April 30, 2016, SFPUC (or the Implementing Party on behalf of the SFPUC) shall submit a certified statement by a responsible district officer representing SFPUC and a responsible official representing the Implementing Party documenting the expenditures by SFPUC and the Implementing Party during the completion period for the SEP. In making such certification, the officials may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or

consultants. SFPUC shall provide any additional information requested by Regional Water Board staff that is reasonably necessary to verify SEP expenditures.

ii. Certification of Performance of Work

On or before April 30, 2016, SFPUC shall submit a report, under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Stipulation including Exhibit D. Documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by SFPUC.

iii. Certification that Work Performed Meets or Exceeds Requirements of CEQA and Other Environmental Laws

Within two months of this Stipulation and Order becoming effective, SFPUC shall submit documentation, under penalty of perjury, stating that the SEP meets or exceeds the requirements of the California Environmental Quality Act (CEQA), if applicable, and/or other applicable environmental laws. SFPUC (or the Implementing Party on behalf of the SFPUC) shall, before the SEP implementation date, consult with other interested State agencies regarding potential impacts of the SEP. Other interested State agencies include, but are not limited to, the California Department of Fish and Wildlife.

iv. Third Party Audit

If Regional Water Board staff obtains information that causes staff to reasonably believe that SFPUC or Implementing Party has not expended money in the amounts claimed by SFPUC or Implementing Party, or has not adequately completed any of the work in the SEP, Regional Water Board staff may require, and SFPUC shall submit, at its sole cost, a report prepared by an independent third party acceptable to Regional Water Board staff providing such party's professional opinion that SFPUC and/or the Implementing Party has expended money in the amounts claimed by SFPUC. In the event of such an audit, SFPUC and the Implementing Party agree that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to Regional Water Board Staff within three months of the completion of the SFPUC's SEP obligations.

f. Regional Water Board Acceptance of Completed SEP

Upon SFPUC's satisfaction of its obligations under this Stipulation, the completion of the SEP and any audits, Regional Water Board staff shall request that the Regional Water Board issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of SFPUC and/or the Implementing Party under this Stipulation.

g. Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP

In the event that SFPUC is not able to demonstrate to the reasonable satisfaction of Regional Water Board staff that it and/or the Implementing Party has spent the entire SEP Amount for the completed SEP, SFPUC shall pay the difference between the SEP Amount and the amount SFPUC can demonstrate was actually spent on the SEP, as an administrative civil liability.

h. Failure to Complete the SEP

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulation or there has been a material failure to satisfy a milestone requirement set forth in Exhibit D, Regional Water Board enforcement staff shall issue a Notice of Violation. As a consequence, SFPUC shall be liable to pay the entire Suspended Administrative Civil Liability or some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, SFPUC shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Regional Water Board. The amount of the suspended liability owed shall be determined by the Executive Officer or the Executive Officer's delegate. Upon notification of the amount assessed for failure to fully impellent the SEP, the amount assessed shall be paid to the Cleanup and Abatement Account within thirty days. In addition, SFPUC shall be liable for the Regional Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy SFPUC's obligations to implement the SEP.

21. **Compliance with Applicable Laws:** SFPUC understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

22. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Brian Thompson
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
brthompson@waterboards.ca.gov
(510) 622-2422

For SFPUC:

Steven R. Ritchie
Assistant General Manager
San Francisco Public Utilities
Commission
525 Golden Gate Ave, 13th Floor
San Francisco, CA 94102

23. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
24. **Matters Covered by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation, represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein or which could have been asserted against SFPUC as of the date of this Stipulation based on the specific facts alleged herein. The provisions of this Paragraph are expressly conditioned on SFPUC's full payment of administrative civil liability by the deadline specified above.
25. **Public Notice:** The Parties understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. If significant new information is received during the public review and comment period that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegee.
26. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
27. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
28. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.
29. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the Regional Water Board or its delegee, or is vacated in whole or in part by the State Water Resources Control Board (State Water 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 will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

30. **No Admission of Liability:** In settling this matter, SFPUC does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, state or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

31. **Waiver of Hearing:** SFPUC has been informed of the rights provided by Water Code section 13323, subdivision (b) and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

32. **Waiver of Right to Petition:** SFPUC hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

33. **Covenant Not to Sue:** SFPUC covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

34. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

35. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

36. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

37. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION PROSECUTION TEAM

Date: December 6, 2013

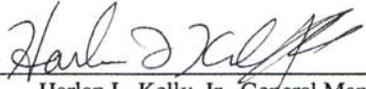
By: 
Thomas Mumley,
Assistant Executive Officer

Approved as to form:

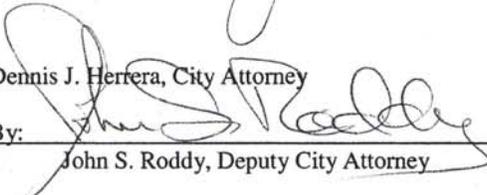
By: 
Andrew Tauriainen, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

Date: 12/4/13

By: 
Harlan L. Kelly, Jr., General Manager

Approved as to form:

Dennis J. Herrera, City Attorney
By: 
John S. Roddy, Deputy City Attorney

Section IV: ORDER OF THE REGIONAL WATER BOARD

38. The Regional Water Board incorporates the Stipulation described above by this reference as if set forth fully herein.
39. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy as shown in Exhibit A, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. In addition to these considerations, this Order recovers the costs incurred by Regional Water Board staff for this matter.
40. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
41. The Stipulation and Order are severable; should any provision be found invalid the remainder shall be in full force and effect.
42. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if SFPUC fails to perform any of its obligations under the Order.
43. Fulfillment of SFPUC's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

IT IS HEREBY ORDERED, pursuant to Water Code section 13323 and Government Code section 11415.60 on behalf of the California San Francisco Bay Regional Water Quality Control Board that SFPUC shall pay **\$608,310** in administrative civil liabilities.

Bruce H. Wolfe
Executive Officer

Date: _____

EXHIBIT A

SPECIFIC FACTORS CONSIDERED TO DETERMINE ADMINISTRATIVE CIVIL LIABILITY

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

- Violation 1: October 21, 2010, Discharge to San Andreas Reservoir**
Violation 2: January 5 and 10, 2011, Discharges to San Mateo Creek
Violation 3: May 21, 2011, Discharge to Alameda Creek
Violation 4: October 2, 2012, Discharge to San Mateo Creek

Pursuant to Water Code sections 13327 and 13385 subdivision (e), the Regional Water Board is required to consider the following factors in determining the amount of civil liability: the nature, circumstances, extent, and gravity of the violations; whether the discharges are susceptible to cleanup or abatement; the degree of toxicity of the discharges; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violations; and other matters that justice may require. Water Code section 13385, subdivision (e) requires that, at a minimum, the liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violations.

On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code sections 13327 and 13385 subdivision (e).

Each factor in the Enforcement Policy and its corresponding category, adjustment, or amount for each of four violation incidents is presented below. The alleged violations by the San Francisco Public Utilities Commission (SFPUC) in the Stipulation and this technical analysis are discharge violations for the purpose of applying the Enforcement Policy's penalty calculation methodology. This analysis omits step three of the calculation methodology, which addresses non-discharge violations.

DESCRIPTION OF ALLEGED VIOLATIONS

Violation 1: October 21, 2010, Discharge of 180,900 Gallons of Low pH and Elevated Total Suspended Solid Water to San Andreas Reservoir

SFPUC allegedly violated Specification IV.B, Group B Effluent Limitations (for "Short-Term or Seasonal" Discharges (Table 2), of NPDES No. CAG382001, Order No. R2-2009-0033 by discharging approximately 180,900 gallons of low pH and elevated total suspended solids (TSS) to San Andreas Reservoir from the Harry Tracy Water Treatment

Plant on October 21, 2010. The discharge occurred when a plant operator inadvertently drained a floc basin containing ferric chloride into an overflow structure that drains into San Andreas Reservoir.

Violation 2: January 5 and 11, 2011, Discharges of 37,000 Gallons of Chlorinated and High pH Water to San Mateo Creek

SFPUC allegedly violated Specification IV.A, Effluent Limitations of Discharges to Freshwater Creeks (Table 4), of NPDES No. CA0038857, Order No. R2-2008-0102 by discharging a combined total of approximately 37,500 gallons of chlorinated and high pH wastewater to San Mateo Creek on January 5 and 10, 2011. The discharges occurred during chlorinated water disinfection of a newly installed transmission pipeline when crystallization of the dechlorination chemical in a feed line caused temporary blockages of the feed line resulting in inadequate dechlorination of the disinfection water prior to discharge to San Mateo Creek. SFPUC has not determined the cause of the high pH in the discharges. The discharges killed five rainbow trout.

Violation 3: May 21, 2011, Discharge of 2.32 Million Gallons of Chlorinated Water to Alameda Creek

SFPUC allegedly violated Prohibitions 1 and 2 of NPDES No. CAG382001, Order No. R2-2009-0033 (NPDES Permit) by discharging 2.32 million gallons of chlorinated potable water from its Sunol Valley Water Treatment Plant to Alameda Creek over 47 minutes on May 21, 2011. The discharge occurred when a plant operator inadvertently closed a valve causing water to overflow from the treatment plant into Alameda Creek. SFPUC estimated the volume of the discharge using a USGS gauge immediately downstream of the discharge point.

Violation 4: October 2, 2012, Discharge of 16,500 Gallons of Chlorinated Water to San Mateo Creek

SFPUC allegedly violated Specification IV.A, Effluent Limitations of Discharges to Freshwater Creeks (Table 4) of NPDES No. CA0038857, Order No. R2-2008-0102 by discharging approximately 16,500 gallons of chlorinated water to San Mateo Creek on October 2, 2012. The discharge occurred during SFPUC's planned discharge of approximately 3.6 million gallons of treated (dechlorinated) super-chlorinated water following the disinfection of newly installed sections of the Crystal Springs Drinking Water Transmission System. The discharge was discovered on October 3, 2012, when SFPUC staff observed dead fish immediately downstream of the discharge in San Mateo Creek. Surveys conducted by SFPUC and contractor biologists on October 3 and October 4, 2012, revealed a total of 64 dead fish, including approximately 28 steelhead trout (a state and federally listed threatened species), in San Mateo Creek immediately downstream of the discharge point. SFPUC determined that a temporary spike in chlorine through the dechlorination system caused the fish kill. The spike could have occurred for as long as 15 minutes between when SFPUC operators took measurements. The

discharge flow rate was steady at 1,100 gallons per minute. Thus, the discharge volume responsible for the fish kill was approximately 16,500 gallons.

PENALTY CALCULATION STEPS

STEP 1 – POTENTIAL FOR HARM FOR DISCHARGE VIOLATIONS

The “potential harm” factor considers the harm to beneficial uses that resulted or that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5).

Violation 1: The potential harm to beneficial uses is minor (i.e., a score of 1). The discharge from the floc basin had pH values ranging from 3.45 to 6.42, and TSS concentrations up to 80 mg/L. However, San Andreas Reservoir is a large body of water where fish could find refuge away from the low pH discharge. Thus, the impacts would be limited to less mobile aquatic organisms in the immediate vicinity of the discharge. The pH would dilute to ambient levels as it diffused into the reservoir. The solids are inert in nature and would quickly settle to the bottom with little if any impact. While the SFPUC sent a biologist to assess the impact, the biologist inspected the wrong location, so those observations were not considered in this assessment.

Violation 2: The potential harm to beneficial uses is below moderate (i.e., a score of 2). The untreated wastewater discharges caused or contributed to killing approximately five rainbow trout in San Mateo Creek. These dead fish were observed on January 10, 2011, in San Mateo Creek downstream of the discharge by an SFPUC environmental inspector and a biologist. They noted that some of the dead fish looked to have died a few days prior. The inspector and biologist also noted a chlorine smell during this inspection, as well as during an earlier inspection on January 5, 2011. In both instances, while the inspector and biologist tested the discharge and receiving water upstream and downstream for pH, they failed to test for residual chlorine despite the chlorine odor. The SFPUC reported the pH in San Mateo Creek where the dead fish to be 9.8, slightly higher than an upstream pH of 9.6. This suggests that flows in the creek diluted and flushed the high pH discharge back close to ambient levels quickly. It is not possible to determine conclusively the cause of the fish kill (pH or chlorine), but it is likely both were factors.

Although there were acute impacts from the discharges of chlorinated and high pH wastewater, the duration of each discharge was limited to no more than 15 minutes, and the impacts were isolated to a small reach of the receiving water. The discharges would

be diluted by ambient water in San Mateo Creek, which was flowing at a higher level during mid-winter.

Violation 3: The potential for harm to beneficial uses is minor (i.e., a score of 1). Water discharged from the treatment plant had up to a 1 mg/L concentration of residual chlorine. However, creek water in Alameda Creek would have diluted the chlorine residual. Also, while a biological assessment of Alameda Creek did not occur until four days after the discharge, the biologist who conducted the assessment did not observe impacts to aquatic life, or erosion or deposition of sediments resulting from the discharge.

The delay in conducting the biological assessment occurred because an operator did not observe any discharge during his initial inspection in response to the valve closure. This operator inspected the wrong location. It was not until the plant superintendent determined four days later, while reviewing plant records, that there had in fact been a discharge, and sent the biologist to assess impacts.

Violation 4: The potential harm to beneficial uses is above moderate (i.e., a score of 4). The approximately 16,500-gallon discharge of chlorinated water to San Mateo Creek caused or contributed to the killing of approximately 64 fish. An SFPUC field biologist determined that 29 of the dead fish were steelhead trout, a state and federally listed threatened species. Subsequent three surveys by SFPUC biologist one on October 31 and two on November 1, 2012, showed the presence of trout and other fish species had returned to the impacted stretch of creek.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics for the Discharge

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

Violation 1: The risk or threat posed by the discharge is moderate (i.e., a score of 2). The SFPUC reported the discharge pH and flow rate for each minute of the discharge. The reported discharge pH ranged between 3.45 and 6.42, and the discharge flow rate ranged between 625 and 4,611 gallons per minute. The discharge lasted for about 50 minutes. Low pH is acutely toxic to aquatic habitat, and the discharge limit requires pH to be within 6.5 to 8.5. The average pH of the entire discharge is 5.63 (calculated from the arithmetic average of the antilog of the reported pH and flow rate data). This average pH is about 7.4 times below the allowable limit.

Violation 2: The risk or threat of the discharge is above moderate (i.e., a score of 3). The discharge was untreated wastewater with chlorine at concentrations up to 1.9 mg/L and pH up to 10.4. Chlorine exhibits toxicity to aquatic life even at low concentrations. The effluent limit is 0.0 mg/L. The U.S. EPA Water Quality Criterion for chlorine is 0.019 mg/L to prevent acute (lethal) effects to aquatic life. High pH also causes toxicity to aquatic habitat. The discharge limit requires the pH to be within 6.5 to 8.5. The pH of the discharge was up to almost 100 times higher than the allowable limit.

Violation 3: For Violation 3, the risk or threat posed by the discharged material is moderate (i.e., a score of 2). The discharge had a chlorine concentration of up to 1 mg/L. Chlorine exhibits toxicity to aquatic life even at low concentrations. The U.S. EPA Water Quality Criterion for chlorine is 0.019 mg/L to prevent acute (lethal) effects to aquatic life.

Violation 4: For Violation 4, the risk or threat of the discharge is major (i.e., a score of 4). The SFPUC reported that the chlorine concentrations in the discharge could have been up to 10 milligrams per liter (mg/L) for the 15-minute period when dechlorination only partially treated the super-chlorinated wastewater. Chlorine exhibits toxicity to aquatic life at low concentrations. The chlorinated discharge is four orders of magnitudes higher than the U.S. EPA Water Quality Criterion for chlorine (0.019 mg/L) for preventing acute (lethal) effects to aquatic life.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

For Violations 1, 2, 3 and 4, the discharges were not susceptible to cleanup or abatement (i.e., factor of 1). In each instance, the discharged material flowed into and commingled with ambient receiving waters. There was no opportunity for abating the effects of low pH and elevated TSS concentrations on aquatic life once the discharges were mixed with ambient receiving waters.

STEP 2 – ASSESSMENTS FOR DISCHARGE VIOLATIONS

When there is a discharge, the Regional Water Board determine an initial liability amount on a per-gallon and/or a per-day basis using the sum of the Potential for Harm scores from Step 1 and a determination of degree of Deviation from Requirement.

Violation 1: The sum of the three factors in Step 1 is 4, and the extent of Deviation for Violation 1 is **major**. The discharge violated the Effluent Limitations and Discharge Specifications IV.B - Group B Effluent Limitations (for “Short-Term or Seasonal” Discharges (Table 2), of NPDES No. CAG382001, Order No. R2-2009-0033. Effluent limits are in essence prohibitions on discharges that are not within limits. The Enforcement Policy defines a major Deviation from Requirement as one where “the requirement has been rendered ineffective....” Discharges not in compliance with effluent limits render those limits ineffective.

The Prosecution Staff used both per-gallon and per-day factors because the discharge was a large scale release violating the pH discharge limit by as much as over 1000 times. The

resulting per-gallon and per-day multiplier factor is 0.15, based on a Potential for Harm score of 5 and a “Major” Deviation from Requirement.

Violation 1 Initial Liability Amount

There was no adjustment of the maximum \$10/gallon because the discharge does not qualify as high volume discharges. The initial liability amount calculated on a per-gallon and per-day basis is as follows:

Per Gallon Liability: (179,900 gallons) x (0.0.025) x (\$10/gallon) = \$44,975

Per Day Liability: \$10,000/day x (0.0.025) x (1 day) = \$250

Total Initial Liability = \$45,225

Violation 2: The sum of the three factors from Step 1 is 6, and the extent of Deviation for Violation 2 is **major**. The discharge violated the Effluent Limitations and Discharge Specifications IV.A - Effluent Limitations for Discharges to Freshwater Creeks other than San Antonio and Alameda Creeks (Table 4) of NPDES No. CA0038857, Order No. R2-2008-0102. Effluent limits are in essence prohibitions on discharges that are not within limits. The Enforcement Policy defines a major Deviation from Requirement as one where “the requirement has been rendered ineffective....” Discharges not in compliance with effluent limits render those limits ineffective.

The Prosecution Staff used both per-gallon and per-day factors because the discharge was large in scale in that it caused or contributed to fish kill. The resulting per-gallon and per-day multiplier factor is 0.22, based on a Potential for Harm score of 6 and a “Major” Deviation from Requirement.

Initial Liability Amount

There was no adjustment of the maximum \$10/gallon because the discharges do not qualify as high volume discharges. The initial liability amount calculated on a per-gallon and per-day basis is as follows:

Per Gallon Liability: (35,500 gallons) x (0.22) x (\$10/gallons) = \$78,100

Per Day Liability: \$10,000/day x (0.22) x (2 days) = \$4,400

Total Initial Liability = \$82,500

Violation 3: The sum of the three factors from Step 1 is 4, and the degree of Deviation from Requirement is considered **major**. The discharge was prohibited by Discharge Prohibitions 1 and 2 of SFPUC’s NPDES Permit:

- **Prohibition 1:** *Discharge of effluent/treated wastewater at a location or in a manner different from that described in the Notice of Intent (NOI) is prohibited.*
- **Prohibition 2:** *The bypass or overflow of untreated or partially treated wastewater to waters of the United States is prohibited.*

The Enforcement Policy defines a major deviation as one where “the requirement has been rendered ineffective....” The unauthorized discharge to Alameda Creek rendered these prohibitions ineffective.

The Prosecution Staff used both per-gallon and per-day factors because of the scale of the discharge. The per-gallon and per-day factor from the Enforcement Policy is a multiplier of 0.025, based on a Potential for Harm score of 4 and a “Major” Deviation from Requirement.

Initial Liability Amount

The Enforcement Policy allows for an adjusted maximum per gallon assessment for “High Volume Discharge.” This discharge is a high volume discharge so a maximum \$2 per gallon is used to determine the initial liability amount for Violation Three as follows:

Per Gallon Liability: $(2,319,000 \text{ gallons}) \times (0.025) \times (\$2/\text{gallons}) = \$115,950$

Per Day Liability: $\$10,000/\text{day} \times (0.025) \times (1 \text{ day}) = \250

Total Initial Liability = \$116,200

Violation 4: The sum of the three factors from Step 1 is 9, and the degree of Deviation from Requirement is considered **major**. The discharge violated the Effluent Limitations and Discharge Specifications IV.A of the Permit (chlorine effluent limit of 0.0 mg/L). The Enforcement Policy defines a major Deviation from Requirement as one where “the requirement has been rendered ineffective....” The Permit set an effluent limit for chlorine to prevent harm to fish and other aquatic species. The chlorinated discharge exceeded the acceptable level by approximately four orders of magnitude, killing fish, and rendering those limits ineffective.

Prosecution Staff used both the per-gallon and the per-day factors, resulting in a per-gallon and per-day multiplier of 0.8, based on a Potential for Harm score of 9) and a “Major” Deviation from Requirement.

Initial Liability Amount

For this violation, there was no adjustment of the maximum \$10/gallon because the discharges do not qualify as high volume discharges. The initial liability

amount for the violation calculated on a per-gallon and per-day basis is as follows:

Per Gallon Liability:

[15,500 gallons) x (0.8) x (10/gallon) = \$124,000]

Per Day Liability:

[\$10,000/day x (0.8) x (1 day) = \$8,000]

Total Initial Liability = \$132,000

STEP 3 – PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS

Omitted.

STEP 4 – ADJUSTMENTS TO DETERMINE INITIAL LIABILITY FOR VIOLATION

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used, with a higher multiplier for negligent behavior.

Violation 1: The culpability multiplier is 1.1. SFPUC operator error caused the discharge of low pH with high TSS water from a floc basin to San Andreas Reservoir. Based on SFPUC's spill report, the floc basin was not in service when the operator inadvertently added ferric chloride to the floc basin and drained the contents into an overflow structure that discharges to San Andreas Reservoir. Prior to the discharge, the operator did not test the water in the floc basin for pH or TSS consistent with permit requirements.

Violation 2: For Violation 2, the culpability multiplier is 1. SFPUC took reasonable measures by using blankets and space heaters to prevent the dechlorination line from freezing when the ambient temperature dropped to mid-30s degree Fahrenheit on January 5, 2011. However, the ambient temperature further dropped to freezing point (i.e., lower 30s degree Fahrenheit) the night of January 9 and the early hours of January 10, 2011. The freezing point of sodium bisulfite solution is about 43 degrees Fahrenheit.

Violation 3: For Violation 3, the culpability multiplier is 1.1 for the following reasons: An SFPUC operator error caused the chlorinated water discharge to Alameda Creek. The operator inadvertently closed a 60-inch butterfly valve located about two miles

downstream of the treatment plant. The valve has a 20-inch bypass line used to throttle the effluent from the treatment plant. When the valve was closed, water backed up into the treatment plant causing an overflow at the water treatment plant.

The failure of SFPUC's alarm system contributed to the violation. This alarm system failed to alert the plant operator that the valve had closed. Had this alarm worked, the overflow may not have occurred or would have been significantly smaller in volume. Instead, a plant supervisor did not become aware of the closed valve until 47 minutes later when a different alarm activated (high-water, elevation alarm) within the operation control system. In response to this other alarm, the supervisor re-opened the valve, which stopped the discharge. SFPUC suspects that the primary alarm may have failed because of a power failure.

Violation 4: For Violation 4, the culpability multiplier is 1.1. SFPUC planned the discharge and was required to dechlorinate influent wastewater prior to discharge. A chlorine spike in the discharge was due to insufficient dechlorination.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is used, with a higher multiplier when there is a lack of cooperation.

Violation 1: For Violation 1, the cleanup and cooperation factor multiplier is 1. Cleanup was not possible once the discharge reached San Andreas Reservoir. SFPUC was responsive to Regional Water Board staff requests during investigation of the discharge.

Violation 2: The cleanup and cooperation factor multiplier is 1. Cleanup was not possible once the discharge reached San Mateo Creek. SFPUC was responsive to Regional Water Board staff requests during investigation of the discharges.

Violation 3: For Violation 3, Prosecution Staff decreased the liability for this factor by ten percent (multiplier of 0.9). Cleanup was not possible once the discharge reached Alameda Creek. However, SFPUC was responsive and conducted thorough investigation on its own once it became aware of the discharge, and was cooperative with Regional Water Board staff during the investigation. In addition, SFPUC took prompt and appropriate preventive measures, such as upgrading the alarm systems, taking substantial disciplinary action against the operator responsible for the discharge, and providing training and refresher to its plant operators.

Violation 4: For Violation 4, the cleanup and cooperation factor multiplier is 1. Cleanup was not possible once the discharge reached San Mateo Creek. SFPUC was responsive to Regional Water Board staff requests during investigation of the discharges.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations using a minimum multiplier of 1.1.

Violation 1: Prosecution Staff increased the liability by a multiplier of 1.1 due to previous violations from this facility. The Region Water Board adopted three mandatory minimum penalty Orders against SFPUC for discharge limit violations at the Harry Tracy Treatment Plant and imposed \$87,000, \$3,000, and \$6,000 mandatory minimum penalties by Order Nos. R2-2009-0098, R2-2010-0123, and R2-2011-0071, respectively.

Violation 2: The history factor multiplier is 1 because SFPUC has no similar past violations at this facility.

Violation 3: For Violation 3, Prosecution Staff increased the liability by a multiplier of 1.1 due to a previous violation at this facility. The Region Water Board enforced against SFPUC for a violation at the Sunol Valley Treatment Plant in 2008 and imposed a \$64,000 administrative civil liability (Complaint No. R2-2008-0033).

Violation 4: The history factor multiplier is 1.2 because SFPUC has had similar violations in the past. SFPUC paid \$64,000 in administrative civil liability penalties for a chlorinated water discharge from its Sunol Valley Water Plant, as alleged in Complaint No. R2-2008-003, dated September 16, 2008.

STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY AMOUNT

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Violation 1: \$45,225 (Initial Liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1.1 (History of Violations Multiplier) = **\$54,720** (rounded).

Violation 2: \$82,500 (Initial Liability) x 1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1 (History of Violations Multiplier) = **\$82,500**

Violation 3: \$116,200 (Initial Liability) x 1.1 (Culpability Multiplier) x 0.9 (Cleanup and Cooperation Multiplier) x 1.1 (History of Violations Multiplier) = **\$126,540** (rounded).

Violation 4: \$132,000 (Initial Liability) x 1.1 (Culpability Multiplier) x 1 (Cleanup and Cooperation Multiplier) x 1.2 (History of Violations Multiplier) = Total Base Liability or [\$132,000 x 1.1 x 1 x 1.2 = \$174,240 (allowable maximum penalty for the violation is \$165,500)] Total Base Liability = **\$165,500** (allowable maximum penalty)

COMBINED TOTAL BASE LIABILITY

The combined Total Base Liability Amount for Violations 1, 2, 3 and 4 is: \$54,720 + \$82,500 + \$126,540 + \$165,000 = **\$428,760**.

STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, the Regional Water Board Prosecution Staff has sufficient information to suggest SFPUC has the ability to pay the proposed liability. SFPUC is a major department within the City and County of San Francisco. According to SFPUC's 2011/12 Fiscal Year Capital Budget for Enterprise Investments (comprising the Port of San Francisco, SFPUC, and the San Francisco International Airport) is approximately \$224 million, of which approximately \$159 million (71 percent) is allocated to the SFPUC. The Regional Water Board has no evidence that SFPUC would be unable to pay the proposed liability or that payment of the proposed liability would cause undue financial hardship.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

For Violations 1, 2 and 3, Regional Water Board Prosecution Staff time incurred to prepare this analysis and supporting information is 177 hours. Based on an average cost to the State of \$150 per hour, the total staff cost for Violations 1, 2 and 3 is estimated to be \$26,550. For Violation 4, Regional Water Board Prosecution Staff time incurred to prepare this analysis and supporting information is 40 hours. Based on an average cost to the State of \$150 per hour, the total staff cost for Violation 4 is estimated to be \$6,000. The staff costs for Violations 1 through 4 totals **\$32,550**. The Assistant Executive Officer intends to seek additional liability for staff costs incurred in bringing the matter to settlement or hearing. Although the final amount for such costs cannot be determined until completion of the matter, such costs could be quite substantial.

STEP 8 – ECONOMIC BENEFIT

The Enforcement Policy directs the Regional Water Board to determine any economic benefit associated with the violations and to recover the economic benefit gained plus 10 percent in the liability assessment.

The economic benefit associated with the four violations is well below the assessed liability.

Violation 1: The discharge was avoidable if the plant operator did not make an error in adding ferric chloride and draining it into an overflow structure that drains into San

Andreas Reservoir. Operator and inspectors training and system testing are ongoing processes, so SFPUC did not gain economically for Violation 1.

Violation 2: SFPUC could have taken measures earlier to prevent the dechlorination equipment from freezing. The economic savings from not doing so is minimal.

Violation 3: The discharge was avoidable if the plant operator did not make an error in closing the valve, and if the primary alarm system had functioned properly. Operator training and systems testing are ongoing processes, so SFPUC did not gain economically for Violation 3.

Violation 4: SFPUC may have realized minimal economic saving of about \$7,200 (i.e., 72 hours at \$100.00 per hour) by not having an attendant to continuously monitor the disinfection feed and dechlorination lines to ensure and maintain the chlorine concentration in the influent steady and coincide with the final dechlorination dose to meet allowable discharge limits for the course of the discharge. The assessed penalty is more than ten percent higher than this savings.

STEP 9 – MAXIMUM AND MINIMUM LIABILITY AMOUNTS

a) *Minimum Liability Amount*

The Enforcement Policy requires that the minimum liability amount imposed not to be below a Discharger's economic benefit plus 10 percent. Based on the Regional Water Board Prosecution Staff's estimate, the proposed liability is above this amount. Mandatory minimum penalties apply to the discharges described in Violations 1 and 2 because they are violations of NPDES Permit limits whereas Violation 3 is permit prohibitions violation. The sum of the mandatory minimum penalty is \$6,000 for the two residual chlorine serious violations that occurred on January 5 and 10, 2011 (i.e., \$3,000 per each serious violation), pursuant to California Water Code section 13385(h). For the two pH violations for the January 5 and 10, 2011, San Mateo Creek discharge, the mandatory minimum penalty is \$3,000 for chronic violation, pursuant to Water Code section 13385(i). For the TSS violation for the October 21, 2010, San Andreas Reservoir discharge, the mandatory minimum penalty is assessed \$3,000, pursuant to Water Code section 13385(h). (The associated low pH violation is not subject to mandatory minimum penalty.) The sum of the mandatory minimum penalty is \$3,000 for the one residual chlorine serious violation that occurred on October 2, 2012 (i.e., \$3,000 per each serious violation), pursuant to Water Code section 13385(h). Thus, the total mandatory minimum penalty is equal to \$18,000.

b) *Maximum Liability Amount*

The maximum administrative civil liability amount is the maximum amount allowed by Water Code Section 13385: (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallons exceeding 1,000 gallons that is

discharged and not cleanup. The maximum liability for Violation 1 is \$1.809 million, the maximum liability for Violation 2 is \$375,000, the maximum liability for Violation 3 is \$23.2 million, and the maximum liability for Violation 4 is \$165,000, for a total combined maximum liability of \$25,549,000.

STEP 10 – FINAL LIABILITY AMOUNT

Based on consideration of the penalty factors discussed above, and including staff costs, the total final liability amount proposed for Violations 1, 2, 3 and 4 is **\$461,310**. This is within the maximum and minimum liability amounts.

EXHIBIT B

**MANDATORY MINIMUM PENALTIES
 FOR**

San Francisco Public Utilities Commission
 Harry Tracy Water Treatment Plant

Located on 2901 Crystal Springs, San Bruno, San Mateo County, CA 94066
 NPDES No. CAG382001 (Order No. R2-2009-0033)

The following table lists this facility's alleged permit exceedance subject to a mandatory minimum penalty pursuant to Water Code sections 13385(h) and/or 13385(i).

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or 13385(i) Required MMP
1	897357	3/28/2011	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.09	> 20%	C2, S	\$3,000
2	897356	3/28/2011	Chlorine, Total Residual Instantaneous Maximum(mg/L)	0.0	0.15	> 20%	C3, S	\$3,000
3	897355	3/28/2011	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.11	> 20%	> C3, S	\$3,000
Total								\$9,000
<p>Legend for Table: CIWQS = California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities. Violation ID = Identification number assigned to a permit exceedance in CIWQS. C = Count – The number that follows represents the number of exceedances SFPUC has had in the past 180 days, including this violation. A count greater than three (> C3) means that a penalty under CWC Section 13385(i) applies. S = Serious, which means that a penalty under Water Code section 13385(h) applies when an effluent limitation is exceeded 40% or more for a Group I pollutant or 20% or more for a Group II pollutant.</p> <p style="text-align: right;">Regulatory Measure ID: 383959 Place ID: 231302 WDID: 02 386058002</p>								

EXHIBIT C

MANDATORY MINIMUM PENALTIES

FOR

San Francisco Public Utilities Commission
 Crystal Springs Drinking Water Transmission System
 NPDES No. CA0038857 (Order No. R2-2008-0102)

The following table lists this facility's alleged permit exceedance subject to a mandatory minimum penalty pursuant to Water Code sections 13385(h) and/or 13385(i).

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or 13385(i) Required MMP
1	943583	10/24/2012 (11:20 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.08	> 20%	C1, S	\$3,000
2	943584	10/24/2012 (11:52 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	C2, S	\$3,000
3	943585	10/24/2012 (12:15 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	8.8 ¹	> 20%	C3, S	\$3,000
4	943586	10/24/2012 (12:18 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.9	> 20%	> C3, S	\$3,000
5	943587	10/24/2012 (12:21 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.1/0.09	> 20%	> C3, S	\$3,000
6	943589	10/24/2012 (12:27 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.19	> 20%	> C3, S	\$3,000
7	943591	10/24/2012 (1:00 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
8	943592	10/24/2012 (1:15 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
9	943593	10/24/2012 (2:00 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
10	943594	10/24/2012 (2:30 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000

¹ Operator smelled chlorine odor at the discharge point in the receiving water and measured residual chlorine in the receiving water. Operator stopped discharge within three minutes when residual chlorine in the receiving water was measured up to 8.8 mg/L. The discharge was brief, and the discharged volume was small where MMP would be adequate as discretionary penalty assessment.

Settlement Agreement and Stipulated Administrative Civil Liability Exhibit C
San Francisco Public Utilities Commission

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or 13385(i) Required MMP
11	943595	10/24/2012 (2:45 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.07	> 20%	> C3, S	\$3,000
12	943596	10/24/2012 (2:45 p.m.)	pH Instantaneous Maximum	6.5 – 8.5	4.4	> 126 times	> C3 NA (Other)	\$3,000
13	943597	10/24/2012 (3:15 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	> C3, S	\$3,000
14	943598	10/24/2012 (4:15 p.m.)	pH Instantaneous Maximum	6.5 – 8.5	4.8	> 50 times	> C3, NA (Other)	\$3,000
15	943600	10/24/2012 (5:02 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	> C3, S	\$3,000
16	943601	10/24/2012 (6:00 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
17	943603	10/24/2012 (6:30 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
18	943604	10/24/2012 (9:30 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
19	943605	10/25/2012 (4:30 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.14	> 20%	> C3, S	\$3,000
20	943607	10/25/2012 (8:15 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
21	943608	10/25/2012 (8:45 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.05	> 20%	> C3, S	\$3,000
22	943609	10/25/2012 (9:13 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.28	> 20%	> C3, S	\$3,000
23	943610	10/25/2012 (9:15 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	> C3, S	\$3,000
24	943611	10/25/2012 (10:00 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.27	> 20%	> C3, S	\$3,000
25	943612	10/25/2012 (10:05 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.11	> 20%	> C3, S	\$3,000
26	943613	10/25/2012 (10:07 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.15	> 20%	> C3, S	\$3,000
27	943614	10/25/2012 (10:10 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.19	> 20%	> C3, S	\$3,000
28	943615	10/25/2012 (10:13 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.18	> 20%	> C3, S	\$3,000

Settlement Agreement and Stipulated Administrative Civil Liability Exhibit C
San Francisco Public Utilities Commission

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or 13385(i) Required MMP
29	943616	10/25/2012 (10:15 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.24	> 20%	> C3, S	\$3,000
30	943617	10/25/2012 (11:30 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.07	> 20%	> C3, S	\$3,000
31	943618	10/25/2012 (11:45 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.16	> 20%	> C3, S	\$3,000
32	943619	10/25/2012 (11:50 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.12	> 20%	> C3, S	\$3,000
33	943620	10/25/2012 (11:52 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.14	> 20%	> C3, S	\$3,000
34	943621	10/25/2012 (11:55 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.15	> 20%	> C3, S	\$3,000
35	943622	10/25/2012 (11:57 a.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.07	> 20%	> C3, S	\$3,000
36	943623	10/25/2012 (12:00 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.18	> 20%	> C3, S	\$3,000
37	943624	10/25/2012 (12:15 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.12	> 20%	> C3, S	\$3,000
38	943625	10/25/2012 (12:22 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.31	> 20%	> C3, S	\$3,000
39	943626	10/25/2012 (12:24 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	> C3, S	\$3,000
40	943627	10/25/2012 (12:30 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.06	> 20%	> C3, S	\$3,000
41	943628	10/25/2012 (12:33 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.09	> 20%	> C3, S	\$3,000
42	943629	10/25/2012 (2:36 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.23	> 20%	> C3, S	\$3,000
43	943630	10/25/2012 (3:00 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.11	> 20%	> C3, S	\$3,000
44	943631	10/25/2012 (3:06 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.16	> 20%	> C3, S	\$3,000
45	943632	10/25/2012 (3:12 p.m.)	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.20	> 20%	> C3, S	\$3,000
46	943633	10/25/2012 (3:15 p.m.)	Chlorine, Total Residual Instantaneous Maximum	0.0	0.24	> 20%	> C3, S	\$3,000

Settlement Agreement and Stipulated Administrative Civil Liability Exhibit C
 San Francisco Public Utilities Commission

No	CIWQS Violation ID No.	Date of Occurrence	Effluent Limitation Description (Unit)	Effluent Limit	Reported Value	Percent a Group I or Group II Pollutant is over Effluent Limitation	Type of Exceedance	CWC Section 13385(h) and/or 13385(i) Required MMP
			(mg/L)					
Total								\$138,000
<p>Legend for Table: CIWQS = California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities. Violation ID = Identification number assigned to a permit exceedance in CIWQS. C = Count – The number that follows represents the number of exceedances SFPUC has had in the past 180 days, including this violation. A count greater than three (> C3) means that a penalty under CWC Section 13385(i) applies. S = Serious, which means that a penalty under Water Code section 13385(h) applies when an effluent limitation is exceeded 40% or more for a Group I pollutant or 20% or more for a Group II pollutant.</p> <p style="text-align: right;">Regulatory Measure ID: 389121 Place ID: 730408 WDID: 02 38605001</p>								

EXHIBIT D

San Francisco Public Utilities Commission Proposal for Supplemental Environmental Project:

Eden Landing Pond E8X Tidal Marsh Transition Zone Habitat Restoration

Basic Information:

1. Project Name:

Eden Landing Pond E8X/E9/E14 Tidal Marsh Transition Zone Habitat Restoration
– Hayward, Alameda County, California

2. Project Developed By:

Save the Bay

3. Project to be Performed By:

Save the Bay

4. Contact:

Donna Ball, Habitat Restoration Director, Save The Bay
dball@savesfbay.org
510-463-6810

Tim Ramirez, Division Manager, SFPUC Natural Resources Lands Management
Division
tramirez@sfgwater.org
415-554-3265

Project Description:

5. Provide a concise description of the SEP, including the goal(s) of the SEP and detailed plans for achieving the goal(s). If available, include photos or graphics of project area or other applicable images.

The Eden Landing Ecological Reserve (ELER) has 6,300 acres of former salt ponds that are surrounded by an extensive remnant berm system characterized by diminished native vegetation cover and colonization by invasive species. Save the Bay specializes in transition zone restoration of these areas, an integral component to the overall success of the wetland restoration efforts of the South Bay Salt Ponds Restoration Project (SBSRP) at the ELER. Restored transition zone is essential to a functioning estuarine ecosystem,

connecting intertidal and salt marsh habitat to the adjacent upland. Benefits include foraging, roosting, and nesting habitat for waterfowl, shorebirds, and other wildlife; increased critical coverage and refugia during high-tide and storm events for sensitive species; improved structural integrity and creates landscape connectivity between different types of tidal habitats; and reduction of the potential for erosion in areas where flood control levees exist. This project will also benefit the federally-endangered California Clapper Rail (*Rallus longirostris obsoletus*) and the salt marsh harvest mouse (*Reithrodontomys raviventris*), providing refuge during high-tide and storm events at areas where tidal marsh is re-establishing post-breaching of restored salt ponds.

Increasing the amount of transition zone adjacent to restored ponds adds to the value of these restoration projects by providing habitat quickly during the period that recently restored marshes are establishing. Restored native revegetation provides immediate high-value habitat and also helps to outcompete future weed invasions. In addition, ecologically functioning tidal marshes and restored transition zone habitat are better able to keep pace with sea level rise and provide improved natural protection for neighboring shoreline communities, helping to build regional resilience and protection for wildlife and humans in the face of projected climate change impacts.

The project will apply Save the Bay's focused revegetation techniques on berms adjacent to existing tidal marsh and managed ponds at ELER to provide the necessary high-value transition zone habitat to provide a critical element of ecosystem function at the ELER complex.

During the proposed 2-year project period, Save the Bay will restore approximately two and a half acres of transition zone habitat toward a 5-year goal of 25 acres of restored transition zone within the ELER complex. We propose the following activities for this project:

- (1) Collect seed, propagate and outplant approximately 20,000 seedlings to establish transition zone habitat on graded levee slopes at Pond E8X/E9/E14 (Figure 1). Revegetation activities will include seeding, collecting seeds and cuttings for propagation in our native plant nurseries and outplanting to establish native plant habitat. Save The Bay will conduct restoration projects using volunteers, Save The Bay staff, and planting crews as needed.
- (2) Remove and control infestations of four invasive plant species: perennial pepperweed (*Lepidium latifolium*), iceplant (*Mesembryanthemum crystallinum*), mustard (*Brassica* sp.) and fennel (*Foeniculum vulgare*) to less than 30 percent of the project area and prevent spreading into adjacent areas. Save The Bay has proven success in controlling invasive species with strategic designs that include replacement using native plantings that outcompete exotic species. We will also control infestations of any additional invasive or non-native plants that threaten the success of native restoration plantings.
- (3) Annual vegetation monitoring and quarterly reporting on project status. Save The Bay staff will conduct annual vegetation monitoring using Collins et al,

(2010) to determine percent native and non-native vegetation cover over a two-year period. Quarterly reports will be submitted to report on project status.
(4) Adaptive management. This project will incorporate strategies to adaptively manage the site to improve restoration design, techniques, and program efficiency.

Compliance with SEP Criteria:

This section must address how the project meets all the following SEP criteria.

6. Describe how the SEP directly benefits or studies groundwater or surface water quality or quantity and the beneficial uses of the waters of the State, in one of the following categories:
 - a. Monitoring program
 - b. Studies or investigations
 - c. Water or soil treatment
 - d. Habitat restoration or enhancement
 - e. Pollution prevention or reduction
 - f. Wetland, stream, or other waterbody protection, restoration or creation
 - g. Conservation easements
 - h. Stream augmentation
 - i. Reclamation
 - j. Watershed assessment
 - k. Watershed management facilitation services
 - l. Compliance training, compliance education, and the development of educational materials
 - m. Enforcement projects
 - n. Non-point source program implementation
 - o. Other

The project will remove invasive weeds from degraded levees and revegetate them with native plants to provide multiple environmental benefits. Project benefits are critical foraging, roosting, nesting and refuge habitat for endangered and threatened species; enhanced wetland ecosystem function and water quality benefits; structural integrity, reduced erosion and shoreline protection against flooding; resilience for adaptation to climate change impacts.

7. Confirm that the SEP contains only measures that go above and beyond applicable obligations of the discharger.

Funding this project goes above and beyond the SFPUC obligations as a discharger. The SFPUC has no prior obligation or relationship to the proposed SEP. While SFPUC owns land in the vicinity of the SEP, the SFPUC will not benefit directly from the proposed SEP.

8. Demonstrate that the SEP does not directly benefit, in a fiscal manner, a Water Board's functions, its members, or its staff.

While the Eden Landing Pond E8X/E9/E14 Tidal Marsh Transition Zone Habitat Restoration Project funding will advance the goals of the Regional Water Board in enhancing habitat and water quality, the funding of this Project does not directly benefit, in a fiscal manner, a Regional Water Board's functions, its members, or its staff. As described in detail in the SEP proposal and the settlement proposal, the SFPUC funding of the Project is directly related to violations of its NPDES permits. The Project will be implemented by Save the Bay. The San Francisco Estuary Project will provide third party oversight for the Project. The Project does not advance a project or activity directly under the purview or under the direction of the RWQCB, its members, or staff. The Regional Water Board generally does not directly undertake restoration projects such as the Project at Eden Landing. The Project is also not related to any abatement order or other legal or administrative mandate that was imposed upon the Regional Water Board.

9. Describe the SEP's nexus to the nature or location of the violation(s), such as: the SEP is located within the same watershed in which the violation(s) occurred, or the SEP reduces likelihood of similar violations in the future.

The SEP is located adjacent to Old Alameda Creek and within the Alameda Creek watershed drainage basin. The SEP area is also adjacent to the San Francisco Bay. As described above, the Project will enhance and restore critical estuarine habitat and will help improve water quality. The SEP addresses a discharge of the SFPUC at the Sunol Valley Water Treatment Plant into Alameda Creek, which drains into San Francisco Bay. The SEP also addresses two SFPUC discharges into San Mateo Creek and one from Harry Tracy Water Treatment Plant, all of which are also hydrologically connected to the San Francisco Bay. The SEP will improve wildlife habitat and provide water quality benefits within the Alameda Creek watershed and in the San Francisco Bay drainage area.

10. Describe any plans to continue and/or maintain the SEP beyond the SEP-funded period. This is especially important in the case of restoration projects.
 - a. How maintenance will be funded
 - b. How other continued activities will be funded

After the initial planting, monitoring will be conducted for the remaining 2-year period of time. By controlling invasive plant species and adaptively managing the site, success criteria are expected to be met. No further action is expected to be necessary after this 2-year period of time.

11. If applicable, include documented support by one of the following:
 - a. Other agencies
 - b. Public groups
 - c. Affected persons

d. Documentation of compliance with the California Environmental Quality Act

A letter of support for the SEP has been provided by the South Bay Salt Pond Restoration Project Executive Director, John Bourgeois and another letter from Scott Wilson, Acting Regional Manager of the California Department of Fish and Wildlife. In addition, the SEP is a component of the South Bay Salt Pond Restoration Project. This project encompasses a long-term, very large restoration effort of the former Cargill Salt Ponds. A combined FEIR/FEIS, which was completed in December 2007, can be found at the following website:

<http://www.southbayrestoration.org/EIR/>

All relevant permits from state and federal resource agencies, including Regional Water Quality Control Board, U.S. Fish and Wildlife, National Marine Fisheries Service and the U.S. Army Corps of Engineers can be found at the following website:

<http://www.southbayrestoration.org/documents/permit-related/>

Project Milestones and Budget:

12. Include a time schedule for implementation of the SEP scope of work. Include milestones (deliverables or key reporting points) that are linked to the budget for the SEP. Include quarterly reports, final report, and any post-project monitoring in the project milestones table.

(Project Map and letters in support on the following pages)

13. Also, include procedures for accounting of all costs and expenses incurred by the SEP, and provisions that any funds left over after the successful completion of the SEP must be turned over to the State Cleanup and Abatement Account.

The SFPUC and Save the Bay will provide the Regional Water Board accounting of costs and expenses incurred by the SEP on a quarterly basis. It is not expected that any of the funds for the SEP will be remaining after completion, but in the event there are remaining funds left over, Save the Bay will turn the remaining funds over to the State Cleanup and Abatement Account.

Project Performance Measures:

14. Describe measures or indicators for the success of the SEP and procedures to evaluate compliance with the performance measures or indicators.

Given the small scale and timeframe of the SEP, approximately 40% total percent cover of native species is anticipated at the end of the monitoring period. Save The Bay staff

will conduct annual vegetation monitoring using Collins et al, (2010) to determine percent native and non-native vegetation cover over a two-year period.

Reports to the Water Board:

15. Confirm that this SEP will meet reporting requirements: at a minimum, the SEP must include quarterly reports on the progress of completion of the SEP to the Regional Water Board, a third party oversight organization, and the State Water Board's Division of Financial Assistance. Additionally, the SEP must include a final report documenting completion of the SEP, and addressing how performance measures were met, along with a copy of accounting records of expenditures.

Quarterly monitoring and status reports will be provided to the Regional Water Board, the State Water Board's Division of Financial Assistance and the San Francisco Estuary Partnership by the SFPUC starting with a report on January 31, 2014. Subsequent reports are due on the first day of each calendar quarter. If the due date falls on a weekend or State holiday, the report shall be due on the next business day. Save the Bay will draft and submit to the SFPUC for review and approval.

Save the Bay shall draft and submit an interim final report documenting completion of the SEP and how performance measures were met along with a copy of the accounting records of expenditures to the Regional Water Board by March 31, 2016.

Save the Bay shall submit a final report, presenting evidence that the performance measure of 40 percent of native vegetation cover is attained, after one year of post-project monitoring, which is April 30, 2016.

Save The Bay Eden Landing Pond E8X/E9/E14 Tidal Marsh Transition Zone Habitat Restoration- Hayward, California					
Total Project Timeline: 7/1/2013-4/30/2016					
Table 1: Funding by the San Francisco Public Utilities Commission					
	Task	Total Project Budget Amount	Expenses incurred 7/1/2013-10/31/2013²	Total Project Budget Remaining	Milestone
1	Begin Site Preparation, Seed Collection and Native Propagation Project costs to support selection of restoration subsites and plots; planting design; achieve seed collection; begin propagation of 20,000 native plants and maintenance of native plant nursery.	\$36,109	\$18,750	\$17,359	July-October 2013; July -October 2014
2	Restoration Implementation Includes plant propagation, hydroseeding, and outplanting of native seedling in plots, recruiting and training volunteers and costs associated with hiring planting crews in restricted areas.	\$173,536	\$44,750	\$128,786	November -March 2014; November-March 2015
3	Invasive Species Control To reduce invasive infestation on graded levee slopes at Pond E8X/E9/E14.	\$22,923		\$22,923	April-June 2014; April-June 2015
4	Annual vegetation monitoring To conduct annual vegetation monitoring using Collins et al, (2010) and data analysis to determine percent native and non-native vegetation cover over a 2.5 year period.	\$32,092		\$32,092	March 2014; March 2015
5	Adaptive management To improve restoration design, techniques, and program efficiency.				October -December 2014; October - December 2015
6	Complete quarterly agency-required reporting				January 31, 2014 & 2015; April 30, 2014 & 2015; July 31, 2014 & 2015; October 31, 2015
7	Submit Interim Final Report				March 31,2016
8	Submit Final Report				April 30, 2016
	Total	\$264,659	\$63,500	\$201,159	
	Cost Overrun Contingency (5%)	\$13,233		\$13,233	
	Total SFPUC Funding	\$277,892		\$214,392	

² Save the Bay has started implementing Tasks 1 and 2 of the SEP to expedite re-establishment of vegetation during the coming wet season. Save the Bay will claim cost reimbursement when the order is adopted.

Third Party Oversight Organization:

16. This proposal must specify a company or organization retained to oversee and audit the SEP and describe funding to this organization for the oversight. The costs for oversight are separate from the costs of the SEP and are borne by the discharger. This organization must be knowledgeable in CIWQS data entries and Regional Water Board's public records procedures.

The San Francisco Estuary Partnership has performed, and is qualified to perform this service for the San Francisco Bay Regional Water Board.