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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

In the Matter of: TENTATIVE ORDER ADOPTION OF CLEANUP AND ABATEMENT ORDER for: POINT BUCKLER ISLAND, Solano County	EVIDENTIARY OBJECTIONS TO THE "OPPOSITION TO ISSUANCE OF CLEANUP AND ABATEMENT ORDER" SUBMITTED BY JOHN D. SWEENEY AND POINT BUCKLER CLUB, LLC

References are to the briefing or evidence submitted on or about July 11, 2016 by John D. Sweeney and Point Buckler Club, LLC, as described more specifically below.

The Prosecution Team recognizes that administrative hearings are not conducted according to the technical rules of evidence (Government Code § 11513(c)), and therefore documents or testimony often are admitted in an administrative hearing that would not be in a court of law. We therefore are not asking that the objectionable documents are struck and removed from the record, but be given appropriate weight by the Board in its consideration of the entire evidence package.

1. **Certain statements are hearsay, and should not be relied upon to support a finding without additional evidence.** Government Code § 11513(d). The Opposition Brief filed by John D. Sweeney and Point Buckler Club, LLC at page 41, lines 17-18 and 21-23, states that, "According to the owner of the island at the time, DWR installed a pump and generator in the early 1990s. … This equipment appears to be the pump and generator that DWR installed. Their

purpose is obviously to pump water onto the island from the adjacent channel." Also cited in the Declaration of John Sweeney, paragraph 2 are Mr. Sweeney's conclusory statements regarding a conversation with the island's prior owner and the use of the pump. These stattements are hearsay. More appropriate and reliable evidence would be a declaration from the previous owner, or one from an employee of DWR. However, the Dischargers instead state that, "Although DWR did not specifically explain how the pump would provide mitigation, the reason can readily be discerned: …" This conclusion is unsupported as presented.

2. **Pt. Buckler's Relies on Port Chicago Data that Is Not in The Record.** Mr. Bazel's declaration, ¶ 29, states that, "On July 3, 2016, the tide at Port Chicago reached the same level it had on February 17, as I determined from comparing the data in Exhibit 24 with the data reported by the Technical Report." However, as Mr. Bazel's declaration correctly points out, Exhibit 24 of the Dischargers' material only goes through May 2016. Bazel Declaration, ¶ 27. Dr. Siegel cites the correct data from July 2016 in his Expert Response, pg. 13.

3. **Incomplete and therefore misleading emails should not be considered.** Exhibits 6, 7 and 10 to the Declaration of John Sweeney are incomplete. True and complete copies are provided as attachments to the Declaration of Dr. Stuart Siegel.

4. **The Individual Management Plan (IMP) submitted by Dischargers is incorrect.** Attached as Exhibit 4 to the Declaration of Mr. Bazel is what is purpoted to be the IMP, with pagination added by the Dischargers. Exhibit 4 actually contains multiples documents, is not an accurate copy of the IMP, and should not be sequentially numbered. An accurate copy of the IMP, as certified in 1984, is provided as Prosecution Team Exhibit 3a.

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