

State of California
California Regional Water Quality Control Board
Central Coast Region

IN THE MATTER OF:)
)
Monterey Regional Water Pollution)
Control Agency) **(TENTATIVE)**
Monterey, CA 93940) Settlement Agreement and Stipulation For
Attn: Paul Sciuto) Entry of Administrative Civil Liability Order
) No. R3-2016-0017

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2016-0017 (“Settlement Agreement” or “Stipulated Order”) is entered into by and between the Assistant Executive Officer of the Central Coast Regional Water Quality Control Board (“Central Coast Water Board”) Prosecution Team (“Prosecution Team”) and the Monterey Regional Water Pollution Control Agency (“Discharger”)(the Central Coast Water Board and the Discharger are collectively referred to as the “Parties”) and is presented to the Central Coast Water Board or its delegate, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations of California Water Code section 13385.

A. RECITALS

1. The Discharger owns and operates a sewage collection system serving various communities throughout Monterey County. At the time of the violation, the facility was regulated under the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, Water Quality Order No. 2006-0003-DWQ, No. WQ 2008-0002-EXEC, and No. WQ 2013-0058-EXEC (General Order). The waste discharge identification number for the facility is 3SSO10296.
2. According to Discharge Prohibition C.1 of the General Order, any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to waters of the United States (U.S.) is prohibited. Furthermore, unauthorized waste discharges to waters of the U.S. violate federal Clean Water Act (CWA) section 301, which prohibits all discharges to such waters of the U.S. except those authorized by permit. Furthermore, violation of CWA section 301 is a violation of California Water Code section 13385.
3. On May 18, 2015, an unauthorized discharge of untreated domestic wastewater occurred at the Discharger’s Pump Station No. 13 – Fountain Avenue Pump Station located at the intersection of 15th Street and Ocean View Boulevard,

Pacific Grove, California, during a station repair project and continued for approximately 6-1/2 hours. The discharge event caused approximately 220,000 gallons of untreated domestic wastewater to enter Monterey Bay (part of the Monterey Bay National Marine Sanctuary) and the Pacific Ocean. The violation is described in further detail in Attachment A, which is hereby incorporated by reference.

4. Water Code section 13385 provides that any person who violates Clean Water Act section 301 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs, and up to \$10 per gallon of waste discharged but not cleaned up over 1,000 gallons. The Discharger violated the federal Clean Water Act by discharging wastes without authorization into waters of the U.S. on May 18, 2015.
5. The State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy)¹, which became effective on May 20, 2010 after being approved by the Office of Administrative Law. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses factors outlined in Water Code section 13385(e), which water boards are required to consider when imposing civil liability pursuant to section 13385.
6. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Coast Water Board's Executive Officer for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was determined using the Enforcement Policy, as described in Attachment A.
7. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$298,958 against the Discharger. The Discharger shall apply \$149,479 of the settlement amount towards a supplemental environmental project (SEP). The Discharger will pay the remaining \$149,479 to the State Water Board Cleanup and Abatement Account. The Prosecution staff finds that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged herein, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

¹ http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

B. STIPULATIONS

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Central Coast Water Board has subject matter jurisdiction over the violation described herein and personal jurisdiction over the Parties to this Settlement Agreement.
2. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of **two hundred ninety-eight thousand nine hundred and fifty-eight dollars (\$298,958)** by the Central Coast Water Board to resolve the alleged Water Code violations in the following manner:
 - a. Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **one hundred forty-nine thousand four hundred and seventy-nine dollars (\$149,479)** in the form of a check made payable to the “*State Water Resources Control Board Cleanup and Abatement Account*”. The Discharger shall indicate on the check “*ACL Order No. R3-2016-0017*” and send it to the following address: State Water Resources Control Board; Division of Administrative Services, ATTN: ACL Payment; P.O. Box 1888; Sacramento, California 95812-1888.
 - b. Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **one hundred forty-nine thousand four hundred and seventy-nine dollars (\$149,479)** to the Bay Foundation of Morro Bay (Implementing Party) for the Central Coast Ambient Monitoring Program/Groundwater Assessment and Protection SEP (CCAMP-GAP or SEP), described in Stipulation 3. The Parties agree that the payment of \$149,479 to the Implementing Party shall be treated as a Suspended Administrative Civil Liability for purposes of this Stipulated Order, as described in Stipulation 4. The check shall be made payable to the “*Bay Foundation of Morro Bay*”. The Discharger shall indicate on the check “*R3-2016-0017 – CCAMP-GAP SEP*” and send it to the following address: Bay Foundation of Morro Bay, Attention: Lexi Bell, 601 Embarcadero, Suite 11, Morro Bay, CA 93442.
 - c. A copy of both checks shall be transmitted electronically to Todd Stanley at Todd.Stanley@waterboards.ca.gov.
3. **SEP Description:** CCAMP-GAP is a regionally scaled water quality monitoring and assessment program. The purpose of the program is to protect, restore, and enhance the quality of the waters of central California by providing scientific information to the public and local water agencies and water purveyors. CCAMP-GAP consists of both surface water and groundwater components (latter known as the Groundwater Assessment and Protection, or GAP program), and has built a significant data resource over the years to characterize the Central

Coast Region's waters. CCAMP-GAP will start with two projects: 1) technical assistance to local agencies to help build the groundwater database infrastructure of CCAMP-GAP and 2) a regional outreach and sampling program for domestic well owners to address the severe health threat from nitrate pollution in domestic wells. In addition, these funds may be available for compliance assistance with the groundwater sampling requirements of the Central Coast Water Board's Irrigated Agriculture Order. CCAMP-GAP will also implement other groundwater-related special projects with the purpose of evaluating, restoring, or protecting the beneficial uses of groundwater or protecting public health. CCAMP-GAP monitoring and data handling adhere to rigorous requirements for field methods, analytical methodologies, data documentation, quality assurance, and data reporting.

Among the primary goals of CCAMP-GAP are to identify groundwater pollution issues facing disadvantaged communities and to provide the general public with information about the safety of their drinking water. In some cases CCAMP-GAP funds may be used to help identify and implement replacement drinking water solutions for disadvantaged communities. CCAMP-GAP is an established, on-going, region-wide project managed and administered by the non-profit Bay Foundation of Morro Bay. Funds derived from suspended liability related to the alleged violations are appropriate for this SEP because the project is implemented throughout the region and is related to waters associated with the Discharger's waste discharge. The Central Coast Water Board has established CCAMP-GAP as a top priority for SEP funding. No SEP funds are directed to the Central Coast Water Board.

The CCAMP-GAP project contains success criteria and requirements for monitoring to track its long-term success. The CCAMP-GAP project currently contains these elements, attached hereto as copies of *Conceptual Project Proposal and Fiscal Year 2012-2013 Work Plan For Central Coast Ambient Monitoring Program (CCAMP) Groundwater Assessment and Protection (GAP)* (Attachment B), *Guadalupe Oil Field Settlement CCAMP Endowment 2008 Grant Agreement* (Attachment C), *CCAMP-GAP Fund 2012 Grant Agreement* (Attachment D), and *Proposed Funding for a Regional Groundwater Assessment and Protection Program and Specific Projects, Water Board Staff Report dated May 3, 2012* (Attachment E).

4. **Failure to Expend SEP Suspended Liability Funds on SEP:** Expenditure of SEP funds for CCAMP-GAP are already subject to Central Coast Water Board staff approval prior to being spent, and the Bay Foundation of Morro Bay regularly reports project actions, income, and expenditures directly to the Central Coast Water Board. Administrative Civil Liability is permanently suspended upon being spent towards the CCAMP-GAP SEP by the Bay Foundation of Morro Bay. If the Central Coast Water Board or its delegate determines that the Bay Foundation of Morro Bay is unable to spend any portion of the suspended liability towards the CCAMP-GAP SEP, then Central Coast Water Board staff will direct

the Bay Foundation of Morro Bay to pay that amount on behalf of the Discharger to the Cleanup and Abatement Account to permanently suspend the remaining liability.

5. **Publicity Associated with SEP:** Whenever the Discharger or its agents or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Central Coast Water Board against the Discharger.
6. **Scope of Order:** Upon adoption by the Central Coast Water Board, or its delegate, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of the administrative civil liability by the deadline specified in Stipulation 2.
7. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Coast Water Board prior to the adoption of the Order.
8. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Central Coast Water Board against the Discharger.
9. **Release and Covenant not to Sue Central Coast Water Board:** Upon the effective date of this Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Central Coast Water Board, including its officers, board members, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
10. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Central Coast Water Board, or its delegate, for adoption in the Stipulated

Order. In the event objections are raised during the public review and comment period, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement. The Central Coast Water Board, or its delegate, may, under certain circumstances, require a public hearing regarding the Settlement Agreement.

11. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Stipulated Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board, or its delegate

12. **Order not Adopted/Vacated:** In the event that this Stipulated Order does not take effect because it is not adopted by the Central Coast Water Board's delegate, or is vacated in whole or in part by the State Water Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Central Coast Water Board, or its delegate, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In the event of the Order being vacated by the State Water Board or a court, unless waived by the Discharger in writing, the Central Coast Water Board shall refund to the Discharger, the amounts in Stipulation 2, provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
 - a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any

contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Central Coast Water Board in any such subsequent administrative or judicial proceeding or hearing; or

- b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

13. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Water Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Water Board.


14. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity, or any local agency from exercising its authority under any law, statute, or regulation.

15. **Water Boards not Liable:** Neither the Central Coast Water Board members nor the Central Coast Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the Central Coast Water Board, its members, or staff be held as parties to or guarantors of any contract entered into by Discharger, or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

16. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Coast Water Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Central Coast Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Settlement Agreement. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Settlement Agreement shall be construed to relieve any Party regarding matters covered in this Settlement Agreement. This Settlement Agreement relates only to the subjective matter hereof, including administrative civil liability for the violations listed in Attachment A. The Central Coast Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.

17. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
18. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
19. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
20. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
21. **Modification:** This Stipulated Order shall not be modified by oral representation whether made before or after the execution of this Stipulated Order. All modifications made before execution of the Stipulated Order must be made in writing and approved by the Discharger and the Central Coast Water Board Prosecution Team.
22. **Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
23. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Central Coast Water Board or its delegate.
24. **Counterpart Signatures:** This Settlement Agreement 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.
25. **Incorporated Attachments:** Attachments A through E are incorporated by reference and are made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED²:



Michael Thomas, Assistant Executive Officer
Central Coast Water Board
Prosecution Team

3-9-16
Date



Paul Sciuto, General Manager
Monterey Regional Water Pollution Control Agency

3/8/16
Date

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² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ABOVE SETTLEMENT AGREEMENT, THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Order, the Central Coast Regional Water Quality Control Board ("Central Coast Water Board") or its Delegate has assessed a penalty in accordance with Water Code section 13385 and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.

Lisa Horowitz McCann
Interim Executive Officer

Date

Attachments:

- A. Specific factors considered – Civil Liability Monterey Regional Water Pollution Control Agency
- B. Conceptual Project Proposal and Fiscal Year 2012-2013 Work Plan For Central Coast Ambient Monitoring Program (CCAMP) Groundwater Assessment and Protection (GAP)
- C. Guadalupe Oil Field Settlement CCAMP Endowment 2008 Grant Agreement
- D. CCAMP-GAP Fund 2012 Grant Agreement
- E. Proposed Funding for a Regional Groundwater Assessment and Protection Program and Specific Projects, Water Board Staff Report dated May 3, 2012

ATTACHMENT A

ATTACHMENT A

ACL ORDER NO. R3-2016-0017

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

This document provides details to support recommendations for enforcement in response to a sanitary sewer overflow (SSO) that occurred on May 18, 2015, within the Monterey Regional Water Pollution Control Agency (Agency) sanitary sewer collection system.

1.0 Discharger Information

The Agency is a non-profit public agency and Joint Powers Authority which provides sewage collection, treatment and disposal services to the County of Monterey, City of Salinas, Boronda County Sanitation District, Castroville Community Services District Service Area 14, City of Monterey, City of Pacific Grove, Seaside County Sanitation District (serving the City of Seaside, Sand City, and the City of Del Rey Oaks), Marina Coast Water District, and the Moss Landing County Sanitation District. The Agency's sewage collection system consists of "trunk line" sewage transportation services for each of the member entities via a system of 10 Agency-owned pump stations and 34 miles of pipeline, and includes the Fountain Avenue Pump Station #13 in Pacific Grove where a sanitary sewer overflow occurred on May 18, 2015. Each member entity retains ownership and operating/maintenance responsibility for wastewater collection and transport systems up to the point of connection with pump stations and interceptors owned and operated by the Agency. The Agency is regulated by Water Quality Order No. 2006-0003-DWQ, No. WQ 2008-0002-EXEC, and No. WQ 2013-0058-EXEC, as are its individual members where they retain collection system responsibility. The Agency's 250,000 customers generate approximately 18.5 million gallons of sewage a day, which is transported to the Agency's regional wastewater treatment plant located two miles north of the City of Marina. The wastewater treatment plant has a treatment capacity of approximately 30 million gallons of wastewater per day.

2.0 Application of Water Board's Enforcement Policy¹

On November 17, 2009, the State Water Resources Control Board (State Water 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 CWC section 13385(e). Water Code section 13385(e) requires the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) to consider several factors when determining the amount of civil liability to impose, including "...the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require."

The Central Coast Water Board Prosecution Team developed the following recommendations based on the procedures included in the Enforcement Policy methodology. The attached spreadsheet shows the calculations associated with the procedural steps.

¹ Water Board's Adopted Enforcement Policy available at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

SSO Violation #1

Date: 5/18/2015

SSO Event Description: *The Agency reported that an estimated 219,733² gallons of sewage spilled from the Agency's Pump Station No. 13 – Fountain Avenue Pump Station located at the intersection of 15th Street and Ocean View Boulevard, Pacific Grove, California, to the immediately adjacent Monterey Bay and the Pacific Ocean. The Agency certified that the event started at 10:42 a.m. and ended at 5:22 p.m.*

Reported Cause of SSO: *The Agency reported that there was an Agency-contracted engineered bypass in operation before the SSO event (initiated May 4, 2015) to facilitate wet-well concrete maintenance work at the pump station by pumping sewage around the station to a sewer connection just downstream of the main station discharge plug valve (main station valve). The Agency reported that the SSO was caused by the failure of the apparently closed main station valve to prevent sewage from flowing from the downstream bypass connection backwards (or upstream) into the station's piping. The Agency reported that when its personnel were attempting to disassemble and replace the internal plug component of upstream discharge plug valve #2 (discharge valve #2) inside the pump station, the sewage that had back-flowed into the station's piping began spilling at a high flow rate from the then opened connection at discharge valve #2 and flooding the pump station. The event threatened imminent damage to pump station equipment, and sewage overflow to the public area around the station and then to Monterey Bay.*

The Agency reported that it responded by first disconnecting power to protect responding personnel from electrocution. The Agency then shut down the engineered bypass to stop the sewage from being pumped backwards past the main station valve and into the station. The Agency was then able to vacuum the sewage out of the pump station to protect operational equipment and regain access to the then disassembled discharge valve #2, and then finish replacing the disassembled components of discharge valve #2 to seal the SSO discharge point. Furthermore, in order to accomplish this while minimizing public exposure to the sewage spill, the Agency reported that it was necessary to intercept the sewage flow coming to the station and discharge it in a controlled manner through a pipe to Monterey Bay. The Agency reported that the engineered pump station bypass operation resumed after Agency personnel regained access to the station and finished replacing the internal plug component of discharge valve #2, which ended the spill via the pipe to Monterey Bay.

Regulation Allegedly Violated: *California Water Code section 13385 for unauthorized discharges to waters of the U.S. in violation of the Clean Water Act. California Water Code section 13350 also applies for violation of Water Quality Order No. 2006-0003-DWQ, Prohibition C.1. Central Coast Water Board Prosecution Team will recommend that the Central Coast Water Board assess administrative civil liability based on California Water Code section 13385.*

² Certified CIWQS report indicated spill volume of 219,205 gallons. Agency revised volume to 219,733 gallons as provided on page 5 of SSO Technical Report dated July 1, 2015.

SSO VIOLATION #1 (STEP 1): POTENTIAL FOR HARM

FACTOR 1: HARM OR POTENTIAL HARM TO BENEFICIAL USES - The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. The range of potential scores for this factor is 0 – 5.

- **SCORE = 4 [ABOVE MODERATE THREAT]** - More than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary (e.g., less than 5 days) restrictions on beneficial uses, and human or ecological health concerns).
 - 3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or *reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects*).
 - 4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or *likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns*).

The above factor quotes from the Enforcement Policy show in italics the distinguishing language that indicates a factor of 4 is appropriate for the May 18, 2015 SSO. The SSO resulted in temporary restrictions on beneficial uses (water contact recreation, and non-contact water recreation) lasting less than 5 days as imposed by the Monterey County Health Department based on human health concerns and confirmed by receiving water sampling, and therefore fits the description of “Above Moderate”. Beneficial use impacts therefore occurred with “appreciable acute effects” and do not fit the description of “Moderate.” Beneficial use impacts were “likely substantial” per the “Above Moderate” description, as shown by the beach warning and closure by the Health Department, and as confirmed by receiving water samples that exceeded water quality objectives. Lastly, as a high volume raw sewage discharge to the Monterey Bay National Marine Sanctuary, ecological health concerns applied as well. These considerations support selecting a factor of 4 – Above Moderate Threat.

- **TECHNICAL CONSIDERATIONS:**

1. Beneficial use impacts were observed and substantial. There were restrictions on beneficial uses for three days due to posted beach health warning signs, the first two days of which included beach closure one mile north and one mile south of SSO as directed by the Monterey County Health Department. There were human and ecological health concerns resulting from the event.
2. According to the Water Quality Control Plan for the Central Coast Basin, June 2011 (Basin Plan), Chapter 2, Monterey Bay beneficial uses include REC-1 (Water Contact Recreation), REC-2 (Non-Contact Water Recreation), IND (Industrial Service Supply), NAV (Navigation), MAR (Marine Habitat), SHELL (Shellfish Harvesting), COMM (Commercial and Sport Fishing), and RARE (Rare, Threatened, or Endangered Species).
3. Due to the potential exposure to elevated levels of pathogens, the association of fecal contamination in recreational waters with an increased risk of gastrointestinal and respiratory illness, aesthetic impacts of the discharge plume, and the designation of Monterey Bay as part of the Monterey Bay National Marine Sanctuary, the beneficial uses deemed most sensitive to potential harm by the SSO discharge are REC-1, REC-2, MAR, SHELL, and RARE.
4. All beaches one mile north and one mile south of the SSO location were closed for two days by the Monterey County Health Department.

5. Beach health warning signs were posted for three days by the Monterey County Health Department for all beaches one mile north and one mile south of the SSO location (total number of signs posted unknown).
6. Ocean water quality sampling from seven sampling stations up coast, down coast, and at the spill location indicated 10 instances of exceeding bacteriological water quality objectives in the 72 hours following the spill event.

FACTOR 2: PHYSICAL, CHEMICAL, BIOLOGICAL OR THERMAL CHARACTERISTICS - The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

- **SCORE = 3 [ABOVE MODERATE THREAT]** – Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).
- TECHNICAL CONSIDERATIONS:
 1. Above-moderate risk or direct threat to potential uses due to high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease, etc. commonly present in sewage.
 2. Shore sampling in the area immediately impacted by the SSO confirmed water quality objective exceedances for fecal and total coliform up to 72 hours after the event.

FACTOR 3: SUSEPTIBILITY TO CLEANUP OR ABATEMENT - A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement.

- **SCORE = 1 [LESS THAN 50% SUSCEPTIBLE TO CLEANUP OR ABATEMENT]**
- TECHNICAL CONSIDERATIONS:
 1. No amount of the discharge to Monterey Bay was susceptible to cleanup. Agency alleges it recovered approximately 31,000 gallons of raw sewage from within the pump station building and transferred it back into the sewage collection system.
 2. Agency alleges SSO couldn't be abated until after spilled sewage was removed from the pump station building and the spill appearance point at discharge valve #2 was sealed by reinstalling a new valve. Agency alleges its best response option was to discharge sewage from the pump station to Monterey Bay because the pumps for the engineered bypass had to be shut off so sewage would stop flowing back through the failed main station valve and spilling from the disassembled discharge valve #2 within the pump station. Note that the pump station includes three, parallel discharge valves that collectively route pumped sewage out of the pump station via the single main station valve.
 3. Actual amount of sewage recovered from Monterey Bay by District was 0% as specified in certified CIWQS report.

FINAL STEP 1 SCORE = 8 [4 + 3 + 1]

SSO VIOLATION #1 (STEP 2): ASSESSMENTS FOR DISCHARGE VIOLATIONS

VOLUME DETERMINATION

- **219,733 GALLONS (218,733 gallons subject to liability after 1,000 gallons subtracted from spilled volume per CWC 13385)**
- TECHNICAL CONSIDERATIONS:
 1. The Agency determined in its May 21, 2015 certified spill report in CIWQS that the SSO volume was 219,205 gallons based on past Supervisory Control And Data Acquisition (SCADA) data and Telog Flow data for the pump station on Monday, April 27, 2015, which the Agency selected as representative because it was the same day of the week prior to the wet well bypass project that began on May 4, 2015. The Agency later revised the spill volume upward to 219,733 based on the methodology described on page 5 of the SSO Technical Report dated July 1, 2015.

DEVIATION FROM REQUIREMENT (for Per Gallon and Per Day Assessments)

- **SCORE = MAJOR** - The requirement has been rendered ineffective in its essential functions.
- TECHNICAL CONSIDERATIONS:
 1. The deviation from requirements is scored as major because this SSO reached waters of the U.S., which rendered Clean Water Act section 301 ineffective. Factors considered:
 - Agency failed to comply with Clean Water Action section 301 (SSO was discharged to waters of the U.S. without authorization via an NPDES permit.
 2. The deviation from requirements is scored as major because this SSO reached waters of the U.S., which rendered Prohibition C.1. set forth in Order No. 2006-0003-DWQ, ineffective. Factors considered:
 - Agency failed to comply with Order Prohibition C.1 (SSO was discharged to waters of the U.S.).
 - Agency failed to comply with Order Provision D.6.iii (failed to provide any feasible alternatives to this SSO discharge such as isolating the pump station from downstream backflow via main station valve redundancy, or temporarily plugging the station discharge line downstream of the main station valve as part of the engineered bypass or as part of the Agency's emergency response to the spill event).
 - Agency failed to comply with Order Provision D.6.v (failed to prevent SSO by exercise of reasonable control via adequate backup equipment such as main station valve redundancy, or temporarily plugging the station discharge line downstream of the main station valve as part of the engineered bypass or as part of the Agency's emergency response to the spill event).

VOLUME ASSESSMENT

- **SCORE (HIGH VOLUME) = \$2.00 per gallon**
- TECHNICAL CONSIDERATIONS:

1. Pursuant to Water Code section 13385(a), the Agency is subject to civil liability for violating pertinent sections of the Clean Water Act. The Central Coast Water Board may impose civil liability administratively pursuant to Article 2.5 (commencing with section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following; (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.
2. The Enforcement Policy requires application of the per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved.
3. The Enforcement Policy allows discretion to lower this factor to \$2 per gallon for high volume discharges. This score has therefore been lowered to \$2 per gallon because the Agency's estimate for this SSO was over the 100,000 gallon threshold typically used to designate a high volume SSO for this purpose.

PER DAY ASSESSMENT

- TECHNICAL CONSIDERATIONS:
 1. The SSO occurred on May 18, 2015, for approximately 6-1/2 hours, and is therefore subject to liability for one day of violation pursuant to Water Code section 13385.

SSO VIOLATION #1 (STEP 3): ASSESSMENTS FOR NON-DISCHARGE VIOLATIONS

- **SCORE = NOT APPLICABLE (N/A)**
- TECHNICAL CONSIDERATIONS: N/A

SSO VIOLATION #1 (STEP 4): ADJUSTMENT FACTORS

CULPABILITY – The culpability factor discusses responsibility for the violation due to characteristics such as oversight, disregard, lack of attention or precaution, or omission (i.e., negligence) that may have otherwise prevented or minimized the violations. For example, the omission of any reasonable precaution, care, or action related to the violation would influence this factor upwards, as would a failure to care for or give proper attention to anything materially or administratively related to the violation. These characteristics are not limited to the violation and immediate response, but can also include actions or inactions leading up to and potentially influencing the event such as maintenance practices, adherence to manufacturer recommendations, operational error, staffing, training, funding, planning, and design.

Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.

Adjustment should result in a multiplier from 0.5 to 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior. Where culpability/responsibility for a violation belongs to a given party, a factor of greater than 1 and up to 1.5 is used to influence the liability amount upward accordingly. Therefore, a high level of culpability is represented by the factor of 1.5. The culpability characteristics discussed above are examples of considerations useful in determining how much above 1 this factor should increase. Any diminishing factor from 0.5 to less than 1 would indicate that circumstances outside of a discharger's control had a substantial influence on the event, and act to reduce the liability.

- **SCORE = 1.2**

- TECHNICAL CONSIDERATIONS:

1. The Agency reported that the main station valve (which the Agency also refers to as “discharge header valve”) that caused the SSO is an eccentric plug valve made by DeZurik, a company whose namesake developed the valve in 1928. DeZurik’s website, <http://www.dezurik.com/> currently makes available technical documentation for the most recent versions of the company’s eccentric plug valves, namely those designated as the PEC and PEF. Water Board staff references some of these documents for manufacturer installation and maintenance recommendations. Water Board staff consulted with Agency staff to confirm whether the documents were reasonably representative of the valves related to the SSO. Agency staff confirmed that the Pump Station 13 main station valve was the same type of valve though an older model, and that it was most similar to the current PEC model. Water Board staff acknowledges that the documentation may not be identical to that which would have applied to the actual station valve when it was installed around 1980. However, Water Board staff assumes that it is reasonable to apply the manufacturer’s most recent general installation precautions and maintenance recommendations in assessing the Agency’s actions because this type of valve has been in common industrial use for over 80 years. As of July 27, 2015, Water Board staff has not been able to acquire technical documentation for the actual main station valve, nor has Agency staff been able to provide the same. Notably, the references made herein are largely common to all of the DeZurik documents, with some minor differences in wording or presentation, which supports the idea of the subject matter being generally common among eccentric plug valves of this type. DeZurik documents referenced herein include (*note abbreviated numbers used throughout the discussion*):

- DeZurik 4-20” PEC Eccentric Valves, Instruction D10021, April 2015 (*D10021*)
- DeZurik 3-36” PEF 100% Port Eccentric Plug Valves, Instruction D10453, April 2015 (*D10453*)
- DeZurik 4” (100mm) & Larger PEC Eccentric Plug Valves Technical Specifications, Bulletin 12.00-1D, February 2015 (*12.00-1D*)
- DeZurik PEF 100% Port Eccentric Plug Valves Technical Specifications, Bulletin 12.60-1B, February 2012 (*12.60-1B*)

2. Agency reported on page 6 of the SSO Technical Report dated July 1, 2015 (Technical Report) that an attempt was made to block the flow of the spill with an inflatable plug, which was too large for the size of discharge point. Agency’s Sanitary Sewer Management Plan (SSMP) indicates that it includes Appendix VI-2 as a section for emergency response equipment needed for each of the Agency’s pump stations, but that section is blank (see also SSMP Section VI.C.3 and 4). Agency therefore failed to include specific lists of pump station emergency response equipment in the SSMP as indicated, and failed to have the correct size of inflatable plug available for Fountain Avenue Pump Station 13.

Water Board staff acknowledges that Agency staff was trying to plug an opening in the discharge valve #2 body itself, which may be a different size than the piping connected to the valve. It’s possible that the inflatable plug available was the right size for the piping connected to the valve but not the valve body opening where the sewage was discharging. Water Board staff also acknowledges the Agency’s statement at the same location of the Technical Report that the force of the flow from the valve body opening was too high and would not allow the insertion of an inflatable plug during the spill, apparently regardless of whether it was the right size or not.

Water Board staff also considered that once the engineered bypass was shut down, a properly sized plug may have been used on the downstream side of the main station valve (between the engineered bypass pump connection and the main station valve) to isolate the station from backflow and thus allow the Agency to restart the engineered bypass sooner and reduce the amount of sewage pumped to Monterey Bay. However, on January 7, 2016, the Agency provided

information indicating it was not possible to install a plug large enough for the line to the main station valve through the smaller bypass connection.

3. Based on Technical Report Exhibit J, the main station valve (identified as the discharge header valve) appears to have been replaced on December 8, 2003. However, Agency Field Maintenance Supervisor, Bret Boatman's (among the first responders) correction emailed to Water Board staff on July 21, 2015, indicates that the action taken as recorded in Exhibit J is not accurate, and that only the actuator (used to open and close the valve) was re-installed on the main station valve on December 8, 2003. DeZurik documentation (D10021, D10453) indicates that service life is dependent on service conditions (or how a valve is used³). Barring further information on the service life of the main station valve itself, information currently available to Water Board staff indicates that the valve is original and therefore the same age as the pump station, and that the valve had been in service for a substantial number of years at the time of the SSO. Based on the facility history provided on the Agency's website and further information on the age of the pump station provided by Mr. Boatman by email on July 27, 2015, the main station valve has been in service since the pump station's construction around 1980, or approximately 35 years.

Technical Report Exhibit Q lists the estimated costs of the SSO long-term follow-up actions and upgrades the Agency intends to implement at the Fountain Avenue Pump Station 13. Line item 5 of the second and third pages indicates that the Agency plans to replace two 16-inch plug valves. By email dated July 30, 2015, Mr. Boatman confirmed that the item refers to the main station valve and that the item includes installing two new 16-inch plug valves because the Agency will add a second station valve for redundancy. The Technical Report does not provide a date for the proposed upgrades. In a telephone discussion with Water Board staff on August 6, 2015, Agency Compliance Engineer, Garrett Haertel, estimated the upgrades would likely commence around July 1, 2016, to allow for budgeting, planning, design, and seasonal timing.

The main station valve was not replaced in the immediate aftermath of the SSO because it remains functional for the purpose of conducting pumped sewage from the station. The nature of the main station valve's "failure" was its inability to prevent backflow from the engineered bypass. However, as discussed in other sections of this Attachment A, the manufacturer, DeZurik, indicates that horizontally oriented eccentric plug valves are not intended to be used in the closed position with the flow against the back of the plug as during the engineered bypass. On January 7, 2016, the Agency reported that it will install redundant station valves to improve station control options and safety during normal and bypass conditions.

4. Technical Report, *Causes and Circumstances of the SSO*, Section D, paragraphs 1 and 2 state, "The main header isolation valve [i.e., main station valve] had been closed for the duration of the wet well rehab project which began on May 4, 2015... the main station header isolation valve was not actually closed despite the position indicator showing that it was closed. At this time [July 1, 2015] the cause of the valve failure is unknown."

Agency staff assumed the valve was closed based on the actuator position, which is reasonable if the actuator is known to be in good working order. However, DeZurik documentation (D10021, D10453) indicates in the troubleshooting sections that valves may fail to close because the actuator closed position is out of adjustment, and provides the remedy of adjusting the closed position stop per the instructions. Technical Report Exhibit N, showing all work performed at Pump Station 13 since 2001, does not include records of any such adjustments or checks. In addition, Technical Report Exhibit J indicates that in 2003 Agency staff noted the actuator had been off of the main station valve for many years and required reinstallation, further indicating the unlikelihood that the Agency performed actuator checks or adjustments to ensure the accuracy of

³ Interpreted by Water Board staff to at least refer to the type of material the valve is used to convey (i.e., raw sewage conveyance representing a higher severity of service than potable water), and how well a valve is maintained.

the actuator indicator and proper operation of the valve. Therefore, the Agency's failure to maintain the valve by checking and adjusting the actuator position stop may have contributed to the valve being out of adjustment at the time of the SSO and inaccurately indicating the valve was closed when it was not.

Agency staff indicates other work (changing all three sewage pump suction valves, and discharge check valve #3) was done in the time between May 4, 2015 and the spill event on May 18, 2015, implying that an open main station valve would have been evident during that work. However, according to Technical Report Exhibit A, each of the three independent sets of suction valves and check valves is separated from the main station valve by a discharge valve (i.e., another eccentric plug valve). Therefore, the suction valve and check valve replacement work may have been isolated from an open main station valve if the individual discharge valve was closed. So, being upstream of a closed valve, Agency staff could have completed suction valve and check valve work without ascertaining that the main discharge valve was open.

The Agency's failure to incorporate manufacturer recommended maintenance on the actuator stop appears to have contributed to the SSO.

5. Technical Report, *Enrollee's Response to SSO*, Section C, paragraph 4 states that one of the follow up items after the SSO was the addition of 114 periodic valve maintenance Preventive Maintenance (PM) items into the Agency's computerized maintenance management system (CMMS) for all Agency owned pump stations. Of those, ten PMs are specifically for Pump Station 13.

According to DeZurik documentation (D10021, D10453), a necessary part of maintaining valve operation is to periodically "exercise" the valves (i.e., move the valves from open to closed positions). Page 19 of D10453 states, "**Valve Exercising** - Each valve should be operated through a full cycle and returned to its normal operating position on a time schedule that is designed to prevent a buildup of media deposits that could render the valve inoperable or prevent a tight shutoff. The interval of time between exercising valves in critical applications or valves subjected to severe operating conditions, should be shorter than valves in less critical installations."

This manufacturer-recommended item was not part of the Agency's preventive maintenance program until after the SSO. Paragraph 6 of the same Technical Report section states, "...in the past MRWPCA [Agency] had no formal PMs for the suction or discharge valves for the sewage pumps or station valves. Valves would be exercised only when the pumps were placed online or when pumps were isolated for station maintenance...Additionally, the PM Coordinator is validating all PM inspections against the original manufacturer's recommendations and equipment performance experience."

Technical Report Exhibit R includes PM Code "VLVEXPM", "PM91 Annual Valve Exercise". However, Exhibit N, which documents all maintenance activities at Station 13, does not include PM Code VLVEXPM, indicating that was not part of their PM program and, as the Agency mentions, was added after the SSO incident.

Similarly, Technical Report Exhibit R PM Code "PMCHKPK, PM CHECK PACKING AND INSPECT" (Water Board staff assumes this refers to the packing (or seals) around the stem/shaft of discharge valves that extends to the actuator) and "PMCHKCHK, PM CHECK CHECKVALVE" (Water Board staff assumes this refers to the checkvalves between each discharge plug valve and its associated pump) are also listed in Exhibit R but not shown as performed at Station 13 in Exhibit N.

Water Board staff assumes the above codes are all that the Agency added after the spill.

Though the Agency has made appropriate revisions to its preventive maintenance practices since the SSO, it is reasonable to expect that the Agency would have already incorporated manufacturer recommended maintenance into its preventive maintenance program. The Agency's failure to do this before the SSO event may have contributed to the main station valve failure that resulted in the SSO.

6. DeZurik eccentric valve documentation (D10021, 12.00-1D, 12.60-1B, D10453) indicates via illustration that an eccentric valve's orientation relative to the direction of flow is critical to a valve's proper functioning, and specifies the installation of horizontally positioned valves (flow passing through the valve in a horizontal direction) such that the outward face of a closed valve plug⁴ faces *towards* the oncoming flow (or *upstream*). In an email from the Agency on July 30, 2015, Agency Field Maintenance Supervisor, Bret Boatman, confirmed that the main station valve is installed such that the closed valve plug faces flow from the station pumps as would be expected and in accordance with the manufacturer's specification.

DeZurik warns that failure to properly install eccentric plug valves can result in solids packing into the valve body and restricting plug movement and therefore the valve's ability to properly open and close. Water Board staff acknowledges that, according to information provided by the Agency noted above, the Agency installed the main station valve correctly. However, the pressurized flow from the engineered bypass *downstream* of the main station valve could have contributed to the valve's malfunction by allowing solids to build up or pack into the backside of the closed valve's plug. In that bypass mode of operation the face of the closed plug faces *away* from the direction of flow as DeZurik warns against. According to DeZurik, the valves are not intended to be oriented with the closed valve facing away from the flow in a horizontal installation such as during the engineered bypass.

Water Board staff acknowledges that Agency staff comments in the Technical Report indicate the valve was closed on May 4, 2015, when the engineered bypass was initiated. It's possible that this particular engineered bypass may not have had time to greatly contribute to a discharge valve failure on May 18, 2015, but that other such engineered bypasses in the past may have contributed to the valve's eventual failure on or before that date. On January 7, 2016, the Agency confirmed that it has bypassed the pump station in the past, but that the subsequent return of the valve to the open position would flush out any solids buildup that might have accumulated while it was closed, therefore making it unlikely that the valve was adversely impacted by solids from past bypasses.

As discussed elsewhere herein, it's also possible that the main station discharge valve was already not closing properly at the time of the engineered bypass on May 4, 2015. So, despite the Agency's movement of the valve actuator to the closed position before the beginning of the engineered bypass on May 4, 2015, it appears most likely that the valve was actually not closed from May 4, 2015, through the SSO event on May 18, 2015, and therefore that the valve is unlikely to have been impacted by solids from the bypass during that time period.

The Agency's bypass configuration put the main station valve in a mode of operation contrary to the manufacturer's specification, and the Agency had access to that information, so the Agency would reasonably be culpable for potential adverse impacts to the valve's proper operation. However, consideration of the information provided by the Agency limits the valve's apparent exposure to solids packing into the valve body from past bypasses and therefore minimizes the apparent contribution to the violation. These considerations are therefore neutral in their effect on this numeric factor.

⁴ The plug is the internal valve component that rotates via the actuator into the path of flow to close the valve, or rotates out of the path of flow to open the valve.

7. According to Water Board staff's telephone discussion with Agency Compliance Engineer, Garrett Haertel on August 6, 2015, the primary purpose of the engineered bypass was to pump sewage around the pump station to allow the Agency to conduct concrete repair work within the station's wet well. The engineered bypass routed the sewage around the station and reconnected to the sewer downstream of the main station valve. Since this configuration did not include a temporary plug or plug valve to isolate the downstream side of the main station valve from the pumped bypass connection, the valve was subjected to pressurized flow from the downstream side and therefore opposite of the direction specified by the manufacturer. To protect the main station valve from being subjected to pressurized flow from the downstream direction and the related potential for failure as discussed elsewhere herein, the engineered bypass might have included a plug on the downstream side of the valve. Alternatively, during the SSO event the Agency might have temporarily shut down the engineered bypass (which still may have required some discharge to Monterey Bay), added a plug to the downstream side of the main station valve (between it and the engineered bypass connection), and then re-started the engineered bypass to both isolate the station and either end the spill to Monterey Bay or possibly prevent it depending on how quickly the work could be done. This course of action may have greatly reduced the duration of sewage discharge to Monterey Bay, while also safeguarding the pump station for continued cleanup, protection of station equipment, and to facilitate station repairs.

On January 7, 2016, the Agency reported that the above alternatives were not possible because the 16-inch plug needed for the main discharge valve line could not fit through the 10-inch line at the bypass connection. Due to the infeasibility of the above alternatives, these considerations are neutral in their effect on this numeric factor.

8. In Technical Report Exhibit F, Mr. Bellone (Agency Maintenance Crew Member and among the three Agency staff present at the beginning of the SSO) described the substantial release of hydrogen sulfide gas when the bleed valve was opened. The substantial release of hydrogen sulfide gas might have led the crew to suspect the presence of sewage, particularly since discharge valve #2 and the whole pump station had been bypassed since May 4, 2015. Mr. Bellone also describes the maintenance crew's decision to partially open discharge valve #2 before disassembly, which the Agency indicates is a common practice to ease the removal of valve plugs. It appears that the maintenance crew's confidence in the main station valve closure and the sequence of partially opening the discharge valve, removing the actuator, and removing the valve face bolts contributed to the spill beginning without much possibility of stopping any flow once started. Water Board staff assumes that the crew could have partially disassembled discharge valve #2 by, for example, leaving the valve closed and the actuator in place and first loosening but not removing the valve face bolts. The crew may then have been able to pry the valve face partially open with the loosened bolts still in place and then use the actuator to partially open the valve for ease of disassembly as Mr. Bellone mentioned. Breaking the valve face seal loose may have been enough to begin sewage leakage. Once flow was evident, the crew may then have been able to use the actuator to close the valve and tighten the valve face bolts to stop the flow.

Water Board staff acknowledges that the above represents a high level of caution to exercise when the crew observed that the main discharge valve actuator indicated it was closed. However, given the large amount of hydrogen sulfide gas that escaped from the check valve before unbolting the valve face, the potential for the actuator to be out of adjustment as described by DeZurik and elsewhere herein, and the assumed viability of an alternative sequence of disassembly steps such as that provided above, the Agency's failure to employ a high level of caution under the circumstances may have contributed to the SSO.

Water Board staff acknowledges that on September 2, 2015, the Agency submitted Technical Report – Supplemental, dated August 31, 2015, in supplement to the SSO Technical Report dated July 1, 2015. The supplemental report provides three Standard Operating Procedures

(SOPs) developed by the Agency in response to the SSO on May 18, 2015, and subsequent to the July 1, 2015 Technical Report. One of the three SOPs addresses pump inspections, and another addresses plug valve face removal. Both SOPs should result in a higher level of caution during pump and plug valve maintenance and provide Agency personnel with greater control and the ability to stop potential spills during such work.

9. In Technical Report Exhibit F, Mr. Bellone describes the maintenance crew's removal of the actuator before opening the valve face for discharge valve #2. DeZurik documentation (D10021, D10453) includes the warning, "When an eccentric valve is mounted in a vertical pipeline...gravity can cause the plug to swing to a lower position in the valve body when the actuator is removed. Place the plug in the lowest position before removing the actuator." Discharge valve #2 is mounted vertically according to Technical Report Exhibit A, so once the actuator was removed the plug may have moved from a partially open, higher position, to its lowest position (downward toward the check valve and pump) and therefore fully opened towards the valve face.

The Agency's removal of the actuator before opening the face of discharge valve #2 may have allowed the valve plug to move from its intended partially open position to fully open and left the valve without a means of being closed in an emergency, and therefore may have contributed to the SSO.

10. A contributing factor to this SSO was a lack of main station valve redundancy at the Fountain Avenue pump station that prevented the Agency from responding to the SSO with any other option than to discharge a substantial volume of untreated domestic wastewater to Monterey Bay.

As indicated above in reference to Technical Report Exhibit Q, the Agency plans to add a second station valve for redundancy.

CLEANUP AND COOPERATION - Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.

- **SCORE = 0.9**
- TECHNICAL CONSIDERATIONS:
 1. Agency immediately took voluntary action to address the SSO and return to compliance.
 2. Agency was unable to correct environmental damage.
 3. Water Board staff engaged Agency staff within a few days of the SSO and Agency staff has fully cooperated with preliminary inquiries and timely submitted the Technical Report.

HISTORY OF VIOLATIONS - Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.

- **SCORE = 1**
- TECHNICAL CONSIDERATIONS:
 1. Agency had two (2) SSOs previous to this SSO since enrolling under Water Quality Order No. 2006-0003-DWQ:

- a. February 16, 2009 – An air relief valve caused 500 gallons of untreated wastewater to spill to a storm drain and impact Lover's Point Beach and Monterey Bay.
 - b. January 5, 2008 – Pump station inundation due to high surf caused 500 gallons of untreated wastewater to spill to Monterey Bay.
 - c. Both SSOs originated in the Pacific Grove area.
2. Agency performance metrics for spill recovery rates are very low (~0%), according to current CIWQS data.
 3. Agency performance metrics for spill rate index (number of spills per 100 miles of sewer line per year) and net volume spills index (gallons spilled per 1,000 capita per year) are good compared to regional and statewide CIWQS data. For Category 1 spills, such as the May 18, 2015 event, CIWQS data indicates the Agency has 0.67 spills/100 mi./yr compared to 1.56 for the region and state, and about 100 gallons spilled/1,000 capita/yr compared to about 650 for the state and 190 for the region.
 4. The two previous spills noted above are relatively minor, isolated incidents. The Agency's violation history does not indicate a history of repeat violations, and therefore a factor of one is appropriate.

SSO VIOLATION #1 (STEP 5): DETERMINATION OF BASE LIABILITY

- Base Liability = \$289,958

SSO VIOLATION #1 (STEP 6): ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

- **SCORE = 1.0 (neutral)**
- TECHNICAL CONSIDERATIONS:
 1. A preliminary evaluation of this factor based on the Agency's 2014-2015 Budget indicated the Agency's General Fund reserve at the end of the fiscal year was projected to be \$3.2 million, so there did not appear to be an inability to pay the proposed penalty. The State Water Resources Control Board Office of Research, Policy, and Performance (ORPP) provided a detailed analysis in *Ability to Pay the Proposed Penalty, Monterey Regional Water Pollution Control Agency*, dated December 2, 2015, which confirmed the Agency's ability to pay the proposed penalty. The Agency provided further information on December 17, 2015, and again on January 7, 2016, requesting that Water Board staff consider available funds to be approximately half of the amount determined in the formal analysis. The additional information also indicated the Agency's ability to pay the proposed penalty.

SSO VIOLATION #1 (STEP 7): OTHER FACTORS AS JUSTICE MAY REQUIRE

- **STAFF COSTS = \$9,000 and continue to accrue up to, and including actual hearing**

SSO VIOLATION #1 (STEP 8): ECONOMIC BENEFIT

- **SCORE = \$769**
- TECHNICAL CONSIDERATIONS:

1. A detailed evaluation for this factor has not been conducted.
2. Water Boards must recover at a minimum 10% above the calculated economic benefit.
3. Economic benefit includes, at a minimum, the costs for treating the sewage spilled from this SSO, as follows:
 - 250,000 population served (estimated at 2 persons per connection) = 125,000 connections
 - 125,000 connections at \$15.35/month (based on the Agency's website for residential) divided by 30 days = \$63,958 revenue per day
 - \$63,958 revenue per day divided by 18.5 MGD (based on the Agency's website) = \$0.0035/gallon
 - \$0.0035/gallon at 219,733 gallons spilled and not treated = savings of **\$769.07**

SSO VIOLATION #1 (STEP 9): MAXIMUM AND MINIMUM LIABILITY

- **Minimum Liability = \$846**
- **Maximum Liability = \$2,197,330**

SSO VIOLATION #1 (STEP 10): FINAL LIABILITY AMOUNT INCLUDING STAFF COSTS FROM STEP 7

- **Final Calculated Liability = \$298,958**

3.0 RECOMMENDATION

- **Recommended Liability = \$298,958**

Penalty Calculation Methodology Worksheet - Version Date: 2/4/2014
 5/18/2015 SSO in Pacific Grove Rev 4 - **FINAL**

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item	4 = Above Moderate
Select Item	3 = Discharged material poses above moderate risk
Select Item	< 50% of Discharge Susceptible to Cleanup or Abatement
Select Item	Major

Determine Harm & per Gallon/Day Factors for Violation #1

Discharger Name/ID: **Monterey Regional WPCA / Party ID 29173**

		Violation 1 [Unauth Disch to Surface Waters]		
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	8	
	Step 2	Per Gallon Factor (Generated from Button)	0.6	
		Gallons (Reported 219,733 - 1,000 per CWC 13385)	218,733	
		Statutory Maximum (\$/gallon)	10.00	
		High Volume (\$/gallon)	2.00	
		Total		\$ 262,480
	Step 2	Per Day Factor (Generated from Button)	0.6	
		Days	1	
		Statutory Max per Day	\$ 10,000	
		Total		\$ 6,000
Non-Discharge Violations	Step 3 N/A	Per Day Factor		
		Total Days		
		Multiple Day Violation Reduction		
		Statutory Max per Day		
		Total		\$ -
Initial Amount of the ACL			\$ 268,479.60	
Add'l Factors	Step 4	Culpability	1.2	\$ 322,175.52
		Cleanup and Cooperation	0.9	\$ 289,957.97
		History of Violations	1	\$ 289,957.97
		Maximum for this Violation	\$ 2,197,330.00	
	Amount for this Violation		\$ 289,957.97	
Step 5 Total Base Liability Amount			\$ 289,957.97	
Step 6	Ability to Pay & to Continue in Business	1	\$ 289,957.97	
Step 7	Other Factors as Justice May Require	1	\$ 289,957.97	
		Staff Costs	\$ 9,000	\$ 298,957.97
Step 8	Economic Benefit	\$ 769		
Step 9	Minimum Liability Amount	\$ 846		
	Maximum Liability Amount	\$ 2,197,330.00		
Step 10 Final Liability Amount			\$ 298,958	

ATTACHMENT B

ATTACHMENT 1

Conceptual Project Proposal and Fiscal Year 2012-2013 Work Plan For Central Coast Ambient Monitoring Program (CCAMP) Groundwater Assessment and Protection (GAP)

The purpose of the Central Coast Ambient Monitoring Program-Groundwater Assessment and Protection (CCAMP-GAP) program is to do the following:

1. Identify and address threats to public health due to polluted groundwater supply.
2. Measure our performance in achieving tangible results (water quality protection and restoration) in our watersheds based on changes in groundwater quality.
3. Prioritize our work to focus on the most important groundwater issues.
4. Help determine appropriate Water Board requirements, and support and defend those requirements.
5. Support the implementation of special projects that address our highest priorities and help us achieve our measurable goals.
6. Implement the Water Board's Environmental Justice goals.

The following CCAMP-GAP project proposal is broken down into the following sections:

- Conceptual Model
- Endowment
- Operating Fund
- Domestic Well Outreach and Sampling Program
- Regional Groundwater Monitoring and Assessment
- Special Projects
- Goals
- Accountability & Transparency

Conceptual Model

The proposed groundwater program will be part of CCAMP and will be funded through similar mechanisms. However, CCAMP-GAP will operate under a slightly different business model than CCAMP. Instead of building a regional monitoring program from the ground up, as we largely did with our surface water monitoring program, we will collaborate extensively with various stakeholders to leverage (with supplemental funding and technical support) existing groundwater monitoring programs currently being implemented by local agencies. We will also help develop monitoring programs in priority groundwater basins where these monitoring programs currently do not exist.

Water Board staff will facilitate data capture and management via the State Board's GAMA GeoTracker database, making the CCAMP-GAP data readily available to the public and other regulatory agencies. We will use the data from CCAMP-GAP to help define our highest priorities and measure our performance in achieving our measurable goal for clean groundwater. Currently, our groundwater regulatory programs deal with groundwater pollution problems on an ad hoc basis, as they are discovered by certain events, such as when a development occurs, or a property is transferred, or when wells are sampled for some other purpose, or pollution is suspected and investigated. We have no systematic, region wide approach to assess and track the quality of our groundwater basins. CCAMP-GAP will eventually provide the data to help direct and prioritize our efforts to protect groundwater in a more comprehensive and effective manner.

CCAMP-GAP will also implement or support special projects, such as providing information and free groundwater sampling to domestic well owners so they can assess their groundwater quality and take appropriate actions to protect their own health and welfare. The proposed domestic well outreach and sampling project (see discussion below) will not only provide well owners with information they can use to make informed decisions about their drinking water, but will also allow us to develop a higher resolution understanding of shallow groundwater (i.e., upper-most aquifer) impacts in rural areas that can be used to prioritize our source control efforts.

Successful startup and implementation of CCAMP-GAP is predicated on securing settlement funds to create an endowment fund and a separate initial operating fund as proposed below. Staff will provide annual updates to the Water Board documenting the accomplishments of the previous year and outlining the next one year and five year work plan goals (see Accountability and Transparency Section, below).

Our goal is to build a comprehensive and transparent program that measures the physical condition of our groundwater basins over the long term, and reaching this goal will require significant increases in funding over time. Staff will direct additional enforcement funds, as they become available, to the CCAMP-GAP endowment, as we have done with CCAMP with respect to surface water monitoring and assessment, and as we have done with the Water Board's Low Impact Development Initiative (LIDI).

Endowment: \$800,000

Staff proposes to set up an initial \$800,000 endowment to provide an ongoing revenue stream to implement the annual CCAMP-GAP work plan. This endowment will require additional funding over time to increase the endowment principal and expand the capacity of CCAMP-GAP. The initial \$800,000 endowment will provide about \$40,000 per year in interest based on a long-term average earnings rate of five percent (understanding that the rate of return could be much lower depending on the economy). One of our longer term goals is to build the endowment up to \$5 million (with an estimated annual earnings rate of \$250,000 per year at 5% over the long term). The revenue stream generated from the endowment will be used to replenish a CCAMP-GAP operating fund, but also may be allowed to roll over to increase the endowment principal and future interest earnings.

Operating Fund: \$471,000

The CCAMP-GAP operating fund will be used to develop and implement regional groundwater monitoring programs and fund groundwater-related projects (see Special Projects discussion) Water Board staff will work with stakeholders to develop the detailed scopes of work and costs associated with these projects. The Executive Officer will prioritize the selection and implementation of these projects based on achieving the maximum cost benefit associated with effectively implementing projects that are in alignment with our highest priorities, as has been the case with CCAMP since its inception.

Domestic Well Outreach and Sampling Program

The implementation of this program is a regional priority due to significant public health threats associated with unregulated domestic wells in rural agricultural areas as result of widespread and severe nitrate pollution. Therefore, this program is one of the first year CCAMP-GAP goals (see Goals below) and is currently under development. More detailed information regarding this program was provided as part of the Executive Officer's Report to the Board (Item No. 17) contained within the July 14, 2011 Water Board Public Meeting agenda package. Since that time we have prepared a draft domestic well outreach and sampling project grant application request for qualifications package, scope of work, draft outreach and notification flyer. We are coordinating this work with several stakeholders, including State Board GAMA program staff, the California Department of Public Health, various County Health and Public Works Departments, and several nonprofit

environmental groups. The primary goals of the domestic well outreach and sampling program are to:

1. Provide domestic well owners and the general public in the Central Coast Region with specific information regarding potential nitrate impacts to their drinking water supplies, options for dealing with the health threat, and available water quality testing opportunities.
2. Provide free nitrate sampling to domestic well owners.
3. Develop comprehensive maps that delineate the concentration of nitrate in shallow aquifers and domestic wells.
4. As funds are available, provide financial assistance for Limited Resource Farmers and Ranchers or Socially Disadvantaged Operators on an as-needed, sliding-scale basis to help them comply with the groundwater sampling requirements of the Irrigated Agriculture Order.

The long-term goal is to sample domestic wells every five to ten years, depending on available funds. We will also work with local agencies to develop ongoing domestic well sampling and notification programs in all the Region's groundwater basins where domestic well drinking water is threatened or unsafe.

Regional Groundwater Monitoring and Assessment

There are a number of organizations currently implementing groundwater monitoring programs with dedicated monitoring well networks within the Region. CCAMP-GAP will leverage these existing individual programs into a coordinated regional monitoring program. We will start with a pilot project that directs groundwater data from a local agency into the GAMA GeoTracker database. As with the proposed domestic well program, additional funds will be made available as necessary from the CCAMP-GAP operating fund to implement this program.

Coordinating the groundwater data from local agencies into a regional database will significantly improve our ability to assess the data, streamline sharing of these data with the Water Board and other agencies, and allow public access to the data (while keeping well location and ownership confidential). These data would be immediately available for review and limited analyses via GeoTracker as well as for download into GIS or other modeling programs for more robust analyses. Water quality analyses for these existing programs are typically conducted by State-certified private in-house laboratories or commercial "clean water" laboratories that are not currently configured to upload raw analytical data into GeoTracker. Therefore our initial efforts will be to facilitate the electronic transfer of groundwater quality data generated via existing monitoring programs directly into GeoTracker. Once the existing monitoring programs are built into and uploading to GeoTracker, we will focus on capturing all available historical data within the system where feasible. We intend to collaborate with the entities implementing groundwater monitoring programs on a regular and ongoing basis and to provide technical and financial support to expand the existing monitoring programs and develop new ones in priority basins, where needed and given available funding. The following is an outline of the basic monitoring and assessment program development task list:

1. Water Board staff will outreach and coordinate with regional groundwater monitoring stakeholders to:
 - a. Identify and define existing programs
 - b. Advocate CCAMP-GAP
 - c. Identify shared priorities and goals
 - d. Identify and evaluate potential beneficial projects
2. Leverage existing programs where they exist with technical and financial support to facilitate:
 - a. Electronic transfer of data into GeoTracker GAMA
 - i. GAMA technical support
 - ii. Laboratory technical support (to facilitate Electronic Data Format [EDF])
 - iii. Agency/program technical support

- b. Capture/upload historical data from monitoring program
- c. Add additional monitoring wells, increase sampling frequency, add constituents, etc.
3. Capture, integrate & manage additional groundwater and well data from other sources (i.e. well permitting data for unregulated drinking water supply systems/wells)
4. Develop monitoring programs within areas where they don't currently exist
5. Develop or build on existing Quality Assurance Project Plans (QAPPs) and Sampling and Analysis Plans (SAPs)

Water Board staff have already begun implementing the first task. The cost associated with each of the subsequent tasks is currently uncertain and will likely be based on the characteristics of each individual local monitoring program. One of our first year goals (see CCAMP-GAP Goals below) is to determine the cost associated with these tasks and prioritize implementation based on available funding and regional benefit. This effort is currently underway.

We have had favorable preliminary discussions with several local agencies that are implementing regional groundwater monitoring programs regarding the proposed program. As of the date of this staff report we have identified and contacted the following with regard to their existing groundwater monitoring programs and our proposed program:

- Monterey County Water Resources Agency (MCWRA)
- Pajaro Valley Water Management Agency (PVWMA)
- San Benito County Water District (SBCWD)
- Santa Clara Valley Water District (SCVWD)
- Monterey Peninsula Water Management District (MPWMD)
- San Luis Obispo County – Department of Public Works
- Santa Barbara County – Water Resources Division of Public Works
- Santa Cruz County - Water Resources Program

In addition to the regional groundwater monitoring programs with dedicated well networks, we are also reaching out to the counties throughout the Region, principally the Health Departments, as the primacy agency for the drinking water programs and well permitting oversight, to begin capturing Local and State Small Water System well and domestic well water quality information. Our initial efforts are focused on piloting this program with Monterey County given they have the largest number of small water supply systems and domestic wells in our Region. We have also begun discussions with State Water Board GAMA program staff and various regional stakeholders to provide GeoTracker functionality that will directly benefit local agency programs such as drinking water and well permitting programs. In an effort to improve our chances for success, we are endeavoring to make this program as easy and as desirable as possible for participating local agency stakeholders. With this approach we hope to not only improve the functionality of our program, but also to provide benefits to the programs of the participating local agencies.

Special Projects

In addition to collaborating with various stakeholders to develop and implement a comprehensive and robust regional groundwater monitoring and assessment program, CCAMP-GAP will also support the implementation of special studies and projects to protect and restore groundwater quality, or otherwise support activities addressing our highest priorities as they relate to groundwater or the interrelationships between surface water and groundwater.

CCAMP-GAP funds available within the operating account beyond those earmarked for the specific programs and projects proposed within this project proposal and work plan will be available to implement various types of projects including but not limited to the following:

- Domestic Well Sampling Program (for an ongoing or repeat program at specified frequency, or to supplement/leverage local agency domestic well sampling efforts)
- Special studies (groundwater age dating, isotopic analyses, modeling, etc.)
- Well abandonment/destruction
- Development and implementation of well head protection programs
- Emergency replacement water supply
- Groundwater recharge (i.e., active recharge projects)
- Groundwater basin/aquifer assessment and ongoing trend analyses
- Salt and Nutrient Management Planning (i.e., plan development, Basin Planning, implementation, etc.)
- Seawater intrusion related projects
- Technical support for Basin Plan amendments
- Testing and implementation of technologies to reduce groundwater pollution

This is a preliminary conceptual list of potential projects. We will generate a more specific ongoing list of potential projects in concert with regional and local stakeholders. Projects will be evaluated on the basis of 1) their alignment with the Water Board's highest priorities, 2) providing regional scale groundwater data that will improve our ability to effectively evaluate and manage water quality and supply, 3) achieving tangible results in protecting and restoring water quality and/or supply, 4) leveraging existing programs with a regional benefit, and 5) leveraging of supporting funds.

Goals

We have developed an initial set of one-year and five-year goals.

The first year goals are to:

1. Implement a region-wide domestic well outreach and sampling program (currently under development)
2. Identify and begin collaborating with all applicable local and regional groundwater monitoring stakeholders (currently in process)
3. Implement initial water quality data capture and transfer pilot program with an individual local agency - determine the costs associated with and enter into agreements or contracts as necessary with stakeholder(s) to begin uploading groundwater monitoring data directly into GeoTracker GAMA
4. Identify and secure additional sources of potential funding, and
5. Develop and prioritize a running list of potential groundwater-related projects with maximum benefit in achieving our measurable goals and addressing our highest water quality priorities

The initial five-year goals are to:

1. Get all of the existing regional groundwater monitoring programs reporting data directly into GeoTracker GAMA and begin upload of historical data
2. Begin integrating regional groundwater monitoring data with surface water quality (CCAMP) and land use data
3. Develop an online "report card" of regional groundwater conditions
4. Integrate regional groundwater monitoring programs with salt and nutrient management program (Recycled Water Policy, SWRCB Resolution No. 2009-0011) monitoring program(s)
5. Develop Basin Plan amendments to protect water quality and watersheds from impacts to riparian and wetland areas and groundwater recharge.
6. Begin funding projects with a maximum regional benefit in achieving our measurable goals and addressing our highest water quality priorities
7. Build the CCAMP-GW endowment up to \$5 million
8. Implement follow-up domestic well sampling (fifth or sixth year; the goal is to implement this program once every five to ten years)

Accountability & Transparency

As noted in previous sections of this project proposal and fiscal year work plan, Water Board staff will provide annual progress reports and future work plans during scheduled public hearings to facilitate Water Board and public participation in the ongoing development and implementation of the program. The annual progress reports and work plans will:

1. Evaluate the previous fiscal year goals and progress toward achieving the five year goals, and present the next one year and five year set of goals with an emphasis on:
 - a. identifying and discussing newly initiated projects,
 - b. providing the status of ongoing projects,
 - c. forecasting anticipated projects and expenditures for the next year and five year time horizons based on available/anticipated funds,
2. Refine the conceptual special project list and evaluation criteria, and
3. Provide an evaluation of the efficacy of the program with a discussion of successes, shortfalls and opportunities.

Water Board staff will also present the results/findings of special studies and assessment work either as part of the annual updates, as stand-alone informational items or within the Executive Officer's reports as needed to inform the Water Board and public. The five year goal of developing an online groundwater quality "report card" will also help facilitate public transparency and accountability of the effectiveness of Water Board programs focused on our regional-scale water quality problems.

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ATTACHMENT C

1
2 **Guadalupe Oil Field Settlement**
3 **CCAMP Endowment 2008 Grant Agreement**
4

5 **Date: July 1, 2008**
6

7 **Trust Title: Central Coast Ambient Monitoring Program Fund**
8

9 **Foundation: The Bay Foundation of Morro Bay**
10

11 **Project:** This Agreement establishes a grant to augment the Central Coast Ambient
12 Monitoring Program Endowment Fund (CCAMP Fund), to provide support for the
13 Central Coast Ambient Monitoring Program, a water quality monitoring program
14 originating with the Central Coast Regional Water Quality Control Board ("Water
15 Board"). Endowment funds are to be used to defray costs associated with monitoring and
16 assessing water quality, including but not limited to administrative costs, sampling staff
17 costs, data collection and analysis costs, laboratory costs, and equipment and supply
18 purchases. Activities will include rotational watershed monitoring throughout the Central
19 Coast Region, coastal confluences monitoring at major creek mouths from Gazos Creek
20 (San Mateo Co.) to Rincon Creek (Santa Barbara Co.), water quality assessment work,
21 and various special projects to be undertaken from time to time.
22

23
24 **Agreement:** This Agreement is entered into by and between the Water Board and the Bay
25 Foundation of Morro Bay (hereinafter "the Foundation"),
26

27 **The parties agree as follows:**
28

- 29 1. **Background:** In settlement of litigation between Union Oil Company of
30 California ("Unocal") and various agencies of the State of California regarding
31 petroleum pollution at the Guadalupe Oil Field, Unocal, among other things,
32 created the Guadalupe Oil Field Settlement Water Quality Projects Trust (the
33 "Trust"). The National Fish and Wildlife Foundation is the Trustee for the Trust.
34 Funds in the Trust are to be spent on water quality projects that directly benefit or
35 study ground water or surface water quality and the beneficial use of ground
36 water and surface water. Under the terms of the Trust, the Regional Water
37 Quality Control Board, Central Coast Region (Water Board) has sole authority to
38 select projects to be funded by the Trust. In 1999, the Water Board approved
39 \$2,000,000 to be set aside in the Trust to serve as an endowment fund for
40 operations of the Central Coast Ambient Monitoring Program (hereinafter
41 "CCAMP"). In 2007, the Water Board approved that this \$2,000,000, along with
42 an additional \$200,000 for first year expenses, be granted to the Foundation to
43 establish the CCAMP Fund. This Agreement augments the previously approved
44 endowment fund project by granting an additional \$4.65 million to the
45 Foundation for the CCAMP Fund.
46
- 47 2. **Executive Officer:** The Executive Officer is the chief executive of the Water
48 Board and is appointed pursuant to California Water Code section 13220. The
49 Executive Officer has been delegated and may exercise all the powers of the

1 Water Board except for those enumerated in California Water Code section
2 13223. The Executive Officer may delegate his authority to Water Board staff in
3 accordance with California Government Code Section 7 and California Water
4 Code Section 7.
5

- 6 3. **Bay Foundation President:** The President of the Foundation is responsible for
7 coordinating the Foundation's role under this Agreement. The current President
8 of the Bay Foundation is Joel Neel, Bay Foundation of Morro Bay, 601
9 Embarcadero, Suite 11, Morro Bay, California, 93442. The President may
10 delegate responsibilities for coordination to a representative of the Foundation.
11
- 12 4. **CCAMP Program Director:** The CCAMP Program Director is appointed by
13 the Water Board's Executive Officer and will be responsible for day-to-day
14 operations and development of annual work plans and budgets for all CCAMP
15 activities. The work plans will describe CCAMP monitoring activities and
16 required disbursements from the funds described in this Agreement. The
17 CCAMP Program Director shall provide a periodic performance evaluation of
18 services supplied to CCAMP by the Bay Foundation. Karen Worcester currently
19 serves as the Central Coast Ambient Monitoring Program Director.
20
- 21 5. **Term:** The term of this Agreement shall commence on the date of execution and
22 shall continue until January 1, 2017. The term of this Agreement may be
23 extended by mutual consent of the parties.
24
- 25 6. **Scope of Work:** The Foundation agrees to provide labor, material and equipment
26 necessary to carry out work described in each Annual Work Plan to be funded
27 under the terms of this Agreement, provided the CCAMP Endowment Account
28 or the CCAMP Operational Account have sufficient available (distributable)
29 funds. The Annual Work Plan is subject to external scientific peer review. It
30 identifies monitoring activities to be conducted using multiple funding sources.
31 The CCAMP Program Director shall ensure that allocations to monitoring
32 activities address any geographic limitations and other requirements of any of the
33 fund sources held in the CCAMP Fund. The Foundation shall review the Annual
34 Work Plan and budget for the purposes of determining consistency with the terms
35 of this Agreement but shall have no authority to revise the Annual Work Plan
36 without the Water Board's consent.
37
- 38 7. **Deliverables:** The Foundation shall provide to the Water Board a quarterly
39 accounting of funds (assets, liabilities, and total balance), investments and
40 disbursements, provide the Water Board an annual (year end) report of the assets
41 balance, liabilities balance, net gains on investments, distributable balance, and
42 total amount available to spend. The Foundation shall provide such goods and
43 services as may be needed for performance under the terms of this Agreement.
44
- 45 8. **Fund Accounts:** The amount of funds subject to this Agreement shall be
46 \$4,650,000. The Foundation shall add this to the CCAMP Endowment Account
47 and shall manage the account so that this amount, as well as other principle
48 amounts from previous fund transfers, are maintained in full. The Foundation
49 also maintains an Operational Reserve Account to meet unforeseen budgetary
50 demands by the CCAMP program or to pay CCAMP expenses in excess of
51 available Endowment funds. The Foundation shall disburse funds from the
52 Operational Reserve Account upon request by the CCAMP Program Director,
53 provided that such request is consistent with the purposes of the Endowment as

1 set forth in this Agreement. The Foundation shall seek to reimburse the
2 Operational Reserve Account for any such disbursements within a reasonable
3 time so as to maintain the Operational Account at a minimum of \$50,000,
4 provided such reimbursement funding is available from Endowment Fund
5 earnings or other sources of funding. With the written approval of the Water
6 Board Executive Officer, the Foundation's Board of Directors may increase the
7 amount to be held in the Operational Reserve Account using Endowment
8 Account earnings. The funds in the Operational Reserve Account and the
9 Endowment Account are collectively referred to as "CCAMP Funds."

10
11 9. **Accounting and Fiduciary Duties:** The Foundation need not maintain CCAMP
12 Funds in segregated accounts, but shall account for CCAMP Funds separately
13 from other Foundation monies. The Foundation shall disburse CCAMP Funds
14 under the terms and conditions set forth in this Agreement. The Foundation shall
15 manage the Endowment Account to preserve the principal amount and with an
16 investment strategy intended to increase the principal balance over time through
17 prudent investments. No portion of the Endowment Account principal may be
18 used for payment of work plan activities or other direct or indirect costs.
19 Investment strategies employed by the Foundation may include US treasury
20 bonds, notes, and other investment vehicles guaranteed by the full faith and credit
21 of government and other investments considered prudent by the Foundation.
22

23 10. **Budget:** The annual budget for the CCAMP program shall be included as part of
24 the CCAMP Annual Work Plan submitted annually to the Foundation by the
25 CCAMP Program Director. The Annual Budget shall specify the CCAMP Funds
26 that the Foundation shall disburse for the year in question, which disbursement
27 shall be subject to the limitations herein set forth. The Annual Budget, prepared
28 by the CCAMP Program Director, shall address the appropriate uses of these
29 funds in accordance with Paragraph 1 of this Agreement.
30

31 11. **Additional Requirements:**

32
33 a. The Foundation may provide services of its employees or contractors for
34 the purposes set forth in this Agreement. The Foundation shall be solely
35 responsible for hiring and terminating employees and contractors that will
36 provide services under the terms of this Agreement. The Foundation's employees
37 and contractors that provide services under the terms of this Agreement shall be
38 subject to policies established by the Foundation.
39

40 b. The Foundation may provide sub-contracted services and other goods
41 and services pursuant to the purposes of this Agreement. Such goods and
42 services shall be provided subject to procurement policies which the Foundation
43 may establish from time to time. The Foundation shall notify the Water Board in
44 writing of any changes to its procurement policies as they exist on the effective
45 date of this Agreement.
46

47 c. Funds are to be used for the purposes set forth in this Agreement and for
48 direct costs incurred by Foundation related to administration of the funds and
49 administrative fees. Direct costs include, but are not limited to, disbursements
50 made by the Foundation associated with monitoring and assessment activities,
51 including worker's compensation insurance, bookkeeping, accounting, auditing,
52 insurance, employee benefits, and other costs which the Foundation may incur in

1 connection with fulfilling the purpose of the Endowment and its related special
2 funds.

3
4 d. In consideration for the obligations incurred by the Foundation in
5 entering into this Agreement, the Foundation may collect administrative fees for
6 management of the funds (management fees), in the amount of 7% of
7 disbursements or \$10,000 (whichever is greater), an investment management fee
8 based on the principal balance in the Endowment, and reimbursement of its
9 indirect costs incurred in performing this Agreement. The investment
10 management fee shall be the same amount as the Foundation pays to its outside
11 investment managers for investment management of accounts with the same
12 principal balance as the Endowment Fund, subject to the 1% limitation in
13 subparagraph e. The 7% management fee will be disbursed on October 1st of each
14 year based on the prior year's expenditures. The terms of agreement herein
15 related to administrative fees shall apply to the initial funds contemplated by this
16 Agreement and any funds added to principal during the term of this Agreement.
17

18 e. Subparagraphs 11 c and 11 d of this Agreement notwithstanding, total
19 annual administrative fees (including management fees, investment management
20 fees and indirect costs) shall not exceed 1% of the principal balance of the
21 Endowment Fund.
22

23
24 **12. Invoice and Payment Procedure:** The Foundation will make disbursements
25 from time to time under the terms of this Agreement. The Foundation may make
26 disbursements for budgeted expenses in accordance with the CCAMP Annual
27 Work Plan and disbursements for non-budgeted expenses approved by the
28 CCAMP Program Director. Approved non-budgeted expenses may include,
29 without limitation, costs of additional monitoring or equipment not included in
30 the Annual Work Plan. The Foundation will make disbursements within 30
31 working days of receipt by the Foundation of any invoice approved by the
32 CCAMP Program Director. Disbursements which the Foundation makes to itself
33 shall be subject to approval of the CCAMP Program Director and all other terms
34 of this Agreement.
35

36 **13. Commencement of Work and Delays Beyond Control of the Foundation:**

- 37
38 a. Upon receipt of an executed copy of this Agreement and an Annual
39 Work Plan and Budget, the Foundation shall commence activities under
40 this Agreement.
41
42 b. Delay in completion of work or services or submission of deliverables by
43 Foundation within the time or times specified in the Annual Work Plan
44 which arise from causes beyond the control of the Foundation and
45 without fault or negligence on the part of the Foundation shall entitle the
46 the Foundation to a reasonable extension of time for performance.
47 Causes beyond the control of the Foundation shall be deemed to include
48 but are not limited to, unusually severe weather, acts of God, fire, floods,
49 epidemics, quarantine restrictions, strikes, freight embargoes, and delays
50 of suppliers or subcontractors arising from causes beyond the control and
51 without fault or negligence of both the Foundation and such suppliers or
52 subcontractors. The Foundation shall not be held liable for

1 circumstances that limit its performance under this Agreement which are
2 beyond its control.
3

4 14. **Amendments:** This Agreement may be amended only by written agreement
5 between the Foundation and the Water Board.
6

7 15. **Dispute Resolution:** Authority to terminate performance under Paragraph 16
8 of this Agreement is not subject to the dispute resolution provisions of this
9 Paragraph 15. All other issues including, but not limited to, the amount of any
10 compensation or reimbursement which should be paid to the Foundation shall be
11 subject to the dispute resolution process under this Paragraph 15. All claims or
12 disputes arising out of, or relating to this Agreement, its interpretation or breach
13 shall be made in writing. If a dispute arises related to this Agreement, the parties
14 shall attempt to resolve it informally. If the dispute is not resolved informally
15 within 30 days, the dispute may be elevated to the Water Board Executive
16 Officer and the Foundation President by submitting a written memorandum to
17 them describing the dispute. The Executive Officer and Foundation President
18 will consult with the CCAMP Program Director and other appropriate parties and
19 attempt to resolve the dispute. Within 15 days of receiving the memorandum
20 describing the dispute, the Executive Officer and Foundation President shall
21 either make a decision or determine that they cannot agree to a resolution. If the
22 Executive Officer and the Foundation President cannot resolve the dispute, the
23 Executive Officer or Foundation President may request the Water Board to
24 consider the dispute at a regularly scheduled public meeting. If the Foundation
25 disagrees with the Water Board's determination, or if the Water Board declines
26 the request to consider the matter, then the dispute shall proceed to mediation
27 upon the demand of either Party. Written notice of the demand for mediation
28 shall be made within a reasonable time after completion of the dispute resolution
29 process specified in this Agreement. The mediation shall take place in San Luis
30 Obispo County, California, at a time and place selected by the mediator and the
31 parties. Unless the Water Board and the Foundation agree otherwise in writing,
32 mediation fees, if any, shall be paid by the party demanding mediation. The
33 mediator shall be a person or persons mutually acceptable to the Water Board
34 and the Foundation. If the parties cannot agree on a mediator, each party shall
35 select one mediator and those two mediators shall select a third mediator.
36 CCAMP Funds shall not be used to pay legal fees and costs incurred. The
37 mediation provisions set forth herein do not apply to any matter which is under
38 the jurisdiction of a bankruptcy court or that is under the jurisdiction of, or could
39 be filed in, a small claims court.
40
41
42

43 16. **Termination and Reversionary Interest:**
44

- 45 a. If for any reason the Foundation is no longer willing or able to carry out
46 the terms and conditions of this Agreement, the Foundation shall so
47 notify the Water Board in writing. Within thirty days after providing the
48 notice, the Foundation shall transfer all remaining CCAMP Funds or
49 other assets to National Fish and Wildlife Foundation or any successor
50 trustee of the Guadalupe Oil Field Settlement Water Quality Projects
51 Trust. The Foundation may withhold its administrative expenses allowed
52 under the terms of this Agreement and accrued to the date of termination,

1 but shall not treat the transfer of remaining funds as a disbursement for
2 purposes of calculating administrative costs.
3

4 b. The Water Board Executive Officer may terminate this Agreement at any
5 time for any reason by giving thirty (30) days written notice to the
6 Foundation. Within thirty (30) days of receiving such notice, the
7 Foundation shall transfer all remaining CCAMP Funds or other assets to
8 National Fish and Wildlife Foundation or any successor trustee of the
9 Guadalupe Oil Field Settlement Water Quality Projects Trust as specified
10 by the Water Board in the notice of termination. The Foundation may
11 withhold its administrative expenses allowed under the terms of this
12 Agreement and accrued to the date of termination, but shall not treat the
13 transfer of remaining Funds as a disbursement for purposes of calculating
14 administrative costs. The Foundation shall be entitled to an
15 administrative fee of \$ 6,000 for executing the transfer and providing a
16 final accounting of Funds. Upon receipt of notice of termination, and
17 except as otherwise directed in the notice, the Foundation shall:
18

- 19 • Stop work on the date specified in the notice;
- 20
- 21 • Place no further orders or enter into any further subcontracts for
22 materials, services or facilities except as necessary to complete work
23 under the Agreement up to effective date of termination;
- 24
- 25 • Terminate all orders and subcontracts;
- 26
- 27 • Promptly take all other reasonable and feasible steps to minimize any
28 additional cost, loss, or expenditure associated with work terminated,
29 including, but not limited to reasonable settlement of all outstanding
30 liability and claims arising out of termination of orders and subcontracts;
31
- 32 • Deliver or make available to the Water Board all data, drawings,
33 specifications, reports, estimates, summaries, and such other information
34 and material as may have been accumulated by the Foundation under this
35 Agreement, whether completed, partially completed, or in progress.
36

37 c. In the event of the dissolution of Water Board, the term "Water Board"
38 shall refer to the unit of California state government that assumes the
39 functions of the Water Board. In the event of the dissolution of the
40 Water Board without a transfer of functions to another unit of California
41 state government, or in the event the Water Board shall no longer be a
42 unit of California state government or an organization described in
43 section 170(c) of the Internal Revenue Code of 1954, as amended, the
44 Foundation shall thereafter continue to hold the CCAMP Funds and shall
45 distribute the income there from to such organizations as in the opinion
46 of the Board of Directors of the Foundation most nearly serve the
47 purposes and objectives of this Agreement.
48

49 **17. Indemnity and Liability:**
50

51 a. In making the grant to the Foundation and monitoring performance under
52 this Agreement, Water Board assumes no liability for injuries or loss to
53 persons or property resulting from the Foundation's activities.

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- b. In conducting its activities relating to this Agreement, the Foundation agrees to conduct such activities in compliance with applicable federal, state, and local laws, regulations and ordinances and to obtain and maintain appropriate insurance against liability for injury to persons or property arising from its activities.

 - c. The Foundation shall, indemnify and hold harmless Water Board, its board members, officers, directors, agents, and employees from claims, injuries, losses, damages, liabilities, including damage or injury to persons and property and reasonable expenses including reasonable legal fees, to the extent caused by negligent acts or willful misconduct by employees or agents of the Foundation. This indemnification will survive termination of this Agreement.

 - d. Water Board shall indemnify and hold harmless the Foundation, its board members, officers, directors, agents, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, but only to the extent caused by negligent acts or willful misconduct by employees of the Water Board. This indemnification will survive termination of this Agreement.

 - d. Except as otherwise provided in this Agreement, the Foundation expressly waives any and all rights to any type of express or implied indemnity or right of contribution from the State of California and the United States, their officers, agents or employees, for any liability resulting from or growing out of, or in any way connected with or incident to this Agreement.
18. **Third Parties:** Nothing in this Agreement is intended to create in the public, any member of the public, or any public entity rights as a third party beneficiary under this Agreement.
19. **Permits, Fees and Notices:** The Foundation shall procure all permits and licenses necessary to accomplish work funded under this Agreement. The Foundation shall pay all charges and fees with CCAMP Funds, and give all notices necessary and incident to the due and lawful prosecution of the work. The Water Board may, but is not required to, elect to procure necessary permits or licenses or give notices in lieu of the Foundation.
20. **Insurance and Bonds:**
- a. The Foundation is solely responsible for maintaining insurance policies to cover insurance that may be required by law in the jurisdiction where the activities funded under the terms of this Agreement are being implemented.

 - b. Upon request, the Foundation shall furnish to Water Board copies of insurance certificates evidencing its present level of insurance coverage for: Worker's Compensation and other coverage the Foundation has

1 secured in fulfillment of its responsibilities under the terms of this
2 Agreement. The certificates shall specify the dates when such insurance
3 expires and shall provide further that the Foundation and Water Board
4 shall be given not less than thirty (30) days notice before cancellation of
5 or any material change in such insurance. The Foundation shall maintain
6 such insurance coverage throughout the term of this Agreement.
7

8 21. **Foundation Acting Independently:** The Foundation, and the employees or
9 agents of the Foundation, in the performance of this Agreement, shall act in an
10 independent capacity and not as officers, employees or agents of the Water
11 Board, or the State of California.
12

13 22. **Audits and Access to Records:**

14 a. The Foundation shall maintain standard financial accounts, documents
15 and records relating to implementation of CCAMP activities funded
16 under this Agreement. The Foundation may use any accounting system
17 which follows the guidelines of "Generally Accepted Accounting
18 Practices" published by the American Institute of Certified Public
19 Accountants.
20

21 b. The Water Board, and federal and state government auditors or their duly
22 authorized representatives shall have access to any books, documents,
23 papers, and records of the Foundation which are directly pertinent to this
24 Agreement for the purpose of making audits, examinations, excerpts and
25 transcriptions.
26

27 c. The Foundation shall include in each of its subcontracts involving an
28 expenditure of funds under this Agreement in excess of twenty five
29 thousand dollars (\$25,000) a provision which requires the subcontractor
30 to make all records directly pertinent to the subcontract available for
31 examination and audit under the same terms as specified in subparagraph
32 a., of this paragraph. The subcontract shall also require subcontractor to
33 maintain all required records for three (3) years after final payment under
34 the subcontract and all pending matters are resolved.
35
36

37 23. **Rights to Data and Other Information:** The Foundation agrees that all data,
38 plans, drawings, specifications, reports, computer programs, operating manuals,
39 notes and other written or graphic work produced in the performance of this
40 Agreement are subject to the rights of the Foundation and Water Board as set
41 forth in this Paragraph 23. Both the Foundation and Water Board shall have the
42 right to reproduce, publish, and use all such work, or any part thereof, in any
43 manner and for any purposes whatsoever and to authorize others to do so. If any
44 such work is copyrightable or patentable, the Foundation may copyright or patent
45 the same, except that, as to any work which is so protected by the Foundation, the
46 Water Board reserves a royalty-free, nonexclusive, and irrevocable license to
47 reproduce, publish, provide to the public and use such work, or any part thereof.
48

49 24. **Agreement Not Assignable:** Without mutual written agreement of the Water
50 Board and the Foundation this Agreement is not assignable in whole or in part.
51

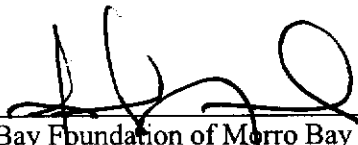
52 25. **Review and Comments:** The Foundation agrees that Water Board has the right
53 to review and comment on any and all activities undertaken by the Foundation in

1 connection with this Agreement, however, the Water Board shall not control or
2 direct the mode or manner in which any employee, contractor or agent of the
3 Foundation performs his or her duties.
4

- 5 26. **Lobbying:** The Foundation is prohibited from using funds held in the
6 endowment for lobbying the executive or legislative branches of the state or
7 federal government.
8
- 9 27. **Applicable Law and Jurisdiction:** This Agreement has been executed and
10 delivered in the State of California and shall be subject to and interpreted by the
11 laws of the State of California, without regard to choice of law principles. By
12 entering into this Agreement, the Water Board and Foundation agree to submit to
13 the jurisdiction of the courts of the State of California.
14
- 15 28. **Entire Agreement:** This Agreement constitutes the entire understanding
16 between the parties and supersedes all prior agreements and understandings,
17 whether written or oral, between the parties.
18
- 19 29. **No Waiver of Enforcement:** The failure of the Water Board, or the Foundation
20 to enforce, or the delay by the Water Board or the Foundation in enforcing, any
21 of the terms and conditions of this Agreement shall not be deemed a continuing
22 waiver or a modification of this Agreement unless the waiver or modification is
23 expressly written and signed by the Foundation and Water Board.
24
- 25 30. **Nondiscrimination:** During the performance of this Agreement, the Foundation
26 and its subcontractors shall not unlawfully discriminate, harass or allow
27 harassment, against any employee or applicant for employment because of sex,
28 race, color, ancestry, religious creed, national origin, disability (including HIV
29 and AIDS), medical condition (cancer), age, marital status, denial of family and
30 medical care leave and denial of pregnancy disability leave. The Foundation and
31 its subcontractors shall comply with the provisions of the Fair Employment and
32 Housing Act (California Government Code, Section 12900 et seq.) and the
33 applicable regulations promulgated thereunder. (California Code of Regulations,
34 Title 2, Section 7285.0 et seq.)
35
- 36 31. **Current State Employees:** No officer or employee of the State of California
37 shall engage in any employment, activity, or enterprise from which the officer or
38 employee receives compensation or has a financial interest and which is
39 sponsored or funded by any California state agency, unless the employment,
40 activity or enterprise is required as a condition of regular state employment.
41
- 42 32. **Former State Employees:** For the two-year period from the date he or she left
43 state employment, no former California state officer or employee may enter into
44 a contract in which he or she engaged in any of the negotiations, transactions,
45 planning, arrangements, or any part of the decision-making process relevant to
46 the contract while employed in any capacity by any state agency.
47
- 48 33. **Attorneys Fees:** Except as explicitly provided in this Agreement to the contrary,
49 each party shall bear its own attorneys fees and costs in any dispute or legal
50 action related to this Agreement.
51

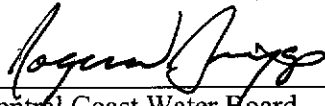
1 **Certification of Signatories:** The people signing this Agreement certify that they are authorized
2 by the entity they represent to sign this Agreement and to bind the entity they represent to the
3 terms of this Agreement.

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Bay Foundation of Morro Bay
Joel Neel, President

4/9/08 Date



Central Coast Water Board
Roger Briggs, Executive Officer

4-7-08 Date

ATTACHMENT D

1
2 **CCAMP-GAP Fund Grant Agreement**
3

4 **Date: December 3, 2012**
5

6 **Title: Central Coast Ambient Monitoring Program; Groundwater**
7 **Assessment and Protection (CCAMP-GAP) Fund**
8

9 **Foundation: The Bay Foundation of Morro Bay**
10

11 **Project:** This Agreement establishes a grant to supplement the Central Coast Ambient
12 Monitoring Program (CCAMP) via additional endowment and operational accounts, to
13 provide support for the Groundwater Assessment and Protection (GAP) component of
14 CCAMP, a water quality monitoring and protection program originating with the Central
15 Coast Regional Water Quality Control Board ("Water Board"). The purpose of CCAMP-
16 GAP is to develop and implement regional groundwater monitoring programs and
17 support the implementation of groundwater related projects with the intent of evaluating,
18 restoring and protecting the beneficial uses of groundwater. Grant funds are to be used to
19 defray costs associated with groundwater monitoring and groundwater related projects
20 including, but not limited to:

- 21
- 22 a. Technical assistance to build and implement regional groundwater monitoring
23 programs.
 - 24
 - 25 b. Technical assistance to develop a groundwater database infrastructure for
26 CCAMP-GAP.
 - 27
 - 28 c. The implementation of special projects, including but not limited to the
29 following:
30
 - 31 • Domestic Well Sampling Program
 - 32 • Special studies (groundwater age dating, isotopic analyses, modeling, etc.)
 - 33 • Well abandonment/destruction
 - 34 • Development and implementation of well head protection programs
 - 35 • Emergency replacement water supply
 - 36 • Groundwater recharge
 - 37 • Groundwater basin/aquifer assessment and ongoing trend analyses
 - 38 • Salt and Nutrient Management Planning
 - 39 • Seawater intrusion related projects
 - 40 • Technical support for Basin Plan amendments
 - 41 • Testing and implementation of technologies to reduce groundwater
42 pollution
 - 43
 - 44

45
46 **Agreement:** This Agreement is entered into by and between the Water Board and the Bay
47 Foundation of Morro Bay (hereinafter "the Foundation"),

1 **The parties agree as follows:**
2

- 3 1. **Background:** In settlement of litigation between Union Oil Company of
4 California (“Unocal”) and various agencies of the State of California regarding
5 petroleum pollution at the Guadalupe Oil Field, Unocal, among other things,
6 created the Guadalupe Oil Field Settlement Water Quality Projects Trust (the
7 “Trust”). The National Fish and Wildlife Foundation (NFWF) is the Trustee for
8 the Trust. Funds in the Trust are to be spent on water quality projects that
9 directly benefit or study ground water or surface water quality and the beneficial
10 use of ground water and surface water. Under the terms of the Trust, the
11 Regional Water Quality Control Board, Central Coast Region (Water Board) has
12 sole authority to select projects to be funded by the Trust. In 1999, the Water
13 Board approved funds to be set aside in the NFWF Trust to serve as an
14 endowment fund for operations of the Central Coast Ambient Monitoring
15 Program (hereinafter “CCAMP”). In 2007, the Water Board approved that these
16 funds be granted to the Foundation to establish the CCAMP Fund. The Water
17 Board augmented the grant of CCAMP funds in 2008 using funds from the
18 Guadalupe Oil Field Settlement and a Pacific Gas and Electric (PG&E)
19 Settlement. The PG&E Settlement Fund was established in 2003, as a settlement
20 between the Water Board and PG&E regarding unpermitted discharges from the
21 Moss Landing Power Plant. The PG&E settlement funds are currently managed
22 by the Community Foundation of Monterey County. The PG&E funds must be
23 allocated to water quality projects in the watersheds tributary to the Elkhorn
24 Slough and Moss Landing Harbor. On May 3, 2012 the Water Board allocated
25 the remaining unobligated Guadalupe Oil Field and PG&E settlement funds for
26 CCAMP-GAP via Resolution No. R3-2012-0024 (Attachment A). This
27 Agreement secures and consolidates the remaining available Guadalupe and
28 PG&E settlement funds for CCAMP-GAP by granting the funds to the
29 Foundation to establish the CCAMP-GAP Fund.
30
- 31 2. **Executive Officer:** The Executive Officer is the chief executive of the Water
32 Board and is appointed pursuant to California Water Code section 13220. The
33 Executive Officer has been delegated and may exercise all the powers of the
34 Water Board except for those enumerated in California Water Code section
35 13223. The Executive Officer may delegate his authority to Water Board staff in
36 accordance with California Government Code Section 7 and California Water
37 Code Section 7.
38
- 39 3. **Bay Foundation President:** The President of the Foundation is responsible for
40 coordinating the Foundation’s role under this Agreement. The current President
41 of the Bay Foundation is Gary Ruggerone, Bay Foundation of Morro Bay, 601
42 Embarcadero, Suite 11, Morro Bay, California, 93442. The President may
43 delegate responsibilities for coordination to a representative of the Foundation.
44
- 45 4. **CCAMP-GAP Program Director:** The CCAMP-GAP Program Director is
46 appointed by the Water Board’s Executive Officer and will be responsible for
47 day-to-day operations and development of annual work plans and budgets for all
48 CCAMP-GAP activities. The work plans will describe CCAMP-GAP activities
49 and required disbursements from the funds described in this Agreement. The
50 CCAMP-GAP Program Director shall provide a periodic performance evaluation
51 of services supplied to CCAMP-GAP by the Bay Foundation.
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5. **Term:** The term of this Agreement shall commence on the date of execution and shall continue until January 1, 2025. The term of this Agreement may be extended by mutual consent of the parties.
 6. **Scope of Work:** The Foundation agrees to provide labor, material and equipment necessary to carry out work described in each Annual Work Plan to be funded under the terms of this Agreement, provided the CCAMP-GAP Endowment Account and the CCAMP-GAP Operational Account have sufficient available funds. The Annual Work Plan identifies monitoring and other activities to be conducted using multiple funding sources. The CCAMP-GAP Program Director shall ensure that allocations address any geographic limitations and other requirements of any of the fund sources held in the CCAMP-GAP Fund. The Foundation shall review the Annual Work Plan and budget for the purposes of determining consistency with the terms of this Agreement but shall have no authority to revise the Annual Work Plan without the Water Board's consent.
 7. **Deliverables:** The Foundation shall provide to the Water Board a quarterly accounting of funds (assets, liabilities, and total balance), investments and disbursements, provide the Water Board an annual (year end) report of the assets balance, liabilities balance, net gains on investments, distributable balance, and total amount available to spend. The Foundation shall provide such goods and services as may be needed for performance under the terms of this Agreement.
 8. **Fund Accounts:** The amount of initial funds subject to this agreement shall be approximately \$1,563,000. The amount of initial funds is subject to change due to market conditions and the application of administrative fees at the time the funds are transferred from the National Fish and Wildlife Foundation and the Community Foundation of Monterey County to the Foundation. The amount of initial funds will be based on the final transfer amounts from the two foundations currently managing the funds and will be documented by the Foundation via the fund transfer receipts. This agreement initiates two new CCAMP accounts, the CCAMP-GAP Endowment Account and the CCAMP-GAP Operational Account. The Foundation shall deposit \$800,000 in the CCAMP-GAP Endowment Account. Water Board staff's intent is to increase the CCAMP-GAP Endowment Account to \$5,000,000 over the next ten years. The Foundation shall deposit the remaining fund transfer balance of approximately \$763,000 in the CCAMP-GAP Operational Account. The Foundation shall disburse funds from the Operational Account upon request by the CCAMP-GAP Program Director, provided that such request is consistent with the purposes set forth in this Agreement. The Foundation shall transfer funds from the CCAMP-GAP Endowment Account to the CCAMP-GAP Operational Account upon request of the CCAMP-GAP Program Director provided that the fund transfer request does not reduce the balance of the Endowment Fund below \$800,000, unless otherwise approved by the Water Board. The funds in the Operational Account and the Endowment Account are collectively referred to as "CCAMP-GAP Funds."
 9. **Supplemental Environmental Project:** "Supplemental Environmental Project (SEP)" shall mean CCAMP-GAP or other specified Central Coast Water Board approved program or project, developed as a result of Water Board enforcement actions. The Central Coast Water Board has identified CCAMP-GAP as an appropriate SEP. As such, enforcement penalties may periodically be directed to CCAMP-GAP as allowable by the State Water Resources Control Board's Enforcement Policy and SEP Policy. Unless the associated SEP is for a

1 specifically identified CCAMP-GAP related project, the SEP funds will be
2 administered consistent with the annual CCAMP-GAP work plans (i.e. the use of
3 funds will not be restricted to specific project tasks and milestones, but will be
4 managed and appropriated consistent with all other available CCAMP-GAP
5 funds within the Endowment or Operating Accounts).
6

7 **10. Accounting and Fiduciary Duties:** The Foundation need not maintain
8 CCAMP-GAP Funds in segregated accounts, but shall account for CCAMP-GAP
9 Funds separately from other Foundation monies. The Foundation shall disburse
10 CCAMP-GAP Funds under the terms and conditions set forth in this Agreement.
11 The Foundation shall manage the Endowment Account to preserve the principal
12 amount and with an investment strategy intended to increase the principal
13 balance over time through prudent investments. No portion of the Endowment
14 Account principal may be used for payment of work plan activities or other direct
15 or indirect costs. Investment strategies employed by the Foundation may include
16 US treasury bonds, notes, and other investment vehicles guaranteed by the full
17 faith and credit of government and other investments considered prudent by the
18 Foundation.
19

20 **11. Budget:** The annual budget for the CCAMP-GAP program shall be included as
21 part of the CCAMP-GAP Annual Work Plan submitted annually to the
22 Foundation by the CCAMP-GAP Program Director. The Annual Budget shall
23 specify the CCAMP-GAP Funds that the Foundation shall disburse for the year
24 in question, which disbursement shall be subject to the limitations herein set
25 forth. The Annual Budget, prepared by the CCAMP-GAP Program Director,
26 shall address the appropriate uses of these funds in accordance with Paragraph 1
27 of this Agreement.
28

29 **12. Additional Requirements:**
30

31 a. The Foundation may provide services of its employees or contractors for
32 the purposes set forth in this Agreement. The Foundation shall be solely
33 responsible for hiring and terminating employees and contractors that
34 will provide services under the terms of this Agreement. The
35 Foundation's employees and contractors that provide services under the
36 terms of this Agreement shall be subject to policies established by the
37 Foundation.
38

39 b. The Foundation may provide sub-contracted services and other goods
40 and services pursuant to the purposes of this Agreement. Such goods
41 and services shall be provided subject to procurement policies which the
42 Foundation may establish from time to time. The Foundation shall notify
43 the Water Board in writing of any changes to its procurement policies as
44 they exist on the effective date of this Agreement.
45

46 c. Funds are to be used for the purposes set forth in this Agreement and for
47 direct costs incurred by Foundation related to administration of the funds
48 and administrative fees. Direct costs include, but are not limited to,
49 disbursements made by the Foundation associated with monitoring and
50 assessment activities, including worker's compensation insurance,
51 bookkeeping, accounting, auditing, insurance, employee benefits, and
52 other costs which the Foundation may incur in connection with fulfilling
53 the purpose of the Endowment and its related special funds.

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- d. In consideration for the obligations incurred by the Foundation in entering into this Agreement, the Foundation may collect administrative fees for management of the funds (management fees), in the amount of 7% of disbursements for the Operational Account or a base fee (whichever is greater), an investment management fee based on the principal balance in the Endowment, and reimbursement of its indirect costs incurred in performing this Agreement. The initial base fee shall be \$3,500 and increase to \$10,000 when the Endowment Account exceeds \$2,800,000. The investment management fee shall be the same amount as the Foundation pays to its outside investment managers for investment management of other CCAMP accounts, subject to the 1% limitation in subparagraph e. The management fees will be disbursed on October 1st of each year based on the greater of the base fee or 7% of the prior year's Operational Account disbursements. The terms of agreement herein related to administrative fees shall apply to the initial funds contemplated by this Agreement and any funds added to principal during the term of this Agreement.
- e. Subparagraphs 11 c and 11 d of this Agreement notwithstanding, total annual administrative fees (including management fees, investment management fees and indirect costs) shall not exceed 1% of the principal balance of the Endowment Fund.

13. **Invoice and Payment Procedure:** The Foundation will make disbursements from time to time under the terms of this Agreement. The Foundation may make disbursements for budgeted expenses in accordance with the CCAMP-GAP Annual Work Plan and disbursements for non-budgeted expenses approved by the CCAMP-GAP Program Director. Approved non-budgeted expenses may include, without limitation, costs of additional monitoring, equipment or special projects not included in the Annual Work Plan. The Foundation will make disbursements within 30 working days of receipt by the Foundation of any invoice approved by the CCAMP-GAP Program Director. Disbursements which the Foundation makes to itself shall be subject to approval of the CCAMP-GAP Program Director and all other terms of this Agreement.

14. **Commencement of Work and Delays Beyond Control of the Foundation:**

- a. Upon receipt of an executed copy of this Agreement and an Annual Work Plan and Budget, the Foundation shall commence activities under this Agreement.
- b. Delay in completion of work or services or submission of deliverables by Foundation within the time or times specified in the Annual Work Plan which arise from causes beyond the control of the Foundation and without fault or negligence on the part of the Foundation shall entitle the the Foundation to a reasonable extension of time for performance. Causes beyond the control of the Foundation shall be deemed to include but are not limited to, unusually severe weather, acts of God, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and delays of suppliers or subcontractors arising from causes beyond the control and without fault or negligence of both the Foundation and such suppliers or subcontractors. The Foundation shall not be held liable for

1 circumstances that limit its performance under this Agreement which are
2 beyond its control.
3

- 4 15. **Amendments:** This Agreement may be amended only by written agreement
5 between the Foundation and the Water Board.
6
- 7 16. **Dispute Resolution:** Authority to terminate performance under Paragraph 16
8 of this Agreement is not subject to the dispute resolution provisions of this
9 Paragraph 15. All other issues including, but not limited to, the amount of any
10 compensation or reimbursement which should be paid to the Foundation shall be
11 subject to the dispute resolution process under this Paragraph 15. All claims or
12 disputes arising out of, or relating to this Agreement, its interpretation or breach
13 shall be made in writing. If a dispute arises related to this Agreement, the parties
14 shall attempt to resolve it informally. If the dispute is not resolved informally
15 within 30 days, the dispute may be elevated to the Water Board Executive
16 Officer and the Foundation President by submitting a written memorandum to
17 them describing the dispute. The Executive Officer and Foundation President
18 will consult with the CCAMP-GAP Program Director and other appropriate
19 parties and attempt to resolve the dispute. Within 15 days of receiving the
20 memorandum describing the dispute, the Executive Officer and Foundation
21 President shall either make a decision or determine that they cannot agree to a
22 resolution. If the Executive Officer and the Foundation President cannot resolve
23 the dispute, the Executive Officer or Foundation President may request the Water
24 Board to consider the dispute at a regularly scheduled public meeting. If the
25 Foundation disagrees with the Water Board's determination, or if the Water
26 Board declines the request to consider the matter, then the dispute shall proceed
27 to mediation upon the demand of either Party. Written notice of the demand for
28 mediation shall be made within a reasonable time after completion of the dispute
29 resolution process specified in this Agreement. The mediation shall take place in
30 San Luis Obispo County, California, at a time and place selected by the mediator
31 and the parties. Unless the Water Board and the Foundation agree otherwise in
32 writing, mediation fees, if any, shall be paid by the party demanding mediation.
33 The mediator shall be a person or persons mutually acceptable to the Water
34 Board and the Foundation. If the parties cannot agree on a mediator, each party
35 shall select one mediator and those two mediators shall select a third mediator.
36 CCAMP-GAP Funds shall not be used to pay legal fees and costs incurred. The
37 mediation provisions set forth herein do not apply to any matter which is under
38 the jurisdiction of a bankruptcy court or that is under the jurisdiction of, or could
39 be filed in, a small claims court.
40
- 41 17. **Termination and Reversionary Interest:**
42
- 43 a. If for any reason the Foundation is no longer willing or able to carry out
44 the terms and conditions of this Agreement, the Foundation shall so
45 notify the Water Board in writing. Within thirty days after providing the
46 notice, the Foundation shall transfer all remaining CCAMP-GAP Funds
47 or other assets to a trustee selected by the Executive Officer. The
48 Foundation may withhold its administrative expenses allowed under the
49 terms of this Agreement and accrued to the date of termination, but shall
50 not treat the transfer of remaining funds as a disbursement for purposes
51 of calculating administrative costs.
52

1 b. The Water Board Executive Officer may terminate this Agreement at any
2 time for any reason by giving thirty (30) days written notice to the
3 Foundation. Within thirty (30) days of receiving such notice, the
4 Foundation shall transfer all remaining CCAMP-GAP Funds or other
5 assets to a trustee selected by the Executive Officer. The Foundation
6 may withhold its administrative expenses allowed under the terms of this
7 Agreement and accrued to the date of termination, but shall not treat the
8 transfer of remaining Funds as a disbursement for purposes of calculating
9 administrative costs. The Foundation shall be entitled to an
10 administrative fee of \$6,000 for executing the transfer and providing a
11 final accounting of Funds. Upon receipt of notice of termination, and
12 except as otherwise directed in the notice, the Foundation shall:

- 14 • Stop work on the date specified in the notice;
- 16 • Place no further orders or enter into any further subcontracts for
17 materials, services or facilities except as necessary to complete work
18 under the Agreement up to effective date of termination;
- 20 • Terminate all orders and subcontracts;
- 22 • Promptly take all other reasonable and feasible steps to minimize any
23 additional cost, loss, or expenditure associated with work terminated,
24 including, but not limited to reasonable settlement of all outstanding
25 liability and claims arising out of termination of orders and subcontracts;
- 27 • Deliver or make available to the Water Board all data, drawings,
28 specifications, reports, estimates, summaries, and such other information
29 and material as may have been accumulated by the Foundation under this
30 Agreement, whether completed, partially completed, or in progress.

32 c. In the event of the dissolution of the Water Board, the term “Water
33 Board” shall refer to the unit of California state government that assumes
34 the functions of the Water Board. In the event of the dissolution of the
35 Water Board without a transfer of functions to another unit of California
36 state government, or in the event the Water Board shall no longer be a
37 unit of California state government or an organization described in
38 section 170(c) of the Internal Revenue Code of 1954, as amended, the
39 Foundation shall thereafter continue to hold the CCAMP-GAP Funds
40 and shall distribute the income there from to such organizations as in the
41 opinion of the Board of Directors of the Foundation most nearly serve
42 the purposes and objectives of this Agreement.

44 **18. Indemnity and Liability:**

- 46 a. In making the grant to the Foundation and monitoring performance under
47 this Agreement, Water Board assumes no liability for injuries or loss to
48 persons or property resulting from the Foundation’s activities.
- 50 b. In conducting its activities relating to this Agreement, the Foundation
51 agrees to conduct such activities in compliance with applicable federal,
52 state, and local laws, regulations and ordinances and to obtain and

1 maintain appropriate insurance against liability for injury to persons or
2 property arising from its activities.

- 3
4 c. The Foundation shall, indemnify and hold harmless Water Board, its
5 board members, officers, directors, agents, and employees from claims,
6 injuries, losses, damages, liabilities, including damage or injury to
7 persons and property and reasonable expenses including reasonable legal
8 fees, to the extent caused by negligent acts or willful misconduct by
9 employees or agents of the Foundation. This indemnification will survive
10 termination of this Agreement.
11
12 d. Water Board shall indemnify and hold harmless the Foundation, its board
13 members, officers, directors, agents, and employees in respect of any and
14 all claims, injuries, losses, diminution in value, damages, liabilities, but
15 only to the extent caused by negligent acts or willful misconduct by
16 employees of the Water Board. This indemnification will survive
17 termination of this Agreement.
18
19 d. Except as otherwise provided in this Agreement, the Foundation
20 expressly waives any and all rights to any type of express or implied
21 indemnity or right of contribution from the State of California and the
22 United States, their officers, agents or employees, for any liability
23 resulting from or growing out of, or in any way connected with or
24 incident to this Agreement.
25

26 19. **Third Parties:** Nothing in this Agreement is intended to create in the public,
27 any member of the public, or any public entity rights as a third party beneficiary
28 under this Agreement.
29

30 20. **Permits, Fees and Notices:** The Foundation shall procure all permits and
31 licenses necessary to accomplish work funded under this Agreement. The
32 Foundation shall pay all charges and fees with CCAMP-GAP Funds, and give all
33 notices necessary and incident to the due and lawful prosecution of the work.
34 The Water Board may, but is not required to, elect to procure necessary permits
35 or licenses or give notices in lieu of the Foundation.
36

37 21. **Insurance and Bonds:**

- 38
39 a. The Foundation is solely responsible for maintaining insurance policies
40 to cover insurance that may be required by law in the jurisdiction where
41 the activities funded under the terms of this Agreement are being
42 implemented.
43
44 b. Upon request, the Foundation shall furnish to Water Board copies of
45 insurance certificates evidencing its present level of insurance coverage
46 for: Worker's Compensation and other coverage the Foundation has
47 secured in fulfillment of its responsibilities under the terms of this
48 Agreement. The certificates shall specify the dates when such insurance
49 expires and shall provide further that the Foundation and Water Board
50 shall be given not less than thirty (30) days notice before cancellation of
51 or any material change in such insurance. The Foundation shall maintain
52 such insurance coverage throughout the term of this Agreement.
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22. **Foundation Acting Independently:** The Foundation, and the employees or agents of the Foundation, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the Water Board, or the State of California.
23. **Audits and Access to Records:**
- a. The Foundation shall maintain standard financial accounts, documents and records relating to implementation of CCAMP-GAP activities funded under this Agreement. The Foundation may use any accounting system which follows the guidelines of “Generally Accepted Accounting Practices” published by the American Institute of Certified Public Accountants.
- b. The Water Board, and federal and state government auditors or their duly authorized representatives shall have access to any books, documents, papers, and records of the Foundation which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.
- c. The Foundation shall include in each of its subcontracts involving an expenditure of funds under this Agreement in excess of twenty five thousand dollars (\$25,000) a provision which requires the subcontractor to make all records directly pertinent to the subcontract available for examination and audit under the same terms as specified in subparagraph a., of this paragraph. The subcontract shall also require subcontractor to maintain all required records for three (3) years after final payment under the subcontract and all pending matters are resolved.
24. **Rights to Data and Other Information:** The Foundation agrees that all data, plans, drawings, specifications, reports, computer programs, Operational manuals, notes and other written or graphic work produced in the performance of this Agreement are subject to the rights of the Foundation and Water Board as set forth in this Paragraph 23. Both the Foundation and Water Board shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable or patentable, the Foundation may copyright or patent the same, except that, as to any work which is so protected by the Foundation, the Water Board reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, provide to the public and use such work, or any part thereof.
25. **Agreement Not Assignable:** Without mutual written agreement of the Water Board and the Foundation this Agreement is not assignable in whole or in part.
26. **Review and Comments:** The Foundation agrees that Water Board has the right to review and comment on any and all activities undertaken by the Foundation in connection with this Agreement, however, the Water Board shall not control or direct the mode or manner in which any employee, contractor or agent of the Foundation performs his or her duties.
27. **Lobbying:** The Foundation is prohibited from using funds held in the endowment for lobbying the executive or legislative branches of the state or federal government.

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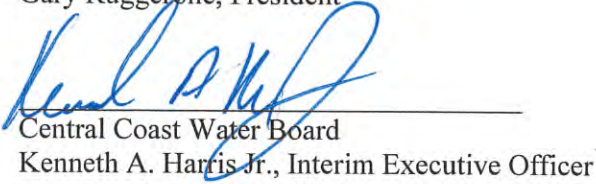
- 28. **Applicable Law and Jurisdiction:** This Agreement has been executed and delivered in the State of California and shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Agreement, the Water Board and Foundation agree to submit to the jurisdiction of the courts of the State of California.
- 29. **Entire Agreement:** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings, whether written or oral, between the parties.
- 30. **No Waiver of Enforcement:** The failure of the Water Board, or the Foundation to enforce, or the delay by the Water Board or the Foundation in enforcing, any of the terms and conditions of this Agreement shall not be deemed a continuing waiver or a modification of this Agreement unless the waiver or modification is expressly written and signed by the Foundation and Water Board.
- 31. **Nondiscrimination:** During the performance of this Agreement, the Foundation and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. The Foundation and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder. (California Code of Regulations, Title 2, Section 7285.0 et seq.)
- 32. **Current State Employees:** No officer or employee of the State of California shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any California state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 33. **Former State Employees:** For the two-year period from the date he or she left state employment, no former California state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 34. **Attorneys Fees:** Except as explicitly provided in this Agreement to the contrary, each party shall bear its own attorneys fees and costs in any dispute or legal action related to this Agreement.

1 **Certification of Signatories:** The people signing this Agreement certify that they are authorized
2 by the entity they represent to sign this Agreement and to bind the entity they represent to the
3 terms of this Agreement.

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7 Bay Foundation of Morro Bay
8 Gary Ruggerone, President

12/4/12
Date

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12 Central Coast Water Board
13 Kenneth A. Harris Jr., Interim Executive Officer

12/7/12
Date

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

RESOLUTION NO. R3-2012-0024

**FUNDING FOR THE CENTRAL COAST AMBIENT MONITORING PROGRAM—
GROUNDWATER PROTECTION PROGRAM, AND SPECIAL PROJECTS**

Whereas, the California Regional Water Quality Control Board, Central Coast Region (hereafter "Water Board"), finds that:

1. The Water Board has directed staff to prioritize water quality issues, and actions to address those issues, and to propose allocations of settlement funds to support those priority actions. The Board directed staff to consider "regional benefit" and "leveraging" when developing proposals for funding.
2. The Water Board established a vision and tangible goals for the Central Coast Region. The Central Coast Ambient Monitoring Program (CCAMP) is very effective at measuring the Water Board's performance in achieving the vision and measurable goals with regard to surface water quality and other physical and biological parameters for surface water. However, the Water Board requires additional tools to effectively measure its performance in achieving its vision and measurable goals associated with protecting and restoring groundwater quality.
3. Preventing and correcting water quality-related threats to human health is the Water Board's highest priority. Widespread and severe groundwater nitrate pollution, primarily due to intensive irrigated agricultural land use practices, in addition to other regional groundwater issues such as seawater intrusion and salt loading, requires the implementation of ongoing regional-scale groundwater monitoring and assessment to protect public health and sustainably manage groundwater supplies.
4. People who rely on domestic wells and small water system wells are most at-risk to health exposures from drinking water polluted with nitrate and other potentially harmful constituents given these wells are typically shallow, located in more rural areas within or adjacent to agricultural areas, and are not tested regularly to ensure the water meets public health standards.
5. The Water Board has identified riparian and wetland habitat protection and groundwater recharge area protection as high priorities, which may require the development and implementation of Basin Plan amendments and expert technical services to support the amendments.
6. The Water Board has effectively utilized funds from various sources, including the Guadalupe Oil Field Settlement and PG&E Moss Landing Settlement, since 1998, to fund priority water quality-related projects and to conduct water quality monitoring in the Central Coast (i.e., CCAMP and the Central Coast Cooperative Monitoring Program).
7. The implementation of programs and projects that address and provide ongoing action and evaluation in alignment with our highest priorities are necessary to help us achieve our

measurable goals, will hold us accountable as a performance-based organization to achieve tangible results, and will result in the greatest possible outcomes for the Central Coast Region over the long-term.

8. A total of approximately \$1,771,400 in settlement funds is currently available for Water Board allocation to fund priority projects in the Central Coast Region.

Guadalupe Fund

9. In 1998, approximately \$15.6 million from the \$43.8 million UNOCAL settlement associated with pollution at the Guadalupe Oil Field was deposited into the Guadalupe Water Quality Restoration Trust (the "NFWF Trust") held by the National Fish and Wildlife Foundation (NFWF). Use of these funds for "water quality projects" is subject to Water Board approval.
10. In total, the Water Board has approved the allocation of \$6.9 million of Guadalupe Settlement funds for CCAMP via resolution numbers 99-02, R3-2007-0042 and R3-2007-0046. The Water Board determined that the region-wide benefit criterion applied, and directed use of these endowment funds in watersheds throughout the Region with CCAMP.
11. The Water Board has allocated about \$9.4 million of the NFWF Trust funds for implementation of various other water quality related projects throughout the Region.
12. As of the October 1, 2010 to September 30, 2011 NFWF Trust reporting period, approximately \$1,544,287 were still available (unobligated) within the NFWF Trust. These funds are currently incurring fund administrative and grant coordination fees of about \$29,000 semiannually (based on existing balance of approximately \$2.5 million, of which \$950,000 is obligated).

PG&E Moss Landing Fund

13. In 2003, a \$5 million settlement agreement was reached in response to back-flushing of hot water into Elkhorn Slough by PG&E, former owner of the Moss Landing Power Plant.
14. The settlement agreement allocated \$2,850,000 and \$950,000 of this money to Non-Point Source Project and Non-Point Source Monitoring Funds, respectively, to be managed by the Community Foundation for Monterey County ("Community Foundation") with Water Board oversight of the project ranking criteria and project selection.
15. The Non-Point Source Funds were used to implement projects to reduce and monitor non-point sources of pollution, with an emphasis on sediment, nutrients, pesticides and other pollutants associated with agricultural practices, within the watersheds tributary to the Elkhorn Slough and Moss Landing Harbor, including the Salinas River, Moro Cojo Slough, and Tembladero Slough (Salinas and Bolsa Nueva Hydrologic Units).
16. The Water Board also designated \$950,000 of this money for CCAMP to conduct monitoring activities in the Monterey Bay area. High priority is given to coastal confluences monitoring, including routine sampling of creeks in the Monterey Bay area.
17. At its July 11, 2003 public meeting, the Water Board approved the project evaluation/ranking criteria for the use of the Non-Point Source Funds. The approved criteria included a provision for Executive Officer approval of project awards up to \$50,000 with Water Board review of awards greater than \$50,000. The Water Board also added a provision for periodic

assessment of the program along with a process for revision of the criteria and priorities if the Water Board determines the funding approach is ineffective or insufficient.

18. As of the January 30, 2012 trust fund projection statement, approximately \$170,103 and \$57,010 are currently available (unobligated) within the Non-Point Source Projects and Non-Point Source Monitoring Funds, respectively, for a total of \$227,113 in available funds. These funds are currently incurring fund administrative and grant coordination fees of about \$13,000 annually.

THEREFORE, the Water Board hereby resolves that:

1. All remaining Guadalupe settlement funds of approximately \$1,540,000, within the NFWF Trust be allocated for the development and implementation of the CCAMP Groundwater Assessment and Protection (GAP) program and implementation of two priority projects as described within the May 3, 2012 staff report, Item number 12. Specifically, \$800,000 of these funds will be used to establish an endowment to generate an annual revenue stream for ongoing CCAMP-GAP development and implementation with the remaining fund balance allocated for the initial implementation of CCAMP-GAP and the implementation of two additional priority projects, as described below. Staff shall receive Board approval for proposed projects prior to spending any of the principal of the endowment.
2. Allocate \$471,000 to two groundwater projects, where the total amount spent on each project will depend on need and staff's ability to leverage these funds with other funding sources. The Executive Officer will deposit any unused funds for these projects into the CCAMP-GAP endowment (above). These projects are as follows:
 - a. Technical assistance to local agencies to help build the groundwater database infrastructure of CCAMP-GAP. Once the groundwater database infrastructure is built, the CCAMP-GAP endowment will provide support over the long term.
 - b. A regional outreach and sampling program for domestic well owners to address the severe health threat from nitrate pollution in domestic wells. In addition, some of these funds will be available on a sliding-scale, as-needed basis for Limited Resource Farmers and Ranchers, or Socially Disadvantaged Operators, to help them comply with the groundwater sampling requirements of the Irrigated Agriculture Order.

Reserve the remaining \$500,000 (total approximate amount) from the Guadalupe settlement fund to support priority basin planning amendments. The Executive Officer may allocate these funds for technical assistance for basin planning updates, such as third party consulting expertise regarding the economic, social, and scientific analyses (triple bottom line analyses) associated with proposed Basin Plan amendments. The interest earnings from the \$500,000 will be available for CCAMP-GAP development and implementation. Staff shall receive Board approval prior to using any portion of the \$500,000 for projects other than those pertaining to the Basin Plan amendments.

3. The interest earnings from the balance of the Guadalupe settlement funds within the NFWF Trust tentatively obligated for the Wild Cherry Canyon Project will be available for CCAMP-GAP development and implementation.
4. All remaining PG&E Moss Landing settlement funds of approximately \$227,000 within the Community Foundation Non-Point Project and Monitoring Funds be allocated for the implementation of the regional domestic well outreach and sampling program and the initial implementation of CCAMP-GAP. These funds will be preferentially allocated for

implementation of the domestic well project and secondarily for CCAMP-GAP implementation. The PG&E funds will only be allocated for portions of these projects implemented within the Salinas and Bolsa Nueva Hydrologic Units.

5. The Executive Officer may also allocate CCAMP-GAP funds toward other priority projects, such as:
 - Domestic Well Sampling Program (for an ongoing or repeat program at specified frequency, or to supplement/leverage local agency domestic well sampling efforts)
 - Special studies (groundwater age dating, isotopic analyses, modeling, etc.)
 - Well abandonment/destruction
 - Development and implementation of well head protection programs
 - Emergency Replacement water supply
 - Groundwater recharge (e.g., active recharge projects)
 - Groundwater basin/aquifer assessment and ongoing trend analyses
 - Salt and Nutrient Management Planning (e.g., plan development, Basin Planning, implementation, etc.)
 - Seawater intrusion related projects
 - Technical support for Basin Plan amendments
 - Testing and implementation of technologies to reduce groundwater pollution
6. The CCAMP-GAP endowment and operational reserve accounts will be managed by a single trustee (foundation), a 501(c)(3) nonprofit organization, to be selected by the Executive Officer to facilitate the most cost effective and efficient management of the funds.
7. Prior to transferring any funds to the CCAMP-GAP endowment, the EO shall ensure that the Water Board can later redirect those funds to be expended for other purposes or projects as approved by the Water Board.
8. The Executive Officer is directed to develop and finalize the necessary agreements and contracts with NFWF, Community Foundation and additional parties, such as the Bay Foundation of Morro Bay, or other appropriately qualified foundation, to consolidate and manage these funds.

I, Roger W. Briggs, Executive Officer of the California Regional Water Quality Control Board, Central Coast Region, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on May 3, 2012.



Digitally signed by Roger W. Briggs
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o=RWQCB3, ou=CalEPA,
email=rbriggs@waterboards.ca.gov
, c=US
Date: 2012.06.08 16:39:28 -0700'

Executive Officer

Date

ATTACHMENT E

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR MEETING OF May 3, 2012
Prepared March 27, 2012

ITEM NUMBER: 12

SUBJECT: Proposed Funding for a Regional Groundwater Assessment and Protection Program and Specific Projects

SUMMARY

During the mid-1990's, the Water Board directed staff to create the Central Coast Ambient Monitoring Program (CCAMP) to provide comprehensive monitoring and assessment of both surface water and groundwater on the Central Coast. The Water Board and staff realized that this program would be critical to measure our performance in achieving our mission. Over the next several years, staff built one of the most successful surface water programs in the country. Staff is now focusing on building the Groundwater Assessment and Protection (GAP) component of CCAMP (referred to as CCAMP-GAP).

Over eighty percent of the people living on the Central Coast rely on groundwater for their drinking water and other uses. A regional groundwater monitoring program is essential to identify areas of potentially unsafe drinking water supply, measure individual groundwater basin health, and determine the effectiveness of our efforts to protect groundwater. Many local agencies monitor groundwater quality to some degree, or have the potential to do so, and there is a great opportunity for the Water Board to coordinate and leverage these local efforts into a state-of-the-art groundwater protection program. We realize that our success in protecting groundwater for future generations depends on coordinating and leveraging the efforts of local agencies with our own priority actions, and this is the main purpose of CCAMP-GAP.

This staff report is a proposal to allocate \$1.271 million from the Central Coast Water Board's enforcement settlement accounts to begin building CCAMP-GAP and to support specific projects, as follows:

1. Establish a CCAMP-GAP endowment with an initial amount of \$800,000 to support the ongoing implementation of a regional groundwater assessment and protection program. Staff's goal is to increase this endowment to \$5 million over the next five years.
2. Allocate \$471,000 to two groundwater projects, where the total amount spent on each project will depend on need and staff's ability to leverage these funds with other fund sources. Any funds that are not used for these projects will roll over into the CCAMP-GAP endowment (above). These projects are as follows:
 - a. Technical assistance to local agencies to help build the groundwater database infrastructure of CCAMP-GAP. Once the groundwater database infrastructure is built, the CCAMP-GAP endowment will provide support over the long term.
 - b. A regional outreach and sampling program for domestic well owners to address the severe health threat from nitrate pollution in domestic wells. In addition, these funds will be available on a sliding-scale, as-needed basis for Limited Resource Farmers and Ranchers, or Socially Disadvantaged Operators, to help them comply with the groundwater sampling requirements of the Irrigated Agriculture Order.

Staff will leverage these funds with other fund sources, such as local agency funds, State Water Board grant funds, and State Water Board Cleanup and Abatement Account funds, to the maximum extent possible.

Staff also recommends reserving the remaining \$500,000 (approximate amount) in the Water Board's enforcement settlement accounts for priority basin planning amendments. These funds would be used, if necessary, for expert consulting services regarding the economic, social, and scientific analyses (triple bottom line analyses) of proposed Basin Plan amendments. Staff's goal is to present draft Basin Plan amendment language to the Board in 2012. Any funds that are not used for this purpose would roll over into the CCAMP-GAP endowment.

Staff recommends that the Water Board approve Resolution No. R3-2011-0024 to allocate Guadalupe and PG&E Settlement Funds for the priority projects outlined within this staff report.

DISCUSSION

The Water Board affirmed its highest priorities at its July 14, 2011 annual "big picture" meeting (agenda Item No. 18)¹ as follows:

Preventing and Correcting Impacts to Human Health
Preventing and Correcting Degradation of Aquatic Habitat
Preventing Degradation of Hydrologic Processes
Preventing/Reversing Seawater Intrusion
Preventing Further Degradation of Groundwater Basins from Salts

With over eighty percent of the population on the Central Coast relying on groundwater for its drinking water supply and other uses, it is no surprise that three of the Water Board's top priorities listed above are focused on groundwater. The other two priorities, Aquatic Habitat and Hydrologic Processes, also involve groundwater (groundwater provides base flow for habitat, and hydrologic processes including recharge). Groundwater is critical to our communities and our economy. In July 2009, the Water Board directed staff to focus settlement funds on large-scale, long-term solutions to our priority water quality problems. The Board also directed staff to consider "regional benefit" and "leveraging" criteria when developing proposals for funding. Over the last several years we have become increasingly focused on identifying and addressing our highest water quality priorities throughout the region, and in transforming ourselves into a performance-based organization.²

The Water Board has two major enforcement settlement fund accounts that are available to help the Water Board achieve its goals. The funds are described below.

Guadalupe Fund: The Guadalupe Fund was established in 1998, as a settlement between the Water Board and Unocal Corporation regarding unpermitted discharges at Unocal's Guadalupe Dunes Oilfield. The original fund amount was \$15.6 million, and there is approximately \$1.544 million remaining (the actual amount fluctuates with the market). These funds may be allocated to region-wide water quality projects, and the projects proposed in this staff report are in direct alignment with the original broad fund criteria established in the settlement agreement, and the more recent Water Board direction regarding its priorities. The Board used this same fund for many projects over the last 14 years. Two of the largest projects utilize similar concepts to today's

¹ http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2011/July/Item_18/index.shtml

² Performance-based organizations have clear and measurable goals, objectives, and targets for improved performance, which are established, regularly evaluated and reported.

proposal. The Board established endowments for our regional monitoring program, CCAMP, and for our resource center for Low Impact Development, the LID Initiative, or LIDI. Both of these projects have been and continue to be very successful.

PG&E Fund: The PG&E Fund was established in 2003, as a settlement between the Water Board and PG&E regarding unpermitted discharges from the Moss Landing Power Plant. The original fund amount was \$5 million, and there is approximately \$227,000 remaining (the actual amount fluctuates with the market). These funds must be allocated to water quality projects in the watersheds tributary to the Elkhorn Slough and Moss Landing Harbor. Staff will ensure these funds are allocated accordingly for the projects proposed in this staff report.

The total amount remaining in the Guadalupe Fund and PG&E Fund is approximately \$1,544,000 + \$227,000 = \$1,771,000.

This staff report recommends the Water Board allocate Guadalupe and PG&E Moss Landing settlement funds as follows:

Project Description	Project Amount
CCAMP-GAP Endowment Fund	\$800,000
CCAMP-GAP Operating Fund <ul style="list-style-type: none"> • Domestic Well Outreach/Sampling and Ag Order assistance • Regional Groundwater Monitoring 	\$471,400
Subtotal	\$1,271,000
Technical Support for Basin Plan Amendments <ul style="list-style-type: none"> • Protection of riparian and wetland habitat and groundwater recharge 	\$500,000 (rolls over to CCAMP-GAP endowment if not needed)
Subtotal	\$500,000
Total	\$1,771,000

Attachment 1 is a Conceptual Project Proposal and Fiscal Year 2012-2013 Work Plan for CCAMP-GAP, and provides details on the following sections:

- Conceptual Model
- Endowment
- Operating Fund
- Domestic Well Outreach and Sampling Program
- Regional Groundwater Monitoring and Assessment
- Special Projects
- Goals
- Accountability & Transparency

Alignment with Statewide Programs and Goals

The CCAMP-GAP goal to develop a regional groundwater monitoring and assessment program is in alignment with and supports various statewide policies, mandates and programs. California's comprehensive groundwater quality monitoring program, the Groundwater Ambient Monitoring and Assessment (GAMA) Program, was created by the State Board in 2000, and was later expanded by

Assembly Bill 599 (AB 599 Liu) – the Groundwater Quality Monitoring Act of 2001. The Main goals of the GAMA program and AB 599 are:

- To improve statewide groundwater monitoring
- To increase the availability of groundwater quality information to the public

AB 599 requires the integration of existing monitoring programs and design of new program elements, as necessary, to establish a comprehensive statewide groundwater quality monitoring program with priority given to groundwater basins that supply drinking water. As proposed, CCAMP-GAP will build on the existing GAMA program consistent with AB 599 by integrating and building on regional groundwater monitoring programs to develop a comprehensive monitoring program within the Central Coast Region. In addition, the data generated from CCAMP-GAP will be publicly available on the GeoTracker GAMA website, and part of the benefit of this effort will be better public access to groundwater quality data from local water agencies. Our Regional Water Board will benefit from a better characterization of groundwater quality within the region, which will greatly assist our prioritization of water quality problems and our control/improvement efforts.

The regional monitoring component of CCAMP-GAP also supports or is otherwise consistent with the Recycled Water Policy (SWRCB Resolution No. 2009-0011) which calls for the development of local salt and nutrient management plans, including the development and implementation of regional groundwater monitoring programs. The Recycled Water Policy calls for the submittal of the proposed plans by February 3, 2014, and consideration for adoption by the Regional Water Boards within one year of the receipt of the proposed plans. A number of salt and nutrient management planning efforts are currently underway within the Region. Consequently, it would be beneficial for us to support and leverage these efforts via CCAMP-GAP in an effort to develop monitoring programs that address multiple pollutants, priorities, and objectives.

Interested Party Notification List

The Water Board has developed an electronic interested parties mailing list for the Groundwater Assessment and Protection program via the State Water Board's existing Email List Subscription Form portal (known as the Lyris subscription list). Interested parties wishing to receive future notices and updates regarding the Central Coast Water Board's Groundwater Assessment and Protection Program and regional groundwater issues should sign up at:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg3_subscribe.shtml

Complete the form and check the box for: GAP - Groundwater Assessment and Protection

RECOMMENDATION

Staff recommends that the Water Board approve Resolution No. R3-2011-0024 to allocate Guadalupe and PG&E Settlement Funds for the priority projects outlined in this staff report.

The attached Resolution No. R3-2011-0024 accomplishes the following:

- Acknowledges the Water Board's concurrence with and approval of the development and implementation of the Central Coast Ambient Monitoring Program – Groundwater Assessment and Protection (CCAMP-GAP) program and the implementation of specific high priority projects as discussed in detail within this staff report.
- Approves the allocation of all remaining Guadalupe and PG&E settlement funds for CCAMP-GAP implementation, including the domestic well outreach and sampling project and CCAMP-GAP startup, and technical support for a potential Basin Plan amendment project, as outlined in this staff report.

- Authorizes the Executive Officer to manage the remaining Guadalupe and PG&E settlement funds to effectively implement the proposed projects. This includes finalizing the necessary grant agreements and MOAs with the various foundations to effectuate the proposed projects in the most efficient and cost effective manner.

ATTACHMENT

1. Conceptual Project Proposal and Fiscal Year 2012-2013 Workplan for Central Coast Ambient Monitoring Program (CCAMP) – Groundwater Assessment and Protection (GAP)
2. Resolution No. R3-2011-0024