CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

November 18, 2016

Marnie Ajello
Office of the Chief Counsel
CalEPA Headquarters
1001 I Street, 22nd Floor
Sacramento, CA 95814

SUBJECT: REBUTTAL MATERIALS IN THE MATTER OF PT. BUCKLER ISLAND ACL COMPLAINT NO. R2-2016-1008

Dear Ms. Ajello:

This letter transmits the Prosecution Team's rebuttal submission. Please note that the rebuttal contains financial information that Mr. John Sweeney and Point Buckler Club, LLC (Dischargers) requested be kept confidential, and that the Prosecution Team asserts should be disclosed. We await the Advisory Team's decision before either making all of the submittal public or redacting financial information from it.

This is the last in a series of submissions to the Advisory Team in accordance with its hearing procedures. The Board and its Advisory Team should now have four binders of evidence in its possession for the December 14, 2016, hearing on Administrative Civil Liability (ACL) Complaint No. R2-2016-1008. (The first two binders were previously presented to the Board for its consideration and adoption of Cleanup and Abatement Order (CAO) No.R2-2016-0038 on August 10, 2016.) For ease of reference, here is a summary of the submittals and evidence.

- **Binder 1: Evidence for August CAO Hearing – Exhibits 1 through 20 (July 1, 2016)**

  This submission contains many of the foundational documents pertaining to development of the CAO and ACL Complaint (and related Exhibit A, the penalty calculation), including legal (statutes, regulations, policies, etc.) and technical (scientific resources, plans, reports) references, correspondence between the Dischargers and regulatory agencies up until May 2016, documents from court proceedings, and social media shared by Mr. Sweeney. This submittal provides the most robust scientific reporting of what happened at Point Buckler Island prior to, during, and following unpermitted levee construction by the Dischargers, resulting in the unauthorized discharge of fill to tidal wetlands in Suisun Marsh and to jurisdictional waters of the State and United States (e.g., *Point Buckler Technical Assessment of Current Conditions and Historic Reconstruction since 1985 (Exhibit 11)* and *Point Buckler Inspection Report (Exhibit 6)*).

- **Binder 2: Rebuttal for August CAO Hearing – Exhibits 21 through 31 (July 21, 2016)**

  This submission responds to evidence submitted by the Dischargers on July 11, 2016, and it rebuts the

following: 1) the Dischargers' arguments defending the work that was done; 2) claims that fill was above the high tide line that define Clean Water Act jurisdiction; 3) challenges to the applicability of various agencies' authorities or application of process; and 4) statements about the validity of a former Individual Management Plan issued to a historic duck club. In addition to correcting factual and legal misrepresentations, a core theme of this rebuttal is the rejection of quasi-scientific arguments made by the Dischargers' counsel that lack support from qualified professionals.

- **Binder 3: Evidence for December ACL Hearing – Exhibits 32 through 44 (September 2, 2016)**

  This submission begins with CAO No. R2-2016-0038 (which determined that the Dischargers are responsible for the unauthorized placement of fill into channels and tidal wetlands that are waters of the State and United States) and presents the Prosecution Team's assessment of penalty factors as required by the State Water Board's Water Quality Enforcement Policy. The Prosecution Team provides a preliminary assessment of the Dischargers' ability to pay the proposed liability as required by law and statute, using information available through public resources. The submission also provides more information pertaining to the culpability of, and the harm caused by, the Dischargers, additional documentation of interactions between the Dischargers and regulatory agencies, and evidence pertaining to the active kiteboarding operation at Point Buckler Island.

- **Binder 4: Rebuttal for December ACL Hearing – Exhibits 45 through 59 (November 18, 2016)**

  This last submission is enclosed with this letter. It responds to evidence submitted by the Dischargers on October 20, 2016, rebuts arguments made at the August CAO hearing, and addresses unsubstantiated claims about the Dischargers' inability to pay the proposed liability. The rebuttal includes responses to numerous legal challenges and scientific analyses of conditions at Point Buckler Island. The Prosecution Team's rebuttal consists of the following:

  1) A brief addressing legal arguments presented in the Dischargers' Opposition to Issuance of Administrative Civil Liability Complaint No. R2-2016-1008;
  2) A Factual Rebuttal to address the large number of factually incomplete, incorrect, or misleading statements in the Opposition Brief and Declarations;
  3) The Prosecution Team's evidentiary objections; and
  4) Rebuttal Exhibits.

Respectfully submitted,

Dyan Whyte
Assistant Executive Officer
Prosecution Team Lead