

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION No. R2-2017-00XX

AUTHORIZING REFERRAL TO THE ATTORNEY GENERAL REGARDING
CLEANUP AND ABATEMENT ORDER NO. R2-2016-0038

- A. WHEREAS, John D. Sweeney and Point Buckler Club, LLC (hereinafter, collectively, the “Dischargers”), own Point Buckler Island (Island), located off the western tip of Simmons Island in the Suisun Marsh, Solano County.
- B. WHEREAS, the Dischargers’ unauthorized activities, including levee construction, unauthorized placement of structures, and removal and destruction of tidal marsh vegetation resulted in (1) the discharge of fill into 3.23 acres of waters of the State and United States; (2) blocking tidal action to the Island; and (3) the ongoing degradation of about 27.18 acres of the Island’s interior tidal marsh.
- C. WHEREAS, at its August 10, 2016, hearing, the San Francisco Bay Regional Water Quality Control Board (Water Board) adopted Cleanup and Abatement Order No. R2-2016-0038 (CAO) and found that the Dischargers’ unauthorized activities were in violation of the Water Board’s San Francisco Bay Basin Water Quality Control Plan Discharge Prohibition No. 9; Federal Clean Water Act section 301 for unauthorized discharge of fill to waters of the State and United States; and Clean Water Act section 401 for failure to obtain a Water Quality Certification.
- C. WHEREAS, at its December 14, 2016, hearing, the Water Board found that the Dischargers’ unauthorized activities were in violation of the San Francisco Bay Basin Water Quality Control Plan Discharge Prohibition No. 9; Clean Water Act section 301 for unauthorized discharge of fill to waters of the State and United States; and Clean Water Act section 401 for failure to obtain a Water Quality Certification, and imposed an administrative civil liability of \$2,828,000 against the Dischargers in Administrative Civil Liability Order No. R2-2016-0048.
- D. WHEREAS, CAO Provision 1 requires the Dischargers to submit an adequate Interim Corrective Action Plan (ICAP) designed to prepare the Island for tidal restoration and include measures to manage water on the Island, control the spread of perennial pepperweed, reduce soil salinity, and reverse soil acidification and peat decomposition.
- E. WHEREAS, the ICAP submitted by the Dischargers on November 10, 2016, is inadequate because (1) it does not provide sufficient technical justification to demonstrate that proposed corrective actions would be effective or implementable; (2) several of the proposed actions may result in additional harm to beneficial uses; and (3) it does not include an adequate implementation schedule including clearly necessary tasks, such as the need to obtain permits and complete consultations with the resource agencies, and a proposed schedule for meeting those tasks.
- F. WHEREAS, Water Board staff detailed the deficiencies of the ICAP and recommended the Dischargers submit a revised ICAP in a November 18, 2016, memo and the Dischargers

have failed to address the deficiencies with an improved plan and have not taken any actions to date.

- F. WHEREAS, CAO Provision 2 requires the Dischargers to submit an adequate Point Buckler Restoration Plan that includes corrective actions to restore the water quality functions and values of the tidal marsh, including the length of channels and area of marsh that existed prior to the Dischargers' unauthorized activities, and (1) restores tidal flow into channels and ditches; (2) restores tidal circulation throughout the interior of the Island; and (3) restores overland tidal connection to the Island's interior tidal marsh during higher tides.
- G. WHEREAS, the Point Buckler Restoration Plan submitted by the Dischargers on February 10, 2017, is inadequate because it (1) does not include a statement of qualifications or other documentation to demonstrate it was prepared under the direction of appropriately qualified professionals; (2) does not provide substantive information on what corrective actions will be taken to restore tidal flow, tidal circulation, and overland tidal connection to the Island; (3) does not include an adequate implementation schedule; (4) does not include an adequate monitoring plan such as monitoring methods and performance criteria; and (5) proposes alteration of the Island such that it will not be returned to pre-existing conditions, and does not address these alterations in the Mitigation and Monitoring Plan.
- H. WHEREAS, CAO Provision 3 requires the Dischargers to submit an adequate Mitigation and Monitoring Plan to provide compensatory mitigation for temporal and permanent impacts to wetlands and waters of the State that resulted from unauthorized activities.
- I. WHEREAS, the Mitigation and Monitoring Plan submitted by the Dischargers on February 10, 2017, is inadequate because it (1) does not propose compensatory mitigation for temporal and permanent impacts resulting from unauthorized activities; and (2) proposes alterations of the Island that may result in additional harm to beneficial uses with no proposed mitigation to address those impacts.
- J. WHEREAS, the Dischargers have failed to comply with corrective actions required by Provisions 1, 2, and 3 of the CAO, the Water Board finds it is necessary and appropriate to refer this matter to the Office of the California Attorney General to seek judicially-imposed injunctive relief and/or civil penalties, to file such other punitive causes of action, and to seek other remedies as may be permissible and appropriate.
- K. WHEREAS, the Dischargers have failed to comply with the CAO, it is appropriate to seek an injunction requiring the Dischargers to comply with the CAO pursuant to Water Code section 13304(a) and to seek civil liability for failure to comply with the CAO pursuant to Water Code sections 13328, 13350(d) and 13385.
- L. WHEREAS, Water Code section 13350(g) requires the Water Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Office of Attorney General to petition a court to impose and assess civil liability. On March 8, 2017, the Water Board held such a hearing in compliance with section 13350(g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. Subject to available resources, the Water Board hereby authorizes the Executive Officer to request that the Attorney General seek an injunction, judicially-imposed civil penalties, and to file such other punitive causes of action and to seek other relief as may be permissible and appropriate. The Executive Officer shall confer with the State Water Board Office of Chief Counsel and/or Office of Enforcement on the availability of resources to support the referral to the Attorney General prior to making the referral.
2. If the referral is made and accepted by the Attorney General, the Water Board hereby authorizes the Executive Officer to seek injunctive relief and judicial civil liability against the Dischargers in an amount that he deems appropriate and report it to the Regional Water Board Chair.

I, Bruce H. Wolfe, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region at its regular meeting on March 8, 2017.

BRUCE H. WOLFE
Executive Officer