

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

In the matter of:)	
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City and County of San Francisco)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER
Effluent Limitation Violations at the Southeast and Oceanside Water Pollution Control Plants)	R2-2023-0004
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Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team (Prosecution Team), and the City and County of San Francisco (CCSF) (collectively, Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate, for adoption as an Order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the CCSF in the amount of **\$236,500**.

Section II: RECITALS

1. The CCSF owns and operates the Southeast Water Pollution Control Plant (Southeast Plant) in the City and County of San Francisco, which treats combined wastewater and stormwater collected from the CCSF's combined sewer system on the east side of the city. Discharges from the Southeast Plant are regulated under National Pollutant Discharge Elimination System (NPDES) Permit CA0037664, Regional Water Board Order R2-2013-0029, which has been in effect since October 1, 2013 and establishes waste discharge requirements, including effluent limitations.
2. The CCSF owns and operates the Oceanside Water Pollution Control Plant (Oceanside Plant), which treats combined wastewater and stormwater collected from the CCSF's combined sewer system on the west side of the

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city. Discharges from the Oceanside Plant are regulated under NPDES Permit CA0037681, which is jointly issued by the Regional Water Board and the United States Environmental Protection Agency (U.S. EPA). The version of NPDES Permit CA0037681 that was in effect from October 1, 2009, to October 31, 2019, was approved through the Regional Water Board's adoption of Order R2-2009-0062 and by U.S. EPA's approval of the permit on August 12, 2009. The Regional Water Board and U.S. EPA reissued NPDES Permit CA0037681 to the CCSF through the Regional Water Board's adoption of Order R2-2019-0028, which has been effective since November 1, 2019, and U.S. EPA's decision to reissue NPDES Permit CA0047681, which became a final agency action on February 1, 2021.

3. Pursuant to Water Code section 13385, subdivision (a)(2), a person who violates a waste discharge requirement is subject to administrative civil liability under Water Code section 13385, subdivision (c), as follows:

...in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

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

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

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

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

6. The Prosecution Team alleges that the CCSF violated effluent limitations in the NPDES permits authorizing discharges from the Southeast Plant and Oceanside Plant as follows:

- a. **Group 1 – Acute Toxicity Violations:** The Prosecution Team alleges that, from November 2014 through October 2021, the CCSF had 37

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- violations of acute toxicity limitations set forth in Provision IV.A.4 of Order R2-2013-0029 as shown in Attachment A, which is incorporated in its entirety herein by reference. The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c).
- b. **Group 2 – June and July 2019 Violations:** The Prosecution Team alleges that, in June 2019, the Southeast Plant experienced several effluent limitation violations, including weekly and monthly average biochemical oxygen demand (BOD) limits, weekly and monthly average total suspended solids (TSS) limits, monthly average oil and grease limits, and monthly 90th percentile fecal coliform limits. Specifically, from June 1, 2019, to July 31, 2019, the CCSF exceeded 12 effluent limitations in violation of Provisions IV.A.1, IV.A.2, and IV.A.3.b of Order R2-2013-0029, as shown in Attachment A. The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c).
- c. **Group 3 – Mandatory Minimum Penalties or No Liability:** The Prosecution Team alleges that, from October 2013 through May 2019, the CCSF experienced twelve additional effluent limitation violations, as shown in Attachment A. Of the twelve violations, one is subject to a \$3,000 mandatory minimum penalty pursuant to Water Code section 13385, subdivision (h). No liability is proposed for the remaining eleven violations in this Group.
7. To resolve the alleged violations in Section II, paragraph 6, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$236,500** against the CCSF. The settlement amount is less than the liability the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (Enforcement Policy) (May 2010 and October 2017¹) as shown in Attachment A. The CCSF disagrees with the Prosecution Team's application of the Enforcement Policy's history of violations factor for the Group 1 violations. The CCSF contends that a score of 1.0 is justified because the Regional Water Board has not imposed administrative civil liability against it within the last five years. The Prosecution Team maintains that its application of the history of violations factor in Attachment A is consistent with the Enforcement Policy. However, for purposes of settlement, the final liability proposed in Attachment A for the Group 1 violations was reduced by \$6,200 in consideration of

¹ In November 2009, the State Water Resources Control Board adopted a *Water Quality Enforcement Policy* that became effective in May 2010. That policy applies to violations that occurred from May 20, 2010, through October 4, 2017. In April 2017, the State Water Resources Control Board updated the policy, and the revisions became effective in October 2017. That revised policy applies to violations that occurred from October 5, 2017, to present.

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hearing and/or litigation risk in accordance with Enforcement Policy section VI.B.

8. The Parties have engaged in settlement negotiations and agree to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
9. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The CCSF hereby agrees to the imposition of an administrative civil liability of **\$236,500** to resolve the alleged violations set forth in Section II, paragraph 6, as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the CCSF shall mail a check for **\$118,250**, made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order, to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The CCSF shall email a copy of the check to the State Water Board, Office of Enforcement (paul.cicarelli@waterboards.ca.gov), and to the Regional Water Board (sam.plummer@waterboards.ca.gov).

- b. The Parties agree that the remaining **\$118,250** of the administrative liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for implementation of a Supplemental Environmental Project (SEP) named "Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh," as follows:
 1. **\$118,250** (SEP Amount) shall be paid in the manner described in Section III, paragraph 1.b.2, solely for use toward the SEP Fund for the "Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh" project. Funding this project will allow an

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investigation of the influence of tides, waves, and water levels on sediment delivery and deposition on two tidal marshes in North and Central San Francisco Bay. A description of the project is provided in Attachment B, which is incorporated herein by reference.

2. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the CCSF shall mail a check for **\$118,250**, made payable to "Regional Monitoring Program," referencing the Order number on page one of this Stipulated Order, to:

Regional Monitoring Program
c/o San Francisco Estuary Institute
4911 Central Avenue
Richmond, CA 94804

The CCSF shall email a copy of the check to the State Water Board, Office of Enforcement (paul.cicarelli@waterboards.ca.gov), and to the Regional Water Board (sam.plummer@waterboards.ca.gov).

2. **The SEP and Suspended Liability:** In accordance with the State Water Board's *Policy on Supplemental Environmental Projects* (May 2018) and State Water Board Resolution 2018-0015, the Parties agree that the CCSF's payment of the SEP Amount to fund the "Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh" project is a SEP, and that the SEP Amount shall be treated as a suspended administrative civil liability for purposes of this Stipulated Order. The CCSF's SEP obligations shall be satisfactorily completed, and the SEP Amount will be permanently suspended, upon SFEI's written notification to the Regional Water Board and the CCSF acknowledging that the Regional Monitoring Program received payment of the SEP Amount from the CCSF and that the payment will be spent on the project described in Section III, paragraph 1.b.1, and Attachment B in accordance with the terms of this Stipulated Order. SFEI's annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.
3. **Publicity Associated with the SEP:** Whenever the CCSF or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the CCSF.
4. **Regional Water Board Not Liable:** The Regional Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the CCSF or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order. The Regional Water Board, its members, and its staff shall not be held as parties to, or guarantors of, any contract entered into by the

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CCSF or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

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

6. **Party Contacts for Communications related to this Stipulated Order:**

For the Regional Water Board:

Samuel Plummer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
sam.plummer@waterboards.ca.gov
(510) 622-2485

Counsel:

Paul Ciccarelli
State Water Resources Control Board
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95814
paul.ciccarelli@waterboards.ca.gov
(916) 322-3227

For the CCSF:

Amy Chastain
San Francisco Public Utilities
Commission
525 Golden Gate Ave.
San Francisco, CA 94102
achastain@sfgwater.org
(415) 554-3155

Counsel:

Estie Kus
Deputy City Attorney
San Francisco City Attorney's
Office
1390 Market Street, Suite 700
San Francisco, CA 94102
Estie.Kus@sfcityatty.org
(415) 554-3924

7. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
8. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged in Section II, paragraph 6, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 1.
9. **Public Notice:** The CCSF understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated

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Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The CCSF agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

10. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Regional Water Board or its delegate requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulated Order as necessary or advisable under the circumstances.
11. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
12. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
13. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or

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judicial review to the extent such period has been extended by these settlement proceedings.

14. **Waiver of Hearing:** The CCSF has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds to the Regional Water Board or State Water Board for hearing, the CCSF does not waive its right to a hearing before an order is imposed.
15. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board or its delegate, the CCSF hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate court. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions, SEP completion, and other terms contained in this Stipulated Order.
16. **Covenant Not to Sue:** The CCSF covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.
17. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the CCSF does not admit to any of the allegations stated herein or admit to any violations of the Water Code or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior "history of violations" consistent with Water Code sections 13327 and 13385, subdivision (e).
18. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the CCSF in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the CCSF of its obligation to obtain any final written approval this Stipulated Order requires.
19. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf they execute the Stipulated Order.

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20. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
21. **Severability:** This Stipulated Order is severable; if any provision is be found to be invalid, the remainder shall remain in full force and effect.
22. **Counterpart Signatures; Facsimile and Electronic Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
23. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

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

Date: April 3, 2023

By: 

Thomas Mumley
Assistant Executive Officer

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IT IS SO STIPULATED.

CITY AND COUNTY OF SAN FRANCISCO

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Date: _____

By: _____

Dennis J. Herrera
General Manger
San Francisco Public Utilities Commission

Approved:
David Chiu, City Attorney

Estie M. Kus Digitally signed by Estie M. Kus
DN: cn=Estie M. Kus, o=San
Francisco City Attorney's Office,
ou,
email=estie.kus@sfcityatty.org,
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Date: _____

By: _____

Estie M. Kus
Deputy City Attorney

ORDER OF THE REGIONAL WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Board's Enforcement Policy, which is incorporated herein by reference. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegation set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board or its delegate finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the CCSF fails to perform any of its obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

Eileen
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by Eileen White
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Water Boards

Eileen White
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

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ATTACHMENT A
to
Settlement Agreement and Stipulation
for Entry of Administrative Civil Liability Order

Factors in Determining
Administrative Civil Liability

**CITY AND COUNTY OF SAN FRANCISCO
EFFLUENT LIMITATION VIOLATIONS AT
SOUTHEAST AND OCEANSIDE WATER POLLUTION CONTROL PLANTS
NOVEMBER 2014 TO OCTOBER 2021**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (November 2009) (2010 Enforcement Policy) established a methodology for assessing administrative civil liability for violations that occurred from May 20, 2010, through October 4, 2017. Subsequently, the State Water Resources Control Board's *Water Quality Enforcement Policy* (April 2017) (2017 Enforcement Policy) establishes a methodology for assessing administrative civil liability for violations that occurred from October 5, 2017, to present. Use of these methodologies addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). For the alleged violations, each factor in the applicable Enforcement Policy and its corresponding category, adjustment, and amount is presented below. These Enforcement Policies should be used as companion documents in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms may not be replicated herein. The Enforcement Policies are available at:

https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.html

ALLEGED VIOLATIONS

Three groups of violations subject to administrative civil liabilities under Water Code section 13385, subdivision (c), are alleged. Group 1 includes acute toxicity violations at the City and County of San Francisco's (CCSF's) Southeast Plant from November 2014 through October 2021. Group 2 includes effluent limitation violations at the Southeast Plant from June 1, 2019, through July 31, 2019. Group 3 includes the remaining effluent limit violations that occurred at both the Oceanside Plant and Southeast Plant from October 2013 through May 2019.

Group 1 – Acute Toxicity Violations

From November 2014 through October 2021, the CCSF reported 37 acute toxicity violations. Table 1 (at the end of this attachment) lists these violations. Specifically, the CCSF violated Provision IV.A.4 of Order R2-2013-0029 (NPDES Permit CA0037664), which requires an 11-sample median of not less than 90 percent survival and an 11-sample 90th percentile of not less than 70 percent survival. The CCSF began investigating the violations in December 2014. In a letter to the Regional Water Board on March 9, 2015, the CCSF identified potential causes of this observed toxicity, including un-ionized ammonia. Between 2015 and 2018, the CCSF engaged outside experts to assist with investigating potential causes of the high mortality and experimented with modifications to the testing procedures to try to ascertain effect of un-ionized ammonia (i.e., parallel testing with zeolite-treated effluent, static renewal tests

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with pH control, and flow-through tests with pH control). Although these investigations did not conclusively identify the cause of the intermittent mortality, the CCSF changed its toxicity testing protocols to control pH to better account for the effect of un-ionized ammonia.

The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c). The factors considered in determining the liability are described below, with delineations provided according to the applicable Enforcement Policy:

Factor	Selection	Rationale
Degree of Toxicity of the Discharge	3	A score of 3 (above moderate) is appropriate because the discharged material posed an above-moderate risk to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceeded known risk factors). (2017 Enforcement Policy, p. 12; 2010 Enforcement Policy, p. 13.) The discharge was acutely toxic to aquatic life, resulting in test survival rates as low as 25 percent.
Actual Harm or Potential Harm to Beneficial Uses	1	A score of 1 (minor) is appropriate because there was a low threat of harm to beneficial uses and likely no actual harm. (2017 Enforcement Policy, p. 12; 2010 Enforcement Policy, p. 12.) Since the discharge occurred at a deepwater outfall that provides up to 231:1 dilution, only minor impacts to beneficial uses would be expected.
Susceptibility to Cleanup or Abatement	1	A score of 1 is appropriate because the discharge commingled with the receiving waters and was not susceptible to cleanup or abatement. (2017 Enforcement Policy, p. 13; 2010 Enforcement Policy, p. 13.)
Deviation from Requirement	Major	The violation is a major Deviation from Requirement because the discharge did not meet the acute toxicity effluent limitation set forth in Provision IV.A.4 of Order R2-2013-0029. Thus, the requirement was rendered ineffective in its essential function. (2017 Enforcement Policy, p. 14; 2010 Enforcement Policy p. 14.)
Per-Day Factor	0.15	This multiplier is the same under both the 2010 Enforcement Policy and the 2017 Enforcement Policy. It is based on the total Potential for Harm score of 5 (i.e., the sum of the above factors: 3+1+1) and the major Deviation from Requirement. (2010 Enforcement Policy, Table 2; 2017 Enforcement Policy, Table 2.)
Initial Liability	\$55,500	The initial liability is calculated in the same way under both the 2010 Enforcement Policy and the 2017 Enforcement Policy: the per-day factor is multiplied by the maximum per-day liability (\$10,000) and then by the number of days of violation. (2017 Enforcement Policy, p. 14; 2010 Enforcement Policy, p. 14.) Of the 37 days of violation, 17 occurred before October 5, 2017, and are subject to the 2010 Enforcement Policy, and 20 occurred after October 5, 2017, and are subject to the 2017 Enforcement Policy. The initial liability is therefore 0.15 x \$10,000/day x 37 days.

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Factor	Selection	Rationale
Culpability	1.0	A score of 1.0 (neutral) is appropriate. The CCSF acted in a reasonable and prudent way leading up to these violations. No intentional or negligent behavior caused these violations.
History of Violations	1.1	A score of 1.1 is appropriate because the CCSF has a history of violations.
Cleanup and Cooperation	1.1	A score of 1.1 is appropriate because the CCSF began investigating the toxicity issue in March 2015 but did not implement its first potential solution (pH control) until 2019. During the investigation, the CCSF requested adjusted acute toxicity testing procedures in an email sent June 2, 2015. The Regional Water Board approved this request in a letter dated August 21, 2015, contingent on several conditions, including diligently implementing investigative tasks and describing activities and results in relevant self-monitoring reports.
Total Base Liability	\$67,200 (rounded)	The total base liability is the sum of the initial liability from the 2010 Enforcement Policy and the 2017 Enforcement Policy, times the culpability, history of violations, and cleanup and cooperation factors (\$55,500 x 1.0 x 1.1 x 1.1). (2017 Enforcement Policy, p. 17; 2010 Enforcement Policy, p. 17.)
Ability to Pay and Continue in Business	No adjustment	The CCSF has not demonstrated an inability to pay the proposed administrative civil liability.
Economic Benefit	<i>de minimus</i>	The CCSF did not enjoy any significant economic benefit associated with the violation. The proposed final liability greatly exceeds the time value of any delayed costs associated with the implementation of potential solutions to the toxicity issue.
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.
Minimum and Maximum Liabilities	<i>de minimus</i> and \$370,000	According to the Enforcement Policy, the minimum liability is the economic benefit plus ten percent. The maximum per-day liability Water Code section 13385 allows is \$10,000 per day of violation. Here, the maximum liability is \$370,000 based on 37 days of violation. The minimum liability is nominal.
Final Liability	\$67,200	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, and minimum and maximum liabilities.

Group 2 – June and July 2019 Effluent Limitation Violations

In June 2019, the Southeast Plant experienced a biological treatment issue that resulted in effluent that did not meet secondary treatment standards. The result was several effluent limitation violations, including weekly and monthly average biochemical oxygen demand (BOD) limits, weekly and monthly average total suspended solids (TSS) limits, monthly average oil and grease limits, and monthly 90th percentile fecal coliform limits. Table 2 (at the end of this attachment) lists all effluent limitation violations associated with this event. The CCSF's investigation identified four factors that contributed to these effluent limitation violations:

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1. In preparing the primary sedimentation tanks for maintenance, wastewater levels were lowered quickly, increasing hydraulic and solids loading downstream;
2. Return Activated Sludge pumps intermittently stopped for an unknown reason (June 9 through June 11);
3. Mixing in 2 of 8 aeration trains stopped for several days due to a combination of electrical and control systems issues not identified by onsite staff present 24 hours per day from June 11 through June 13; and
4. Wastewater from construction dewatering at the Southeast Plant was fed into the treatment process.

The partially-treated discharge violated Provisions IV.A.1, IV.A.2, and IV.A.3.b of Order R2-2013-0029. These provisions establish effluent limitations for BOD, TSS, oil and grease, and fecal coliform.

Throughout the months of June and July, 2019, 12 violations occurred, and there were 152 days of violation. To calculate the number of days of violation, a day of violation was counted for each day in which a violation occurred as prescribed by Water Code section 13385, subdivisions (a)(2) and (c). However, if multiple violations for a particular pollutant took place on the same day, only one day of violation was counted for that day for that pollutant. For example, if a violation of a weekly average effluent limitation and a violation of a monthly average effluent limitation occurred during the same month for a single pollutant, each day of the month was counted only once as a day of violation. The BOD, TSS, and oil and grease violations resulted in 122 days of violation. The fecal coliform violation resulted in 30 days of violation.

The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c). The factors considered in determining the liability are described below:

Factor	Selection	Rationale
Degree of Toxicity of the Discharge	2 (TSS, BOD, Oil & Grease)	A score of 2 (moderate) is appropriate because the discharged material posed a moderate risk to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material had some level of toxicity or there was a moderate threat to potential receptors). (2017 Enforcement Policy, p. 12.) TSS, BOD, and oil and grease have low toxicity themselves, but the exceedances indicate that the discharge did not receive complete secondary treatment and may have contained other pollutants normally removed through secondary treatment.

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Factor	Selection	Rationale
	3 (Fecal Coliform)	A score of 3 (above moderate) is appropriate because the discharged material posed an above-moderate risk to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceeded known risk factors). (2017 Enforcement Policy, p. 12.) The discharge contained fecal coliform levels that exceeded the Basin Plan's fecal coliform water quality objective to protect the shellfish harvesting beneficial use.
Actual Harm or Potential Harm to Beneficial Uses	1	A score of 1 (minor) is appropriate because there was a low threat of harm to beneficial uses and likely no actual harm. (2017 Enforcement Policy, p. 12.) Since the discharge occurred at a deepwater outfall that provides up to 231:1 dilution, only minor impacts to beneficial uses would be expected.
Susceptibility to Cleanup or Abatement	1	A score of 1 is appropriate because the discharge commingled with the receiving waters and was not susceptible to cleanup or abatement. (2017 Enforcement Policy, p. 13.)
Deviation from Requirement	Major	The violation is a major Deviation from Requirement because the discharge did not meet effluent limitations defined in Provisions IV.A.1, IV.A.2, and IV.A.3.b of Order R2-2013-0029. Thus, the requirements were rendered ineffective in their essential function. (2017 Enforcement Policy, p. 14.)
Per-Day Factor	0.08 (TSS, BOD, Oil & Grease)	This multiplier is based on the total Potential for Harm score of 4 (i.e., the sum of the above factors for TSS, BOD, and oil and grease: 2+1+1) and the major Deviation from Requirement. (Enforcement Policy, Table 2.)
	0.15 (Fecal Coliform)	This multiplier is based on the total Potential for Harm score of 5 (i.e., the sum of the above factors for fecal coliform: 3+1+1) and the major Deviation from Requirement. (Enforcement Policy, Table 2.)
Initial Liability	\$97,600 (TSS, BOD, Oil & Grease)	The initial liability for the TSS, BOD, and oil and grease effluent limitation violations is the per-day factor multiplied by the maximum per-day liability (\$10,000) and then by the number of days of discharge: 0.08 x \$10,000/day x 122 days. (2017 Enforcement Policy, p. 14.)
	\$45,000 (Fecal Coliform)	The initial liability for the fecal coliform effluent limitation violation is the per-day factor multiplied by the maximum per-day liability (\$10,000) and then by the number of days of discharge: 0.15 x \$10,000/day x 30 days. (2017 Enforcement Policy, p. 14.)
Culpability	1.1	A score of 1.1 (above neutral) is appropriate because all four contributing factors the CCSF identified in its investigation were either directly caused by CCSF's staff or exacerbated by its staff's inaction. A reasonable and prudent discharger would have better managed the primary sedimentation tank maintenance preparations, addressed the Return Activated Sludge pump issues, and noted and repaired the out-of-service aeration trains before biological treatment efficacy was affected.

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Factor	Selection	Rationale
History of Violations	1.1	A score of 1.1 is appropriate because the CCSF has a history of violations.
Cleanup and Cooperation	1.0	A score of 1.0 (neutral) is appropriate. The CCSF responded in a reasonable and timely manner to resolve the biological treatment issue after the four contributing factors were identified.
Total Base Liability	\$172,500 (rounded)	The total base liability is the sum of the initial liability from the TSS, BOD, oil and grease, and fecal coliform violations, times the culpability, history of violations, and cleanup and cooperation factors ($[\$97,600 + \$45,000] \times 1.1 \times 1.1 \times 1.0$). (2017 Enforcement Policy, p. 17.)
Ability to Pay and Continue in Business	No adjustment	The CCSF has not demonstrated an inability to pay the proposed administrative civil liability.
Economic Benefit	<i>de minimus</i>	The CCSF did not enjoy any significant economic benefit associated with the violations related to the loss of biological treatment. The proposed final liability greatly exceeds the time value of any delayed costs associated with resolving the secondary treatment problem.
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.
Minimum and Maximum Liabilities	\$33,000 and \$1,520,000	The minimum liability is calculated from the sum of all violations associated with this event that are each subject to a \$3,000 mandatory minimum penalty pursuant to Water Code section 13385, subdivisions (h) or (i). The maximum per-day liability Water Code section 13385 allows is \$10,000 per day of violation. Here, the maximum liability is \$1,520,000 based on 152 days of violation. The minimum liability is \$33,000 based on 11 violations.
Final Liability	\$172,500	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, and the minimum and maximum liabilities.

Group 3 – Mandatory Minimum Penalties or No Penalty

From October 2013 through May 2019, the CCSF reported 12 effluent limitation violations at the Southeast Plant and the Oceanside Plant not otherwise discussed above, as listed in Tables 3 and 4, below. Specifically, the CCSF violated Provision IV.A of Order R2-2013-0029 and Provision IV.a.1.a of Order R2-2009-0062 (NPDES Permit CA0037681). In most cases, the CCSF was able to return to compliance before investigations could identify any causes.

One of the 12 violations is subject to a mandatory minimum penalty of \$3,000 pursuant to Water Code section 13385, subdivision (h), resulting in a mandatory penalty of **\$3,000** ($\$3,000 \times 1$ violation). No penalties are proposed for the remaining 11 violations.

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Table 1. Alleged Acute Toxicity Violations (Group 1)

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Calculated Value	Percent Exceedance ^[1]	Violation Type	Mandatory Minimum Penalty ^[2]
986758	11/24/2014	11-sample 90 th percentile (% survival)	-	70	65	7	-	\$0
991860	2/23/2015	11-sample median (% survival)	-	90	85	6	-	\$0
991861	3/30/2015	11-sample median (% survival)	-	90	85	6	-	\$0
991862	4/13/2015	11-sample median (% survival)	-	90	85	6	-	\$0
991863	4/27/2015	11-sample median (% survival)	-	90	80	11	-	\$0
991864	4/27/2015	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0
1000082	8/24/2015	11-sample median (% survival)	-	90	85	6	-	\$0
1000081	8/24/2015	11-sample 90 th percentile (% survival)	-	70	45	36	-	\$0
1000087	10/19/2015	11-sample median (% survival)	-	90	85	6	-	\$0
1000088	10/19/2015	11-sample 90 th percentile (% survival)	-	70	26	63	-	\$0
1005131	11/3/2015	11-sample median (% survival)	-	90	85	6	-	\$0
1005132	11/3/2015	11-sample 90 th percentile (% survival)	-	70	26	63	-	\$0
1005135	11/10/2015	11-sample median (% survival)	-	90	85	6	-	\$0
1005133	11/10/2015	11-sample 90 th percentile (% survival)	-	70	26	63	-	\$0
1005135	11/17/2015	11-sample median (% survival)	-	90	85	6	-	\$0
1006955	2/8/2016	11-sample median (% survival)	-	90	85	6	-	\$0
1006953	2/8/2016	11-sample 90 th percentile (% survival)	-	70	45	36	-	\$0
1006956	2/22/2016	11-sample median (% survival)	-	90	85	6	-	\$0
1043827	11/27/2017	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0

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1043828	12/4/2017	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0
1043958	2/12/2018	11-sample median (% survival)	-	90	85	6	-	\$0
1043959	2/12/2018	11-sample 90 th percentile (% survival)	-	70	45	36	-	\$0
1043960	3/5/2018	11-sample median (% survival)	-	90	85	6	-	\$0
1043961	3/5/2018	11-sample 90 th percentile (% survival)	-	70	45	36	-	\$0
1048822	5/7/2018	11-sample median (% survival)	-	90	85	6	-	\$0
1048824	5/7/2018	11-sample 90 th percentile (% survival)	-	70	45	36	-	\$0
1048823	6/18/2018	11-sample median (% survival)	-	90	85	6	-	\$0
1066833	11/5/2018	11-sample 90 th percentile (% survival)	-	70	55	21	-	\$0
1066834	12/10/2018	11-sample 90 th percentile (% survival)	-	70	55	21	-	\$0
1066835	4/8/2019	11-sample 90 th percentile (% survival)	-	70	55	21	-	\$0
1066836	6/3/2019	11-sample median (% survival)	-	90	85	6	-	\$0
1066837	6/3/2019	11-sample 90 th percentile (% survival)	-	70	55	21	-	\$0
1076565	3/2/2020	11-sample 90 th percentile (% survival)	-	70	60	14	-	\$0
1076566	3/9/2020	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0
1087672	11/2/2020	11-sample median (% survival)	-	90	85	6	-	\$0
1097611	7/19/2021	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0
1100517	10/4/2021	11-sample 90 th percentile (% survival)	-	70	50	29	-	\$0

Total Mandatory Minimum Penalty: \$0

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Table 2. Alleged June and July 2019 Effluent Limitation Violations (Group 2)

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	Mandatory Minimum Penalty ^[2]
1066846	6/9/2019 - 6/15/2019	TSS, AWEL (mg/L)	1	45	78	73	C2, S	\$3,000
1066841	6/9/2019 - 6/15/2019	BOD, AWEL (mg/L)	1	45	62	38	C3	\$0
1066847	6/16/2019 - 6/22/2019	TSS, AWEL (mg/L)	1	45	98	118	C4, S	\$3,000
1066843	6/16/2019 - 6/22/2019	BOD, AWEL (mg/L)	1	45	59	31	C5	\$3,000
1066850	6/1/2019 - 6/30/2019	Fecal Coliform, monthly 90 th percentile (MPN/100mL)	N/A	1,100	1,600	45	C6	\$3,000
1066844	6/1/2019 - 6/30/2019	BOD, AMEL (mg/L)	1	30	48	60	C7, S	\$3,000
1066848	6/1/2019 - 6/30/2019	TSS, AMEL (mg/L)	1	30	60	100	C8, S	\$3,000
1066845	6/1/2019 - 6/30/2019	BOD, % removal (%)	1	85	84	1	C9	\$3,000
1066849	6/1/2019 - 6/30/2019	TSS, % removal (%)	1	85	80	6	C10	\$3,000
1087668	6/30/2019 - 7/6/2019	TSS, AWEL (mg/L)	1	45	52	16	C11	\$3,000
1087669	7/1/2019 - 7/31/2019	TSS, AMEL (mg/L)	1	30	37	23	C12	\$3,000
1066998	7/1/2019 - 7/31/2019	Oil & Grease, AMEL (mg/L)	1	10	12	20	C13	\$3,000

Total Mandatory Minimum Penalty: \$33,000

Table 3. Other Alleged Violations for Oceanside Water Pollution Control Plant (Group 3)

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	Mandatory Minimum Penalty ^[2]
1104668	10/6/2013 - 10/12/2013	BOD, AWEL (mg/L)	1	45	51	13	C1	\$0
1104669	7/20/2014 - 7/26/2014	BOD, AWEL (mg/L)	1	45	47	4	C1	\$0
1104671	7/27/2014 - 8/2/2014	BOD, AWEL (mg/L)	1	45	46.6	4	C2	\$0
1030360	6/18/2017 - 6/24/2017	BOD, AWEL (mg/L)	1	45	49	9	C1	\$0
1054392	11/18/2018 - 11/24/2018	TSS, AWEL (mg/L)	1	45	55	22	C1	\$0

Total Mandatory Minimum Penalty: \$0

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Table 4. Other Alleged Violations for Southeast Water Pollution Control Plant (Group 3)

CIWQS Violation ID No.	Violation Date	Parameter (units)	Group	Effluent Limitation	Reported Value	Percent Exceedance ^[1]	Violation Type	Mandatory Minimum Penalty ^[2]
1104673	8/17/2014 - 8/23/2014	BOD, AWEL (mg/L)	1	45	47	4	C1	\$0
1000080	8/1/2015 - 8/31/2015	TSS, AMEL (mg/L)	1	30	33	10	C1	\$0
1000089	10/4/2015 - 10/10/2015	TSS, AWEL (mg/L)	1	45	50	13	C2	\$0
1013158	7/1/2016 - 7/31/2016	TSS, AMEL (mg/L)	1	30	31	3	C1	\$0
1033302	3/1/2017 - 3/31/2017	Oil and Grease, AWEL (mg/L)	1	10	14	40	C1, S	\$3,000
1043955	10/11/2017	Residual Chlorine, instantaneous maximum (mg/L)	2	0	0.5	-	-	\$0
1066839	5/29/2019	Residual Chlorine, instantaneous maximum (mg/L)	2	0	0.2	-	-	\$0

Total Mandatory Minimum Penalty: \$3,000

Legend:

- CIWQS California Integrated Water Quality System database that the Water Boards use to track permit violations and enforcement.
- Violation ID Identification number assigned to each permit violation within CIWQS.
- AWEL Average weekly effluent limitation
- AMEL Average monthly effluent limitation
- C Count – Number of violations within past 180 days, including this violation. A penalty applies under Water Code section 13385(i) when the count is greater than three (> C3).
- S Serious. A penalty applies under Water Code section 13385(h) whenever an effluent limitation is exceeded by 40 percent or more for a Group 1 pollutant or 20 percent or more for a Group 2 pollutant. Group 1 and Group 2 pollutants are specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations.

Footnotes:

- ^[1] Percent that a discharger's reported value exceeds the effluent limitation for a Group 1 or 2 pollutant.
- ^[2] The MMP required under Water Code section 13385(h) and/or (i).

ATTACHMENT B
to
Settlement Agreement and Stipulation
for Entry of Administrative Civil Liability Order

Study Description for
Supplemental Environmental Project for the
Regional Monitoring Program for Water Quality in San Francisco Bay

Basic Information

Study Name: Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh

Study Budget: \$118,250

SFEI Contacts:

- Technical – Melissa Foley, melissaf@sfei.org, (510) 746-7345
- Financial – Jennifer Hunt, jhunt@sfei.org, (510) 746-7347

Study Description

The study will investigate the influence of tides, waves, and water levels on sediment delivery and deposition on two tidal marshes in North and Central San Francisco Bay. The project will include measurements of suspended sediment concentration (SSC) and suspended sediment flux in the shallows adjacent to the marshes, SSC at long-term tidal creek stations, deposition and accretion on the marshes, and the variation in deposition with elevation and vegetation density and type. Data will be collected in 2023 and analyzed and reported by fall 2024. Study results will inform shoreline and tidal marsh sea level rise resilience and adaptation management strategies.

Compliance with SEP Criteria

This study complies with the following SEP criteria:

- It supports development and implementation of a monitoring program and/or study of surface water quality or quantity and/or the beneficial uses of the water.
- Its nexus to the violations is that it is located within the same Water Board region in which violations occurred.

This study goes above and beyond applicable obligations of dischargers because of the following:

- This project is a study (or studies) and associated product (or projects) above and beyond what is required in permits or orders issued by the Regional Water Board or what can be accomplished with dischargers' required monetary contributions to the Regional Monitoring Program for Water Quality in San Francisco Bay.

Study Milestones and Performance Measures

Data collection will begin in 2023 at marshes in Central Bay and North Bay. The data will be available within 18 months of the start of work. A final report will be completed, and the data will be publicly available, no later than 24 months after the effective date of the Stipulated Order approving this project as a SEP. The final report will present the relationship between sediment dynamics in the shallows and sediment delivery to the marshes, and its seasonal variation.

Study Budget and Reports

Pursuant to the October 2015 Supplement to the Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or portions of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder.

SFEI will provide notice to the Regional Water Board within one month after receiving funds from a discharger for the SEP and the notice will state SFEI's agreement to use the funds received as described herein.

Publicity

Pursuant to the 2015 MOU, SFEI will indicate on its RMP website, and annual and other reports, that funding for the study is the result of settlement of "San Francisco Bay Water Board" enforcement actions.