

factor in any future Endangered Species Act analysis conducted by our office pertaining to this discharge." In light of these significant statements made by your governing board and the USFWS, Water Board staff recommends keeping the references to tertiary treatment. The revised settlement agreement will be consistent with this Order to eliminate any discrepancies between the two documents.

Water Board staff has not altered effluent limitations to reflect the definition of ~~Disinfected-Tertiary-Treated-Recycled-Water~~. ~~Secondary standards, in accordance~~ with 40 CFR Part 133, are maintained as the basis for effluent limitations.

Comment 2: Reference to Water Reclamation

"Delete Section IV.F.1 and 2 of the Order (Reclamation Specifications), as there are no current plans to implement a water reuse project in the next five year NPDES Permit cycle, the Reclamation Specifications are superfluous and not germane to the Draft Order."

Staff Response 2: The comment is noted. Although this issue is not subject to public comment, staff made some minor modifications to the language to reflect that these Reclamation Specifications are pertinent if/when the Discharger chooses to recycle treated water.

Comment 3: Collection System Requirements

The Discharger "strongly" recommends that all references to the collections system requirements, as regulated by the Statewide General Waste Discharger Requirements for Sanitary Sewer Systems (General Order No. 2006-0003-DWQ), be removed from the Order.

Staff Response 3: This comment is noted. However, this issue is not subject to public comment.

Comment 4: Cat Litter Outreach Program

"Modify the statement as follows: *'The Discharger will target specific commercial and professional establishments to ~~ensure~~ encourage that appropriate policies and procedures are in place to properly disposal of cat waste.'* As described in the conservation measures contained within the BE, the cat litter outreach program is designed to be an educational tool to minimize the input of cat litter-box wastes into the municipal sewer system, not an enforceable ordinance. In addition, during public outreach to the two existing veterinary clinics in Morro Bay and the two existing pet groomers within Morro Bay, all establishments noted that based upon their current BMP's they do not currently flush cat litter."

"Modify the statement as follows: *'The Discharger will ~~ensure~~ encourage that the aforementioned establishments develop and implement best management practices*

prohibiting the flushing of cat litter,... As noted above, the cat litter outreach program is primarily designed to be an educational tool not an enforcement mechanism."

Staff Response 4: Water Board staff concurs with this comment regarding modifications using the word "encourage" rather than "ensure." We agree that the current language infers that the City will adopt and enforce an ordinance to require commercial and professional establishments to develop policies and/or procedures. ~~As with any education and outreach program, we expect that the Discharger will~~ develop a program to encourage and teach good business practices in order to minimize the potential for cat waste contribution into the discharger's waste stream. Section VI.5.b has been modified to reflect the Discharger's comments.

Mr. Steve Shimek, Executive Director of the Otter Project, submitted written comment on October 13, 2008. Mr. Shimek's written comments are included as an attachment to the staff report. Comments not pertaining to new information, as specified in the public notice, have been reviewed and considered for permit clarity and consistency. Mr. Shimek's comments are addressed below.

Comment 5: Settlement Agreement

Mr. Shimek urges the Water Board to deny the permit on that basis that the revised settlement agreement was not disclosed for public review and comment. Mr. Shimek states that "the most critical components of this permit – timeline and level of upgrade – are not specified in the draft permit. This application is vague and public comment cannot be meaningful without further detail."

Staff Response 5: The comment is noted. Refer to the section above discussing the revised settlement agreement and staff's recommendation.

Comment 6: Secondary Treatment

Mr. Shimek urges the requirement of tertiary treatment for the facility's effluent. Mr. Shimek's comment includes a discussion of otter mortality in Estero Bay.

Staff Response 6: The comment is noted. The Order includes a discussion of facility upgrades to provide tertiary treatment. Refer to Staff Response 1 (above) for a discussion of tertiary treatment.

Comment 7: Timeline for Conversion

Mr. Shimek contends that the current conversion schedule does not satisfy 40 CFR 122.47(a)(1) requiring plants to upgrade "as fast as possible."

Staff Response 7: The comment is noted. However, the conversion schedule is not subject to public comment. It should be noted that this issue was discussed and heard at the May 11, 2006 Water Board meeting. Since the May 11, 2006 Water

Board meeting, the City has agreed to expedite the conversion schedule as described in Section II.AA of this Order.

Comment 8: Triggered Surf-zone Monitoring

Ms. Sarah Corbin, Central California Regional Manager of the Surfrider Foundation, submitted written comments on October 9, 2008. The comments discussed Surfrider Foundation's disagreement with triggered surf-zone sampling.

Staff Response 8: The comment is noted. However, triggered surf-zone sampling is not subject to public comment. A discussion of Water Recreation standards was held at the May 11, 2006 Water Board meeting.

The National Resources Defense Council, Surfrider Foundation, the Sierra Club, and Defenders of Wildlife, submitted written comments on October 14, 2008. This comment letters is included in entirety as an attachment to the Staff Report. The comment letter request the rejection of the Permit based on inadequacies not consistent with the Clean Water Act. Written comments are provided below.

Comment 9: No Legal Basis to Re-issue the 301(h) Waiver

"There is no legal basis to re-issue the 301(h) waiver for the Morro Bay/Cayucos Wastewater Treatment Plant (Plant), as the Plant has consistently not met the substantial burden established by the Clean Water Act and its implementing regulation."

Staff Response 9: The comment is noted. However, this discussion and comment is not subject to public comment. Furthermore, this issue was discussed at the May 11, 2006 Water Board meeting. This discussion can be reviewed at the following website: [http://www.swrcb.ca.gov/centralcoast/board info/minutes/2006/05 06 morro bay ca yucos wwtp hearing transcript.pdf](http://www.swrcb.ca.gov/centralcoast/board%20info/minutes/2006/05%2006%20morro%20bay%20ca%20yucos%20wwtp%20hearing%20transcript.pdf)

Comment 10: Settlement Agreement Reference

"The Draft Permit repeatedly references and relies upon a Settlement Agreement between the Regional Water Quality Control Board, Central Coast region and the City of Morro Bay/Cayucos Sanitary District that is crucial for meaningful review of the Draft Permit, but that the Regional Board has not made available to the public. This is particularly alarming considering the U.S. Environmental protections Agency finding of "No likely Adverse Effect" for the continued discharge from the Plant was predicated on the existence of an enforceable agreement that the plant upgrade."

Staff Response 10: The comment is noted. Refer to the section above discussing the revised settlement agreement. The settlement agreement will be available prior to the December 4-5, 2008 Water Board meeting.

Comment 11: Contradictory Language Regarding Plant Upgrade

"The Draft permit is in critical aspects vague and confusing or contradictory, specifically with regards to provisions that specify the conversion schedule and level of compliance to be obtained at the plant..."

Staff Response 11: Water Board staff disagrees with this comment and provides the following for clarification. The conversion schedule is not subject to public comment. ~~It should be noted that this issue was discussed and heard at the May 11, 2006 Water Board meeting.~~ However, since the May 11, 2006 Water Board meeting, the City has agreed to expedite the conversion schedule as described in Section II.AA. of this Order. This expedited conversion schedule will be incorporated in the settlement agreement.

We disagree that the language regarding treatment upgrades in the Draft Permit is confusing or contradictory. As noted in Staff Response 1, the Water Board is obligated to require "federal secondary standards" as mandated by 40 CFR Part 133. However, effluent limitations identified in Section IV.B. of this Order reflect modified secondary standards for discharges of treated wastewater to surface waters in accordance 40 CFR Part 125.57. As a point of clarification, the definition of tertiary treatment is specific to recycled water uses (refer to Section 60301.203 of the California Water Code or The California Health Laws Related to Recycled Water "The Purple Book"). Since the Discharger has agreed to upgrade to provide tertiary treated water, then by default they will meet secondary standards. Currently, the Discharger does not have any demands to provide recycled water. The upgrade to tertiary treatment will allow the Discharger to consider future recycled water projects.

Comment 12: Discussion of Concerns from USFWS

"The Draft Permit fails to accurately characterize the findings on the scientific studies cited in the Permit, or the explicit concerns of the U.S. Fish and Wildlife Service (USFWS) in issuing a concurrence with the findings of the USEPA Biological Evaluation."

Staff Response 12: Staff disagrees with the allegation of omitting information to mislead the public. Furthermore, this written comment alleges that the "conspicuously absent" discussion of USFWS concerns mischaracterizes the scientific study. Water Board staff does not dispute the fact the December 21, 2007 USFWS letter offers some concern for southern sea otters located within the vicinity of the subject wastewater discharge and that some scientific literature discusses the possibility that pollutant loading from the sewage treatment plant discharges could have an effect on the otter. However, the USFWS acknowledges that a significant degree of scientific uncertainty exists as to the mechanisms for potential impacts to the otter. More to the point, because the USFWS finds there is a significant amount of scientific uncertainty, the USFWS concern may not be scientifically proven. We believe that this concern is predicated on the idea that the Discharger will not upgrade the facility to tertiary treatment. The USFWS letter also states that "this decision [to upgrade the facility to provide tertiary treated wastewater] has significant potential to minimize the concerns

regarding possible effects on the otter." Staff believes that the USFWS concerns will be addressed when the Discharger upgrades the facility to provide tertiary treatment. Additionally, the conservation measures required by USEPA and this Order will continue to minimize the potential impacts to the otter as well as facilitate gathering additional data necessary to assess the direct impacts to the southern sea otter in the vicinity of the discharge.

~~Comment 13: Cat Litter Public Outreach Program is Vague and Lacks Measurable Goals~~

"The provisions of the Cat Little Public Education Outreach Program are vague and lack measurable goals. The Draft Permit must set out specific requirements for the Discharger to comply with under this program, in order to ensure the introduction of cat litter waste into the municipal sewer system is reduced to the greatest extent possible."

Staff Response 13: Water Board staff reviewed and carefully considered this comment. Staff concurs with this comment and has added language to require the Discharger to develop implementation goals. These goals should be quantifiable allowing the Discharger to track their implementation efforts. Water Board staff views this provision to be very similar in nature to municipal stormwater education and outreach programs. These programs as well as associated measurable goals are typically developed by the Discharger. In concert with the implementation goals, the Discharger will be required to reevaluate its implementation goals on an annual basis. Reevaluation methods will be developed by the Discharger and may include surveys or other methods.

Comment 14: Conversion Schedule

"The proposed conversion schedule for the plant violates the Clean Water Act's requirement that upgrades be conducted as 'fast as possible'."

Staff response 14: As stated in Staff Response 9, the conversion schedule is not subject to public comment. It should be noted that this issue was discussed and heard at the May 11, 2006 Water Board meeting.

Dr. Douglas Coats, Program Manager for the Marine Research Specialist, submitted written comments on October 9, 2008. Dr. Coats' written comments are included as an attachment to the staff report. Typographical errors and minor revisions that do not alter the intent of the Order are not discussed below. Further, comments not pertaining to new information, as specified in the public notice, have been reviewed and considered for permit clarity and consistency. Dr. Coats' comments are addressed below.

Comment 15: Revising Finding F to Reflect Modified Secondary Standards

Dr. Coats' written comment explains that the newly added Finding F (Technology-Based Standards) is inconsistent with the original permit application. He explained that this finding needs to be changed in order to state "modified secondary standards."

Dr. Coats requested that the language be to comply with 40 CFR Part 125(g).

Staff Response 15: Although this issue is not subject to public comment, Water Board staff believes that this modification will further clarify and maintain consistency throughout the Order. Section II.F. of the Proposed Order has been modified. The last sentence of the finding now states "However, due to the provisions set forth in 40 CFR Part 125.57 discharges authorized by this Order are subject to modified secondary standards. A detailed discussion of development of technology-based effluent limitations is included in the Fact Sheet (Attachment F)."

Comment 16: Remove Section Implementation Provisions for Bacterial Characteristics

Dr. Coats explains that Section V.D. (Implementation Provisions for Bacterial Characteristics) of the Order is inconsistent with Section VII.A. of the Monitoring and Reporting Program (Triggered Surf-Zone Monitoring). Dr. Coats recommends modifying Section V.D. to coincide with the triggered sampling language in the Monitoring and Reporting Program.

Staff Response 16: Although this issue is not subject to the public comment, Water Board staff agrees that the removal of Section V.D. of the Order will eliminate confusion with Section VII.A. of the Monitoring and Reporting Program. Furthermore, the removal of this section is consistent with Water Board staff's previous recommendations for bacterial monitoring.

Comment 17: Revise the Monitoring Location for Influent Sampling

Dr. Coats explains that there is a negligible amount of return flows to the facility's headworks. To address these return flows, Dr. Coats recommends including two sampling locations to adequately reflect the influent flows. One sample location would be at the metering manhole upstream of any in-plant return flows and the other locations would be at the headworks, which include in-plant return flows.

Staff Response 17: The comment is noted. However, this issue is not subject to public comment.

Comment 18: Modify Special Provision "Receiving Water Monitoring for Bacteria" to Conform to the Triggering Threshold Level Identified in MRP

"The triggering threshold in the MRP is based on exceedances of the limit on maximum coliform density alone (2400 MPN/100ml). Use of the monthly effluent limit to trigger surf zone monitoring is inappropriate because any elevated coliform densities within discharged wastewater will have dissipated long before the required surf zone monitoring would be initiated, up to a month after the fact."

Staff Response 18: This comment is noted. Appropriate changes were made to Section VI.C.4 of the Order to coincide with Section VII.A (Surf-Zone Monitoring) in the Monitoring and reporting program.

Comment 19: Correct the Chronic Testing Requirements

~~Dr. Coats explains that the current language in the Draft Permit is not consistent with the past Staff Responses explaining "that two tests were appropriate for determining the most sensitive species, especially considering that other discharges are only required to have one test."~~

Staff Response 19: Although this issue is not subject to public comment, staff believes that the recommended changes to Section V.A of the Monitoring and Reporting Program are appropriate. Section V.A. of the Monitoring and Reporting Program has been revised to reflect a minimum of two test species to determine the most sensitive species. This modification is also consistent with previous Water Board staff determinations.

Comment 20: Remove the Requirements for Sulfide Analysis of Benthic Porewater

According to previous Water Board staff findings and a delay in permit reissuance, two additional years of sulfide sampling under the current permit have more than met the requirements for one additional year of sulfide analysis, and additional sulfide testing of benthic samples is no longer needed. Due to permit reissuance delays, the Discharger has been conducting high-resolution sulfide analysis of sediment porewater for a total of five years. None of these sulfide samples contained detectable sulfide concentrations.

Staff Response 20: Although this issue is not subject to public comment, staff has made modifications to the Fact Sheet to further clarify and coincide with Water Board staff's previous recommendations. The proposed Order does not require sulfides sampling of benthic porewater (refer to the discussion in Section IV.B.5. of the Fact Sheet).

Comment 21: Exclude Dioxin Sampling for Biosolids

"In accordance with the USEPA recent final decisions not to regulate dioxin and dioxin-like compounds in sewage sludge, dioxin should also be excluded from the list of priority pollutants that are required for analysis in biosolid samples."

Staff Response 21: The comment is noted. However, this issue is not subject to public comment.

Comment 22: Modify Outfall Inspection

"Much of the MSCSD outfall pipe is buried deep within seafloor sediments and it is not possible to conduct an external inspection along its entire length." Dr. Coats offered modifications to the existing text in order to provide clarity.

Staff Response 4 22: The comment is noted. However, this issue is not subject to public comment.

F. Public Hearing

The Central Coast Water Board held the continuation of the joint public hearing on December 4-5, 2008, to consider reissuance of the draft NPDES Permit at the Central Coast Water Board's regular meeting as follows:

Date: **December 4-5, 2008**
Time: **8:30 a.m.**
Location: **Regional Water Quality Control Board Conference Room
895 Aerovista Place, Suite 101
San Luis Obispo, California**

Interested persons were invited to attend. At the public hearing, the Central Coast Water Board and USEPA heard testimony pertinent to the discharge and permit. The Central Coast Water Board unanimously adopted the 301(h) modified NPDES Permit Order No. R3-2008-0065 on December 4, 2008.

G. Petitions

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filling petitions may be found on the internet at:

http://www.waterboards.ca.gov/public_noticies/petitions/water_quality

or will be provided upon request.

H. Information and Copying

The Report of Waste Discharge (ROWD), related documents, tentative effluent limitations and special provisions, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Central Coast Water Board by calling or faxing Sue Gerdson at (805) 549-3465 (phone) or (805) 788-3521 (fax).

I. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding this NPDES Permit should contact the Central Coast Water Board, reference this facility, and provide a name, address, and phone number.

J. Additional Information

Requests for additional information or questions regarding this order should be directed to **David LaCaro (805) 549-3892** or dlacaro@waterboards.ca.gov, or Burton Chadwick (805) 542-4786 or bchadwick@waterboards.ca.gov.

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**SETTLEMENT AGREEMENT FOR ISSUANCE OF PERMITS TO
AND UPGRADE OF THE
MORRO BAY-CAYUCOS WASTEWATER TREATMENT PLANT**

THIS AGREEMENT ("Agreement") is made by and between the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION (the "RWQCB"), on the one hand, and the CITY OF MORRO BAY and the CAYUCOS SANITARY DISTRICT (collectively, the "Discharger"), on the other hand. The RWQCB and the Discharger are collectively referred to as the "Parties," and each of them may be singularly referred to as a "Party."

Recitals

A. Pursuant to the requirements of the Clean Water Act ("CWA") section 402 (33 U.S.C. §1342) and Water Code sections 13000 et seq., the RWQCB or the United States Environmental Protection Agency (the "EPA") must prepare and adopt a National Pollutant Discharge Elimination System ("NPDES") permit for the Discharger's wastewater discharge, every five (5) years.

B. Although NPDES permits issued to publicly owned treatment works generally specify secondary treatment of wastewater (33 U.S.C. §1311(b)(1)(B)) or more stringent standards, Congress has authorized the issuance of discharge permits with modified secondary treatment standards under CWA section 301(h) (33 U.S.C. §1311(h)). To qualify for a modified discharge permit, a discharger must satisfy the conditions of CWA Section 301(h) and applicable regulations. The Discharger currently discharges its treated wastewater under a 301(h) modified discharge permit (No. CA0047881) jointly issued by the EPA and the RWQCB, which became effective on March 1, 1999. On July 3, 2003, the Discharger applied to EPA and the RWQCB for another 301(h) modified discharge permit with a peak seasonal dry weather flow limit of 2.36 million gallons per day ("mgd").

C. A modified discharge permit was issued to the discharger in March 1985 (Permit No. CA0047881) by the EPA, Region 9 and the RWQCB. This original permit expired in March of 1990 and has been reissued by the EPA and the RWQCB twice since, in

March 1993 and March 1999. The current (re-issued) permit expired on March 1, 2004, and has been administratively extended until a decision regarding the application is made. On November 10, 2005, the EPA issued its Tentative Decision for the renewal of Discharger's application for a 301(h) modified discharge permit. The EPA's Tentative Decision states the Discharger has successfully demonstrated (through past performance) the ability to comply with the California Ocean Plan water quality standards for suspended solids, dissolved oxygen, and pH and will be in compliance with all applicable Federal water quality criteria. The RWQCB will consider the EPA's Tentative Decision at the time of the issuance of the Modified Discharge Permit.

D. Subject to the provisions of this Agreement regarding the RWQCB's discretion and New Evidence (defined below), this Agreement contemplates that the Water Board will concur in the Modified Discharge Permit (defined below) and issue the NPDES Permit (defined below), which will effect the Discharger's obligation to complete the upgrade of its treatment facility to a minimum of full secondary treatment standards within an eight year period. Pursuant to the May 1984 Memorandum of Understanding ("MOU") for Modified NPDES Permits Under Section 301(h) of the CWA between the California State Water Resources Control Board and EPA Region 9, the RWQCB concurs with EPA 301(h) modified discharge permits and issues CWA Section 401 certification by issuing final waste discharge requirements. Concurrently with issuance of the waste discharge requirements, EPA issues a NPDES permit including the 301(h) modified discharge permit provisions. References in this Agreement to the RWQCB "issuing" a permit means, as applicable, issuance by the RWQCB of waste discharge requirements that constitute Section 401 certification of and concurrence with an EPA NPDES permit that includes modifications under Section 301(h), or issuance by the RWQCB of an NPDES permit.

E. On April 27, 2006, the JPA approved the upgrade of the Plant to meet full secondary treatment standards by March 31, 2014.

F. On May 24, 2007, Cayucos Sanitary District Board of Directors unanimously approved a further upgrade of the Plant to achieve tertiary treatment standards within the same time

frame. On May 29, 2007, the Morro Bay City Council also unanimously approved a further upgrade of the Plant to achieve tertiary treatment standards.

G. In September 2007, the EPA released its final Endangered Species Act Biological Evaluation and requested concurrence from the US Fish and Wildlife Services ("USFWS"). On December 21, 2007, USFWS issued a letter concurring with such conclusions set forth in the EPA's Endangered Species Act Biological Evaluation.

H. Disputes have arisen between the Parties who wish to avoid unnecessary delay, expense and the uncertainties resulting from litigation over treatment plant upgrade, the currently pending and potential future applications for discharge permits. The Parties, therefore, have agreed to settle and resolve issues related to the pending application for permit renewal as set forth in this Agreement.

Agreement

In consideration of the foregoing and the following and for other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. DEFINITIONS

1. Modified Discharge Permit: A five (5) year NPDES permit and waste discharge requirements jointly issued to the Discharger by the EPA and the RWQCB in or about December 2008 that will include requirements for biochemical oxygen demand (BOD₅) and suspended solids that are modified pursuant to CWA section 301(h), and that are no more stringent than the limits in the Discharger's current NPDES permit.

2. NPDES Permit: A five (5) year NPDES permit issued to the Discharger upon the expiration of the Modified Discharge Permit that includes final effluent limits for biochemical oxygen demand (BOD₅) and suspended solids that are at least as stringent as the CWA requirements for full secondary treatment. Interim effluent limits to effect the Conversion Schedule will be set forth in the NPDES Permit, if allowed by law, or in a 13385(j)(3) Order.

3. Conversion Schedule: The schedule for upgrading to at least full secondary treatment as set forth in Section B.1. It is not the intent of this Agreement to impose numeric or narrative requirements for other constituents (e.g., limits for bacteria) that would effectively require the Discharger to upgrade to at least full-secondary treatment faster than provided under the Conversion Schedule.

4. Conversion Period: The eight (8) year upgrade period ending on the last date listed in the Conversion Schedule.

5. New Evidence: Clear and convincing evidence not in the administrative record at the time the Modified Discharge Permit is issued that more stringent limits for BOD₅ or suspended solids are necessary.

6. 13385(j)(3) Order: A time schedule order or cease and desist order that requires the Discharger to complete the upgrade according to the Conversion Schedule, and that meets the requirements of Water Code section 13385(j)(3), in order to allow the RWQCB to avoid imposing mandatory minimum penalties.

B. TERMS.

1. Conversion Schedule

The Discharger agrees to undertake a program to install and operate equipment at its treatment plant capable of achieving, and that will achieve, full secondary treatment requirements set forth in 40 C.F.R. Part 133, other than 40 C.F.R. section 133.105. The upgraded treatment plant must adequately address future wastewater flows, projected as of the end of the Conversion Schedule. The Discharger shall complete the planning, design, construction and operation of the facilities necessary to attain compliance with the secondary treatment requirements in accordance with the Conversion Schedule set forth below.

CONVERSION SCHEDULE

Task	Date of Completion ¹
Preliminary Activities:	
1. Issuance of Request for Consulting Engineering Proposals for Facilities Master Plan	November 11, 2005
2. Award of Consulting Engineering Contracts	April 27, 2006
Facilities Planning:	
1. Submit Final Draft Facilities Master Plan	November 30, 2007
2. Submit Final Facilities Master Plan	September 30, 2009
Environmental Review and Permitting:	
1. Complete and Circulate Draft CEQA Document	February 27, 2009
2. Obtain Coastal Development Permit	May 31, 2011
Financing:	
1. Complete Draft Plan for Project Design and Construction Financing	December 31, 2007
2. Complete Final Plan for Project Financing	June 30, 2008
3. Submit proof that all necessary financing has been secured, including compliance with Proposition 218	October 30, 2009
Design and Construction:	
1. Initiate Design	September 30, 2010
2. Issue Notice to Proceed with Construction	March 29, 2012
3. Construction Progress Reports	Quarterly (with SMRS)
4. Complete Construction and Commence Debugging and Startup	January 31, 2014
5. Achieve Full Compliance with Secondary Treatment	March 31, 2014
1. Any completion date falling on a Saturday, Sunday, or State holiday shall be extended until the next business day. The Discharger shall submit proof of completion of each task within 30 days after the due date for completion.	

2. **Secondary Treatment Limits and Discharger's Conversion to Secondary.**

a. **First Permit Cycle – Waiver Permit.**

1. At its December 5, 2008 meeting, or as soon thereafter as practicable, the RWQCB's Executive Officer shall recommend that the RWQCB (i) concur in the issuance of the Modified Discharge Permit, and (ii) provide water quality certification of the Modified Discharge Permit under the CWA Section 401 (33 U.S.C. §1341). The Executive Officer shall consider all evidence presented at such meeting before making this recommendation. If any evidence not in the record as of May 4, 2006 causes the Executive Officer to recommend against concurrence and certification, he shall identify such new evidence.

2. The BOD₅ and suspended solids limits to be recommended by the Executive Officer for approval are as follows:

Constituent	Units	Monthly (30-day) Average	Maximum at any time
BOD ₅ (20°C)	mg/L	120	180
	lbs/day	2062	3092
	kg/day	936	1404
Suspended Solids	mg/L	70	105
	lbs/day	1203	1804
	kg/day	546	819

3. The findings in the Modified Discharge Permit shall reference this Agreement and shall incorporate the Conversion Schedule. The draft Modified Discharge Permit's findings shall also state that:

(i) Subject to the provisions of this Agreement regarding the RWQCB's Discretion (below) and New Evidence, this Agreement contemplates that the RWQCB will concur in the Modified Discharge Permit and issue the NPDES Permit in order to effect the Discharger's agreement and obligation to complete the upgrade of its treatment facility to full secondary treatment standards within an eight (8) year period.

(ii) Based on the administrative record, including population growth projections through 2015, known environmental and cumulative impacts of the Discharger's existing wastewater treatment facilities, and evidence submitted by the Discharger of the time needed for upgrading the plant, the Conversion Schedule is reasonable, necessary and appropriate.

4. The Modified Discharge Permit shall require the Discharger, as a condition, to submit an application to the RWQCB at least 180 days before the expiration of the Modified Discharge Permit, which application requests the NPDES Permit. The Discharger agrees not to apply for a permit that includes modifications to full secondary discharge requirements after the expiration of the Modified Discharge Permit.

5. If the RWQCB concurs with the Modified Discharge Permit and issues water quality certification, the Discharger shall complete the tasks in the Conversion Schedule by their respective due dates, except as extended in accordance with this Agreement.

b. Second Five-Year Permit Cycle – NPDES Permit. For the five (5) year period following the expiration of the Modified Discharge Permit, the RWQCB shall (i) issue a NPDES Permit that includes effluent limits consistent with CWA full secondary treatment requirements, or any more stringent requirements that are necessary due to New Evidence or that the Discharger agrees to, and (ii) concurrently issue a 13385(j)(3) Order. The 13385(j)(3) Order shall include interim effluent limits for BOD₅ and suspended solids that are the same as those in the Modified Discharge Permit. Notwithstanding the foregoing, the RWQCB may include more stringent limits for BOD₅ and suspended solids if there is New Evidence. The RWQCB may include a shorter Conversion Schedule, after considering the feasibility of meeting a shorter Conversion Schedule, if there is New Evidence that a shorter schedule is necessary. In either case, the NPDES Permit findings shall clearly identify the New Evidence.

c. Other Permit Provisions. This Agreement does not address any effluent limits of the Modified Discharge Permit and the NPDES Permit other than BOD₅ or suspended solids. Notwithstanding anything herein the contrary, Discharger reserves the right to challenge any other provision of the Modified Discharge Permit and the NPDES Permit besides BOD₅ and suspended solid limits or the Conversion Schedule.

d. RWQCB Discretion.

1. This Agreement does not limit the discretion the RWQCB would otherwise have regarding the subject matter of this Agreement. The Parties understand that the RWQCB's members must consider the evidence before them and exercise their authority consistent with applicable laws, the record before them, and the discretion vested in them by applicable laws. Any decision by the RWQCB not to issue the Modified Discharge Permit, NPDES Permit or 13385(j)(3) Order, or to issue a permit that includes more stringent requirements than those set forth herein, e.g.,

more stringent BOD₅ or suspended solids limits or a shorter Conversion Period (either explicitly or through the imposition of effluent limits or other requirements that require a shorter Conversion Period), shall not constitute a breach of this Agreement by the RWQCB. However, the RWQCB's concurrence with the Modified Discharge Permit and related water quality certification, and the issuance of the 13385(j)(3) Order concurrently with the NPDES Permit, are conditions precedent to the Discharger's continuing obligations under this Agreement.

2. The Discharger does not waive the right to challenge the imposition of more stringent limits or standards or a shorter Conversion Schedule than set forth herein, but agrees not to challenge any provision of the Modified Discharge Permit, NPDES Permit or other order of the RWQCB that are consistent with the standards set forth in this Agreement (i.e., Conversion Schedule; BOD₅ and suspended solids effluent limits; remedies for not meeting the Conversion Schedule). Nothing in this Agreement relieves the Discharger of the requirement to exhaust applicable administrative remedies, including those set forth in Water Code Section 13320, to challenge any provision of the Modified Discharge Permit, the NPDES Permit or the 13385(j)(3) Order. The Discharger's sole remedy for any claimed violation of this Agreement shall be by petition pursuant to Water Code Section 13320 and, if applicable, a writ under Water Code Section 13330. The parties acknowledge that the State Board may decline to review any petition filed pursuant to this Agreement. The Discharger hereby waives all of its rights, if any, to seek damages from the Water Board or any of its employees in the event the Discharger claims a breach of this Agreement. Nothing herein shall operate as a waiver of any defenses the RWQCB or its employees may assert in such an action.

C. REQUIRED ACTIONS DURING CONVERSION PERIOD.

1. Force Majeure

a. A "force majeure event" is any event beyond the control of the Discharger, its contractors, or any entity controlled by the Discharger, including, but not limited to third party litigation that delays the performance of any obligation under this Agreement despite the Discharger's best efforts to fulfill the obligation. "Best efforts" includes addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent feasible. If any event occurs that the Discharger believes is a force majeure event, the Discharger shall immediately notify the RWQCB by telephone, and shall

notify the Water Board in writing within thirty (30) calendar days of the date on which the Discharger first knew of the event. The notice shall describe the anticipated length of time the delay may persist, the precise cause or causes of the delay, the measures taken or to be taken by the Discharger to prevent or minimize the delay as well as to prevent future delays, and the timetable by which those measures will be implemented. Failure by the Discharger to comply with the notice requirements of this paragraph, without good cause shall constitute a waiver of the Discharger's right to obtain an extension of time for its obligations based on such incident.

b. If the Executive Officer agrees that a violation has been caused by a force majeure event, the time for performance of an affected requirement shall be extended for a period not to exceed the actual delay in performance resulting from such circumstance. In addition, liquidated damages shall not be due for said delay. The Executive Officer or the Executive Officer's designee shall notify the Discharger of the agreement or disagreement with the Discharger's claim of a delay or impediment to performance within thirty (30) calendar days of receipt of the Discharger's notice. If the Executive Officer does not so agree, or does not notify the Discharger of its decision within thirty (30) calendar days, the request for force majeure classification shall be deemed denied, and the Discharger may appeal that determination to the RWQCB and, if denied thereby, may appeal to the State Board. Notwithstanding anything herein to the contrary, Discharger reserves the right to seek judicial review of the State Board decision. The Discharger bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Discharger gave the notice required by this Section; that the force majeure event caused the delay the Discharger claims was attributable to that event; and that the Discharger reasonably attempted to prevent or minimize any delay caused by the event.

c. Unless determined to be a force majeure event, unanticipated or increased costs or expenses associated with the implementation of this Agreement, or changed financial circumstances, shall not, in any event, serve as a basis for extensions of time under this Agreement, unless otherwise agreed by the Executive Officer.

d. An extension of one compliance date based on a particular incident may, but shall not necessarily result in an extension of a subsequent compliance date or dates.

e. Where the Executive Officer agrees to an extension of time, the appropriate modification shall be made to this Agreement.

f. If the Discharger fails to timely complete a task in the Conversion Schedule because the Discharger must first complete another task with a later due date, the later due date shall not be a defense to missing the earlier due date.

E. ENFORCEMENT

1. Except for force majeure events as provided above, and except as otherwise agreed by the Parties, if the Discharger fails to complete a required action by the date set forth in the Conversion Schedule, liquidated damages shall accrue as set forth below. Liquidated damages shall accrue only with respect to one task on the Conversion Schedule at a time. In other words, if the Discharger is behind schedule with respect to more than one required task, liquidated damages shall accrue only for the most recent task.

a. Liquidated damages shall be \$100/day for the following milestones, which are to be completed prior to the Discharger's issuance of a Notice to Proceed: Issuance of Request for Consulting Engineering Proposals, Submit Final Draft Facilities Plan, Complete and Circulate Draft CEQA Document, Obtain Coastal Development Permit, submit proof that all necessary financing has been secured and Initiate Design. The Discharger shall pay all such accrued liquidated damages within thirty (30) days following the due date for achieving full compliance with secondary treatment requirements. If the Discharger is current (i.e. has "caught up" with the Conversion Schedule) by the due date for achieving full compliance with secondary treatment requirements, or if the RWQCB does not issue the 13385(j)(3) Order, any accrued liquidated damages thereon shall be cancelled and forgiven.

b. Liquidated damages shall be \$200/day if the Discharger fails to issue a timely Notice to Proceed. The Discharger shall pay all such accrued liquidated damages, within thirty (30) days following the due date for achieving full compliance with secondary treatment requirements. If the Discharger is current (i.e. has "caught up" with the Conversion Schedule) by the due date for achieving full compliance with secondary treatment requirements, any accrued liquidated damages thereon shall be cancelled and forgiven.

c. Liquidated damages shall be \$250/day for the first 180 days if the Discharger fails to achieve compliance with secondary treatment requirements by the date specified in the Conversion Schedule. For the next 185 days following the initial 180 days, liquidated damages shall be \$500/day until the Discharger achieves full compliance with full secondary treatment

requirements. After 365 days, liquidated damages shall be \$1,000/day until the Discharger achieves full compliance with full secondary treatment requirements. Liquidated damages under this paragraph shall be paid by the Discharger quarterly, commencing on the first day of the next calendar quarter that is at least thirty (30) days following the date on which the stipulated penalty is incurred.

2. In addition to or in lieu of seeking liquidated damages, the RWQCB may seek judicial enforcement, including specific performance, of this Agreement, including without limitation enforcement of the tasks and due dates set forth in the Conversion Schedule.

3. If the Executive Officer does not agree that a delay in the Discharger's performance was caused by a force majeure event and the Discharger does not stipulate in writing to the amount of penalties due after missing a milestone under the Conversion Schedule, the RWQCB may impose liquidated damages by issuing an administrative civil liability complaint, pursuant to Water Code Sections 13323-13328. This Agreement satisfies the requirement that the RWQCB consider the factors in Section 13327. If the RWQCB chooses to consider those factors, it may impose liquidated damages in excess of the amounts stated in Section E.1, but nothing in this Agreement waives the Discharger's right to contest amounts in excess of those stated in Section E.1. If the RWQCB utilizes the procedures of Sections 13323-13328, the Parties agree that the liquidated damages shall be deemed administrative civil liability. The RWQCB may hold administrative civil liability proceedings at any time, but any administrative civil liability order shall include the applicable payment due date and conditions of cancellation and forgiveness set forth in Sections E.1.a and E.1.b. The Discharger may, but shall not be required to, waive the right to a hearing. If the Discharger does not waive the right to a hearing, except as otherwise stated in this paragraph 3, the Discharger agrees not to challenge the daily amount of the liquidated damages as set forth in this Agreement. The issues for hearing shall be limited to whether the Discharger undertook or completed the required task or activity by the completion date(s) in question, the number of days or months for which liquidated damages apply, and whether the delay, if any, was caused by force majeure. The Discharger agrees not to contest the use of the administrative civil liability process and waives any claim that Water Code Sections 13323-13328 do not apply to administrative enforcement of the stipulated penalty provisions of this Agreement. However, the Discharger reserves the right to petition to the State Board for review of any decision made by the RWQCB under this paragraph. Upon the filing of such a petition, the Discharger and the RWQCB shall

jointly request that the petition be held in abeyance until such time as it is determined, as applicable, that the liquidated damages at issue are not subject to cancellation and forgiveness under Section E.I, such that it can be determined whether any liquidated damages are due and the amount thereof. Following the expiration of the abeyance and either final action by the State Board on the Discharger's petition or the dismissal of the Discharger's petition by the State Board without review, the Discharger may seek judicial review in accordance with California Water Code Section 13330 with respect to the administrative civil liability order. In any such action the Discharger agrees not to challenge the daily amount of the liquidated damages as set forth in this Agreement. Nothing in this paragraph 4 shall relieve the Discharger of any obligation to exhaust applicable administrative remedies prior to seeking judicial review.

4. The requirements of this Agreement with respect to (i) the Conversion Schedule, (ii) the Conversion Period, and (iii) liquidated damages shall be incorporated into the findings adopted by the RWQCB in connection with the Modified Discharge and NPDES Permits. In addition to the procedures set forth above for enforcement with respect to failure to meet the Conversion Schedule, the RWQCB may use any enforcement action or procedure to remedy any and all violations of the terms of any permit (including the Modified Discharge or NPDES Permits) issued to the Discharger, including, without limitation, any remedy set forth in the California Water Code. Nothing in this Agreement shall limit other remedies available to either Party to enforce the terms and conditions of this Agreement or of any permit or 401 certification issued to the Discharger.

F. MISCELLANEOUS PROVISIONS

1. **No Admission of Liability.** Except as set forth in this Agreement, nothing in this Agreement shall be construed as an admission of liability by any Party, or as a waiver of any future claims or causes of action, or as an agreement on the appropriate standard of review or causes of action or claims that may be asserted in challenging any permit issued to the Discharger or the requirements thereof.

2. **Signatures.** This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to have the same force and effect as original signatures. Photocopies and facsimiles of counterparts shall be binding and admissible as originals.

3. **Representation by Counsel.** The Parties agree and confirm that this Agreement has been freely and voluntarily entered into by the Parties, each of which has been fully represented by

counsel at every stage of the proceedings, and that no representations or promises of any kind, other than as contained herein, have been made by any Party to induce any other Party to enter into this Agreement. The language of this Agreement shall be construed in its entirety, according to its fair meaning, and not strictly for or against any of the Parties.

4. **Integrated Agreement.** Except as otherwise set forth in this Agreement, this Agreement contains the entire understanding of the Parties concerning the matters contained herein and constitutes an integrated agreement.

5. **Subsequent Amendment.** This Agreement may not be altered, amended, modified, or otherwise changed except after a public meeting by a writing executed by each of the Parties. The RWQCB may, on a case-by-case basis in a public meeting, delegate to the Executive Officer the authority to approve and sign on behalf of the RWQCB written amendments to this Agreement.

6. **Effective Date.** This Agreement is effective when signed by all Parties and the effective date shall be date of the last signature.

7. **Notice Requirements.** Any notice provided under this Agreement shall be provided by facsimile and first class mail as follows:

If to the Discharger:

District Manager
Cayucos Sanitary District
200 Ash Avenue
P.O. Box 333
Cayucos, CA 93430
Telephone: (805) 995 3290
Facsimile: (805) 995 3673

City Manager
City of Morro Bay
595 Harbor
Morro Bay, California 93442
Telephone: (805) 772-6200
Facsimile: (805) 772-7329

If to the Water Board:

Roger W. Briggs, Executive Officer
REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Telephone: (805) 549-3147
Facsimile: (805) 543-0397

Frances McChesney, Esq.
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, P.O. Box 100
Sacramento, CA 95814
Telephone: (916) 341-5165
Facsimile: (916) 341-5199

Marilyn H. Levin, Esq.
OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1233
Telephone: (213) 897-2612
Facsimile: (213) 897-2802

8. **Authority.** Each Party to this Agreement warrants that the individual executing this Agreement is duly authorized to do so and that execution is the act and deed of the Party.

9. **Counsel Approval.** Counsel for the represented Parties have negotiated, read, and approved as to form the language of this Agreement, the language of which shall be construed in its entirety according to its fair meaning and not strictly for or against any of the Parties.

10. **Fees and Costs.** The Parties acknowledge and agree that each of them will bear their own attorneys' fees and costs in the negotiation, drafting, and execution of this Agreement or any dispute arising out of this Agreement.

11. **Severability.** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

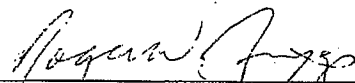
12. **Successors in Interest.** Whenever in this Agreement one of the Parties hereto is named or referenced, the legal representatives, successors, and permitted assigns of such Party shall be included and all covenants and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

13. **References.** This Agreement is made without respect to number or gender, and as such, any reference to a party hereto by any pronoun shall include the singular, the plural, the masculine, and the feminine.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

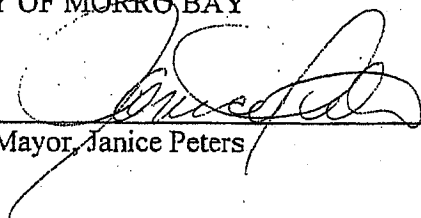
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL
COAST REGION

Dated: Dec 4, 2008

By: 
Roger W. Briggs, Executive Officer

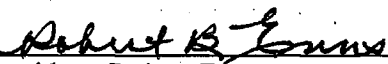
CITY OF MORRO BAY

Dated: Dec 3, 2008

By: 
Mayor, Janice Peters

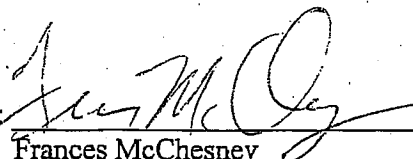
CAYUCOS SANITARY DISTRICT

Dated: Nov. 19, 2008

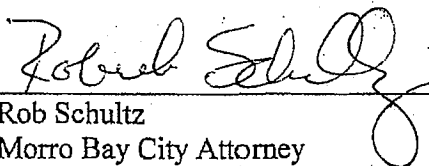
By: 
President, Robert Enns

APPROVED AS TO FORM

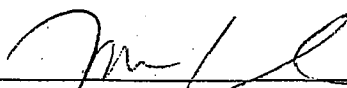
Dated: Dec. 4, 2008

By: 
Frances McChesney
Senior Staff Counsel

Dated: Dec. 3, 2008

By: 
Rob Schultz
Morro Bay City Attorney

Dated: 11/19/, 2008

By: 
Timothy J. Carmel
Cayucos Sanitary District Counsel