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9 STATE OF CALIFORNIA

10 REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

11 In the matter of:

12 COMPLAINT NO. R2-2016-1008
ADMINISTRATIVE CIVIL LIABILITY

13 JOHN D. SWEENEY AND POINT BUCKLER
14 CLUB, LLC
POINT BUCKLER ISLAND,
15 SUISUN MARSH, SOLANO COUNTY

EVIDENTIARY OBJECTIONS (Corrected)

Hearing Date: December 14, 2016

1 John D. Sweeney and Point Buckler Club, LLC (jointly “Mr. Sweeney”) submit these
2 evidentiary objections.

3 **THE PROSECUTION TEAM’S FINANCIAL ANALYSIS SHOULD BE EXCLUDED**

4 Mr. Sweeney objects to the Prosecution Team’s financial analysis on the grounds that its
5 expert has not been qualified, its data and sources of data are unreliable, and its methods have not
6 been properly explained. Specifically, Mr. Sweeney objects to the financial analysis included in the
7 Staff Summary Report at pages 6-10, the ACL Complaint Exhibit A at pages A10-A13, Exhibit
8 Number 34a. Ability to Pay Supporting Evidence, Bryan Elder, August 29, 2016, Exhibit Number
9 34b. Economic Benefit Supporting Evidence, Bryan Elder, September 1, 2016, and Exhibit Number
10 34c. Dredge and Fill Calculator, Agnes Farres, September 1, 2016.

11 First, the Prosecution Team’s Economic Expert, Bryan Elder, has not been qualified as an
12 expert. The Prosecution Team has not established Mr. Elder has special knowledge, skill,
13 experience, training, or education sufficient to qualify him as an expert on the subject to which his
14 testimony relates. Mr. Elder’s analysis must therefore be excluded. The Prosecution Team cannot
15 merely supplement his qualifications now, because doing so would deprive Mr. Sweeney of his due
16 process right to respond and object to those qualifications.

17 Second, the Prosecution Team’s data and sources of data are unreliable. Much of the
18 Prosecution Team’s evidence is outdated or wrong. For example, the Prosecution Team alleged that
19 Mr. Sweeney owned a house in Marin that was actually sold years ago. (ACL Complaint Exhibit A
20 at A10.) Thus, the Prosecution Team’s data and sources of data cannot be trusted.

21 Third, the Prosecution Team failed to properly explain its methods. Although Mr. Sweeney
22 does not object to the summing up of assets and liabilities, the Prosecution Team has not identified
23 how it identifies incorrect data, or how it filters this data. Without a clear explanation of its
24 methods, the Prosecution Team failed to show they meet the standard in *People v. Kelly* (1976) 17
25 Cal.3d 24. Because the Prosecution Team’s financial analysis is unsupported, unreliable, and
26 unexplained, it must be excluded.

1 **NON-PARTIES SHOULD NOT BE ALLOWED TO PARTICIPATE**

2 The Revised Hearing Procedure allows “interested persons” to submit written comments and
3 present “non-evidentiary policy statements” at the hearing. Mr. Sweeney objects to this practice.
4 Non-party statements may be appropriate for quasi-legislative proceedings, but they are not
5 appropriate for adjudicatory proceedings. Just as non-parties are not allowed to participate in a court
6 proceeding, no non-parties should be allowed to participate in this proceeding. Mr. Sweeney should
7 not be tried in the court of public opinion. Mr. Sweeney requests that all non-parties be prohibited
8 from participating at the hearing and that all written comments and Prosecution Team responses be
9 excluded from the record.

10 **THE PROSECUTION TEAM’S JURISDICTIONAL DATA SHOULD BE EXCLUDED**

11 When calculating the Regional Board’s jurisdiction, the Prosecution Team uses Port Chicago
12 data on Point Buckler without properly establishing a relationship between the two. Mr. Sweeney
13 objects to the Prosecution Team’s use of unreliable methods and data. The Prosecution Team should
14 have established a tide gauge on Point Buckler for an appropriate period, and used the data to
15 establish a relationship. Because it did not, it cannot use Port Chicago data to determine tidal
16 elevation at Point Buckler. (See *People v. Kelly* (1976) 17 Cal.3d 24.)

17 Instead of using a tide gauge, the Technical Report bases its assessment on one data point.
18 One point is insufficient. Moreover, the one data point is plainly inaccurate because it is based on
19 the wetted area of a board, rather than on actual water levels. Using a wetted board to establish the
20 relationship between Port Chicago and Point Buckler is not reliable because measurements can be
21 wrong by nine inches. (Declaration of Terry Huffman in Support of Opposition to the Proposed
22 Penalty Order at ¶ 27.)

23 Because the Prosecution Team conducted its jurisdictional analysis using unreliable methods
24 and data, it must be excluded.

1 DATED: November 14, 2016

2 BRISCOE IVESTER & BAZEL LLP

3 *Max Rollens*

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5 By: _____
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8 and John D. Sweeney
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