DECLARATION OF STEVEN CHAPPELL

I, Steven Chappell, declare as follows:

1. I am the Executive Director of the Suisun Resource Conservation District ("SRCD"). I have been employed by the SRCD since 1994 and have held the position of Executive Director since 1998.

2. The Suisun Soil Conservation District ("SSCD") was originally created in 1963. In 1971 the SSCD became the SRCD under the expanded powers of Division 9 of the Public Resource Code ("PRC").

3. In1974, the Legislature enacted the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974 which required the San Francisco Bay Conservation and Development Commission ("BCDC") to prepare and submit to the Governor and Legislature on or before December 1, 1976, a Suisun Marsh Protection Plan ("SMPP").

4. In December, 1976, the BCDC, in collaboration with the California Dept. of Fish and Wildlife, issued the SMPP, as defined in Section 29113(a) of the Suisun Marsh Preservation Act (PRC §§ 29000 – 29612; "SMPA"). In Part III, "Regulation Recommendations: 2. Water Management District," the SMPP recommended that the SRCD should be empowered to "regulate water management practices at managed wetlands controlled by privately-owned duck clubs." Thereafter, in 1977, the Legislature empowered the SRCD to fulfill this responsibility through the enactment of PRC Sections 9960-9963 as part of the same law (Ch. 1155) that enacted the SMPA. PRC § 9962(a) states that the SRCD "shall have primary local responsibility for regulating and improving water management practices on privately owned lands within the primary management area ["PMA"] of the Suisun Marsh in conformity with [the SMPA] and the SMPP."

5. The area over which the SRCD exercises its statutory responsibility encompasses 115,000 acres in the Suisun Marsh, as that term is defined in Section 29101 of the SMPA, which is comprised of approximately of 52,000 acres of managed wetlands, 6,000 acres of unmanaged tidal wetlands, 30,000 acres of bays and sloughs, and 27,000 acres of upland grasslands.

6. In Part II, "Findings and Policies: Environment" Finding 4 and "Land Use and Marsh Management" Finding 1 of the SMPP states that: "Tidal marsh is an important habitat for many wildlife species, including the endangered salt marsh harvest mouse and the Suisun shrew. Tidal marshes also contribute to the maintenance of water quality in the SF Bay." "Land Use and Marsh Management" Policy 3 of the SMPP states that: "The tidal marshes in the PMA should be preserved."

Exhibit B

7. Section 29401(d) of the SMPA requires the SRCD to prepare, as a component of the "Local Protection Program" ("LPP") mandated by the SMPA, "a management program...designed to preserve, protect, and enhance the plant and wildlife communities within the PMA of the [Suisun] marsh, including...enforceable standards for diking, flooding, draining, filling, and dredging of sloughs, managed wetlands, and marshes." The SRCD prepared the Suisun Marsh Management Program ("SMMP") to carry out this directive. The SMMP consists of the following principal elements: (1) a general management program; (2) pursuant to section 29412.5 of the SMPA, individual water management programs ("IMPs") for each privately owned "managed wetland" within the PMA of the Suisun Marsh; (3) pursuant to section 29401(d) of the SMPA, enforceable standards covering diking, flooding, draining, filling and dredging of tidal waters, managed wetlands and tidal marsh wthin the primary management area; and (4) pursuant to section 9962(b) of the PRC, regulations adopted by SRCD to ensure effective water management on privately owned lands within the PMA. Pursuant to Section 29415 of the SMPA, in 1980 the BCDC certified the SMMP as consistent with the provisions of the SMPA and the SMPP. The SMMP notes at Section II.C.1 of Part 1 that "the policies of the SMPP prohibit future conversion of tidal marsh or open water areas to managed wetland or agricultural status."

8. In Exhibit C ("Standards Covering Diking, Flooding, Draining, Filling and Dredging of Tidal Waters, Managed Wetlands, and Tidal Marsh"), Section III ("Purpose"), the SMMP states that one of the principal goals of the standards set forth in Ex. C is "minimizing activities in tidal marshes and waters." The standards contained in Ex. C, Section VI ("Specific Principals and Standards") for the activities specified in the title of Ex. C vary depending on the location of the activity in either A) tidal waters, B) managed wetlands, or C) tidal marshes.

9. In Section II of Ex. C the SMMP defines the term "managed wetland" to mean "leveed areas...in which water inflow and outflow is artificially controlled, or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds and wildlife." As such, the SMMP's definition of the term "managed wetland" is substantially identical to the definition of that term that is contained in Section 29105 of the SMPA. This same section of Ex. C of the SMMP defines the term "tidal marsh" to mean "vegetated areas...which are subject to daily tidal action."

10. In Section II.C.1 ("Individual Management Programs: Program Financing: Capital Improvements") of Part 2 ("Implementation"), the SMMP notes that "the adequacy of the water management facilities on the individual private ownerships varies tremendously." The SMMP further observes that: "it is evident that a substantial number of improvements are still necessary before all ownerships have adequate facilities."

11. The Soil Conservation Service ("SCS") of the US Dept. of Agriculture prepared an IMP for each of the privately owned managed wetlands in the Suisun Marsh. One of the "managed wetlands" for which the SCS prepared an IMP is the Annie Mason Point Club ("AMPC"), Club #801. The AMPC is located on Pt. Buckler Island ("the Site"), which is located within the PMA of the Suisun Marsh off the western tip of Simmons Island. In a Section entitled "Club Improvements: Water Management: Needed Improvements, the AMPC IMP emphasizes that: "Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures" and "Levees require frequent inspection and attention to prevent major breaks from occurring."

12. In a "Plan of Protection for the Suisun Marsh" ("POP") completed in February, 1984, by the Cal. Dept. of Water Resources ("CDWR"), the CDWR states, at p. 103, in connection with a proposal for the CDWR to provide a water pump to the AMPC, that: "Levees about Annie Mason Island are not now in good repair. The pumping equipment will be...installed when the landowner has improved the island's levee system to provide adequate protection of the island." Additionally, on September 13th, 1988, the SRCD sent James Taylor, the AMPC landowner at the time, a letter noting that "one of the conditions of this installation [of a pump facility by CDWR] is that your exterior levee system be intact and up to standards." The letter requested information, "if the requisite work (levee repairs) has been done, and if not, when completion can be expected." The landowner never responded to this SRCD inquiry and to SRCD's knowledge, CDWR has never installed this pump due to the failure of the AMPC exterior levee integrity and the landowner's continued inability to artificially control the inflow and outflow of water at AMPC.

13. Notwithstanding the foregoing findings by the CDWR, the AMPC IMP in the "Summary" section contains a "report" by the "club" that "it now has the water control structures and tight levees necessary for proper water management."

14. On January 29, 1990, a "Wetlands Maintenance Management Report" was prepared which identified 11 locations along approximately 2,450 linear feet of the levee protecting the Site as being in need of interior and exterior repair work. There is no evidence that this needed repair work was ever completed or even undertaken

15. Since 1977 and thus at all times subsequent to the initial certification of the AMPC IMP by the BCDC in 1984, all owners of land within the Suisun Marsh, including but not limited to the Site, have been subject to additional regulatory requirements imposed by the US Army Corps of Engineers ("USACE") under the Clean Water Act and the Rivers and Harbors Act of 1899. These requirements and permitted scope of work defined as a set of discrete authorized maintenance activities have been set forth in a series of Regional General Permit 3's ("RGP3"). The RGP3's authorize the SRCD as co-permittee to "represent" Suisun Marsh landowners with respect to managed wetlands maintenance activities that said

landowners have undertaken or desire to undertake in the Suisun Marsh. During brief periods of time during which a RGP3 has not been in effect the SRCD has performed a similar function under an applicable USACE Nationwide Permit. The RGP3 has typically been issued serially by the USACE for successive 5 year terms. The RGP3 currently in effect, dated July 8, 2013, regulates, among other things, "2) ACTIVITIES ON LEVEES: a. Repair of Interior and Exterior Levees...to repair damage from storms and to counteract subsidence of the levees." Previous versions of the RGP3 contained regulatory requirements of similar scope and content. Under Section 6, "PERMIT ADMINISTRATION," the RGP 3 requires landowners in the Suisun Marsh who intend to perform repair and other work activities that are regulated by the RGP3 to prepare and submit to the SRCD a report (called a "work request form") that describes the proposed activities. The RGP3 gives to the SRCD the responsibility to compile and forward to the USACE the reports that landowners submit to the SRCD, for USACE review and authorization.

16. Since 1994, the records of the SRCD reveal no reports for purposes of compliance with an RGP3 or other evidence of any action on the part of the owners of the Site to maintain the levees and other water control structures on the Site as called for by the AMPC IMP. Due to the complete absence for a period in excess of 20 years of any repair and maintenance work on the exterior levee on the AMPC it is my professional judgment that it is not physically possible for a levee subject to such a lengthy period of inactivity, neglect, and numerous storm damage flooding events to retain the ability to control the inflow and outflow of tidal waters into and from the area that the levee had been originally constructed to protect. As a consequence of this inaction, the levees on the Site were allowed to deteriorate to the point that, when Mr. Sweeney purchased the Site, they no longer controlled the inflow and outflow of tidal water from the Site. As a result the hydrological status of the Site since 1994 was not that of "managed wetland," but rather that of a "tidal marsh", as those terms are defined in Section II of Ex. C of the SMMP. Thus, the standards for "diking, flooding, draining, filling, and dredging" contained in Ex. C of the SMMP that were applicable to the AMPC were those for a "tidal marsh," not those for a "managed wetland."

17. On March 19, 2014, I accompanied Joe LaClair and Cody Aichele-Rothman of the BCDC on a tour of the Suisun Marsh, which included a number of private duck clubs located in the Suisun Marsh. One of the clubs we visited was Club #802 (Rich Island). The Site is located a short distance (approximately 100 yards) across the Annie Mason Slough from Club #802. While we were present on Club #802, I personally observed a significant amount of heavy machinery consisting of a crane, a bulldozer, and other machinery on the Site. I also observed on the Site a substantial amount of landform alteration, i.e., excavation and redeposit of excavated material. The work appeared to have as its purpose the construction of a new exterior levee on the Site. Other nearby landowners had reported this activity to the SRCD, but it came as a surprise to me because, as stated above in

paragraph 15 and 16, any work of this nature on a site that met the definition of a "tidal marsh" in the SMMP was clearly subject to the requirements of the USACE, RWQCB, and BCDC permitting authority. Based upon my own personal knowledge that there had been no such permit authorization or request under the RGP3, nor could it have been authorizable by the USACE, for the construction activity we observed on the Site on March 19.

18. In Section VI.C.1 ("Specific Principles and Standards: Tidal Marshes: Diking") of Ex. C, the SMMP prohibits "diking of tidal marsh areas except in conformance with the findings of the SMPP and the provisions of a certified IMP...." Similarly, Section VI.C.2 ("Specific Principles and Standards: Tidal Marshes: Flooding and Draining") of Ex. C of the SMPP requires that "activities that would affect the natural daily flooding and draining of existing tidal marshes...be undertaken only in conformance with the findings of the SMPP and the provisions of a certified IMP...."

19. As noted above in Paragraph 11 of this declaration, the AMPC IMP authorizes the "inspection and maintenance" of existing levees on the AMPC property. It does not authorize the construction of any new levee to replace any levee that may previously have existed on the Site but which has functionally ceased to exist as a result of neglect and lack of attention. Thus the work Mr. Sweeney has performed in the form of new exterior levee construction is not authorized by, or in conformity with, the provisions of the certified AMPC IMP. Most notably, the AMPC IMP does not authorize any improvements or other work to occur in any area of the Site that meets the definition of a "tidal marsh," as that term is defined in Section II of Ex. C of the SMMP.

20. Accordingly, the construction by Mr. Sweeney of a new perimeter exterior levee on the Site in 2014 was inconsistent with both the findings of the SMPP (as quoted above in Paragraph 6 of this declaration) and with the provisions of the AMPC IMP.

21. Under Ex. C of the SMMP if the "diking of tidal marsh areas" or the obstruction of "the natural daily flooding and draining of existing tidal marshes" that are not "in conformance with [either] the findings of the SMPP [or] the provisions of a certified IMP" are only allowed if such activities occur "with the permission of the appropriate permitting authorities" such as the BCDC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is signed at Solano, CA on April 21, 2016.

Steven Chappell

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