CALIFORNIA Water Boards

EDMUND G. BROWN JR. GOVERNOR

MATTHEW RODRIQUEZ SECRETARY FOR ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2016-1008

ISSUED TO

JOHN D. SWEENEY AND POINT BUCKLER CLUB, LLC
171 SANDPIPER DRIVE, PITTSBURG, CA 94565
CONTRA COSTA COUNTY

HEARING SCHEDULED FOR DECEMBER 14, 2016

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 against John D. Sweeney and Point Buckler Club, LLC (Dischargers) alleging that they have violated Water Code section(s) 13385, subdivisions (a)(4) and (5) by illegally discharging fill into waters of the State and United States at Point Buckler Island, Solano County. The Complaint proposes that a civil liability in the amount of $4,600,000 be imposed as authorized by Water Code section(s) 13385, subdivision (c)(1)(2).

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order imposing the liability proposed in the Complaint, imposing a higher or lower amount, or rejecting the proposed liability; or whether to refer the matter to the Attorney General for judicial enforcement. In addition, the Regional Water Board will consider the proposed CAO and any comments provided by the Dischargers or interested persons related to the CAO. An agenda for the Regional Water Board meeting and notice regarding where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (http://www.waterboards.ca.gov/sanfranciscobay/).

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed

waived. Except as provided in section 648, subdivision (b), and herein, Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion. **Any objections to this Hearing Procedure must be received by Marnie Ajello by September 2, 2016**, **or they will be waived.**

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

(1) The Regional Water Board Prosecution Team

(2) John D. Sweeney and Point Buckler Club, LLC, referred to as the Dischargers
John D. Sweeney, Manager, Point Buckler Club, LLC
171 Sandpiper Drive, Pittsburg, CA 94565
john@spinnerisland.com; (415) 686-0907

Lawrence Bazel, Legal Counsel, Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor, San Francisco, CA 94104
lbazel@briscoelaw.net; (415) 402-2711

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by Marnie Ajello by 5 p.m. on **September 2, 2016**. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person or group), the information required of designated parties as provided below, and a statement explaining why the parties designated above do not adequately represent the person or group's interest. Any opposition to the request must be received by the Advisory Team, the person or group requesting party status, and all parties by 5 p.m. on **September 7, 2016**. The parties will be notified by 5 p.m. on **September 12, 2016**, in writing, whether the request has been granted or denied.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water

Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:

Shin-Roei Lee, Assistant Executive Officer, North Coast Regional Water Quality Control Board; Shin-Roei.Lee@waterboards.ca.gov; (707) 570-3769
David Elias, Section Leader; David.Elias@waterboards.ca.gov; (510) 622-2509
Liz Morrison, Technical Staff; Elizbeth.Morrison@waterboards.ca.gov; (510) 622-2330
Elizabeth Wells, Technical Staff; Elizabeth.Wells@waterboards.ca.gov; (510) 622-2440
David Coupe, Attorney IV; David.Coupe@waterboards.ca.gov; (510) 622-23-6
Marnie Ajello, Attorney; Marnie.Ajello@waterboards.ca.gov, (916) 327-4439

Primary Contact: Marnie Ajello

Prosecution Team:

Agnes Farres, Technical Staff; Agnes.Farres@waterboards.ca.gov; (510) 622-2401
Benjamin Martin, Technical Staff; Benjamin.Martin@waterboards.ca.gov; (510) 622-2116
Brian Thompson, Section Leader; BThompson@waterboards.ca.gov; (510) 622-2422
Dyan C. Whyte, Assistant Executive Officer, DWhyte@waterboards.ca.gov, (510) 622-2441
Keith Lichten, Division Chief; Keith.Lichten@waterboards.ca.gov; (510) 622-2380
Tamarin Austin, Attorney IV; Tamarin.Austin@waterboards.ca.gov; (510) 622-2490
Laura Drabandt, Attorney III; Laura.Drabandt@waterboards.ca.gov; (916) 341-5180
Julie Macedo, Attorney IV; Julie.Macedo@waterboards.ca.gov; (916) 323-6847

Primary Contact: Benjamin Martin

Regional Board Experts:
Peter Baye, PhD, Botanist/Coastal Ecologist, baye@earthlink.net, (425) 310-5109
Stuart Sigel, PhD, Professional Wetlands Scientist, stuart@swampthing.org, (415) 299-8746

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits generally apply: each designated party shall have a combined 120 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than **November 14, 2016**, by 5 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Dischargers only) If the Dischargers intend to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

   The Prosecution Team will move to exclude any evidence on inability to pay that is not submitted with other evidence in accordance with the timeframes herein.

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Marnie Ajello and other designated parties no later than **September 2, 2016**, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Marnie Ajello and other designated parties no later than **October 17, 2016**, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Marnie Ajello and the other designated parties no later than **November 14, 2016**, by 5 p.m. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Marnie Ajello and each designated party no later than **September 2, 2016**, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with California Code of Regulations, title 23, section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to Marnie Ajello and all other designated parties no later than **November 14, 2016**, by 5 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Benjamin Martin.

Questions

Questions concerning this proceeding may be addressed to Marnie Ajello.

IMPORTANT DEADLINES

Note: The Dischargers have waived their right to a hearing on the Complaint within 90 days. **The following deadlines apply to the hearing on the Complaint No. R2-2016-1008:**

MAY 17, 2016	Prosecution Team issues the Complaint/Tentative CAO to Dischargers
SEPTEMBER 2, 2016	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
SEPTEMBER 2, 2016	Dischargers' and interested persons deadline for submission of written comments/non-evidentiary policy statements
SEPTEMBER 2, 2016	Deadline for objections, if any, to this Hearing Procedure
SEPTEMBER 2, 2016	Deadline for requests for designated party status
SEPTEMBER 7, 2016	Deadline for oppositions to requests for designated party status
SEPTEMBER 12, 2016	Advisory Team issues decision on requests for designated party status, if any
OCTOBER 17, 2016	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
NOVEMBER 14, 2016	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
DECEMBER 14, 2016	Regional Water Board Hearing