

ENVIRONMENTAL ADVOCATES  
ATTORNEYS AT LAW

5135 ANZA STREET  
SAN FRANCISCO, CALIFORNIA 94121  
PHONE: (415) 533-3376  
FAX: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

December 14, 2009

***Via Certified Mail, Return Receipt Requested, and Electronic Mail***

Mayor Gavin Newsom  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Email: [gavin.newsom@sfgov.org](mailto:gavin.newsom@sfgov.org)

General Manager Phil Ginsburg  
San Francisco Recreation and Park Department  
501 Stanyan Street  
San Francisco, CA 94117

Re: Sixty-Day Notice of Violations of Clean Water Act and Notice of Intent to File Suit

Dear Mr. Newsom and Mr. Ginsburg:

I am writing on behalf of Wild Equity Institute ("WEI") to notify you of serious and ongoing violations of the federal Clean Water Act ("CWA") at the City of San Francisco's Sharp Park ("the Park"). The purpose of this letter is further to provide notice of WEI's intent to file a civil action against the City of San Francisco ("San Francisco") sixty days (60) days after the date of this letter.

**I. IDENTITY OF PERSONS GIVING NOTICE AND THEIR COUNSEL**

In accord with 40 C.F.R. section 135.3(b), WEI hereby gives notice of the names, addresses, and telephone numbers of the person giving notice, which is WEI.

WEI is a non-profit public benefit corporation with members, *inter alia*, in and around Pacifica, California. WEI works to build a healthy and sustainable global community for people and the plants and animals that accompany us on Earth. With a team of experts in law, management, design, and education, WEI accelerates the transition to a more equitable world through innovative education programs, nature-inspired design, science-based petitions, and vigorous enforcement of environmental laws.

WEI works to link the grassroots biodiversity conservation movement and the environmental justice movement through the movements' shared moral foundation: equity, the creation of a

more just and fair world. WEI aims to create a healthy and sustainable global community for all by, *inter alia*, advocacy that aims to promote biodiversity, equitable preservation of habitats and equal opportunity for all to access to a healthy and diverse environment.

WEI's members use Pacifica's ocean waters, streams and wetlands, including those within or adjoining Sharp Park, for body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. These WEI members are concerned about water quality and are, and will continue to be, adversely affected by San Francisco's CWA violations at Sharp Park. WEI may be contacted at:

Wild Equity Institute  
PO Box 191695  
San Francisco, CA 94119  
E-mail: [info@wildequity.org](mailto:info@wildequity.org)

WEI has retained the following legal counsel to represent them in this matter:

Brent Plater, Esq.  
PO Box 191695  
San Francisco, CA 94119  
E-mail: [bplater@wildequity.org](mailto:bplater@wildequity.org)

Christopher A. Sproul, Esq.  
Environmental Advocates  
5135 Anza Street  
San Francisco, California 94121  
Tel: (415) 533-3376, Fax: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

All communications should be addressed to legal counsel at the above addresses.

## **II. FACTUAL BACKGROUND**

San Francisco is a municipality incorporated under the laws of the State of California. San Francisco owns and operates the Park.

Sharp Park is located in the town of Pacifica in San Mateo County. The Park borders the Pacific Ocean and is bisected by Highway 1. The Sharp Park Golf Course is on both sides of Highway 1.

At just over 400 acres, Sharp Park is one of the largest parks in overall acreage in the San Francisco Recreation and Park Department (SFRPD) system. About 237 acres of the Park are in an undeveloped condition and encompass the upper canyon areas, portions of Sanchez Creek, and the Laguna Salada wetlands and associated vegetation (*see* Exhibit 2 attached to this notice letter). The Park's vegetation includes much invasive forest and non-native grass for a golf

course, but also contains significant areas of wetlands and native scrub vegetation.

As one of the largest SFRPD parks that has habitat which supports endangered species, Sharp Park has high natural resource and recreational values. The Park contains two natural water bodies, Sanchez Creek and a twenty-five acre brackish lake/wetland complex known as Laguna Salada.<sup>1</sup> The Park is situated between two regionally significant open spaces, Milagra and Sweeney ridges, and includes regionally important wildlife habitat and connections between habitat for resident and migratory birds and populations of several threatened or endangered species: California red-legged frogs (*Rana aurora draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and San Francisco forktail damselfly (*Ischnura gemina*).

Sanchez Creek is about 1.5 miles long. It flows from upland hills to the east, under Highway 1, meanders through the Sharp Park Golf Course and ends in Horse Stable Pond. Horse Stable Pond is a shallow lake and wetland complex near the Pacific Ocean shoreline that is separated from the ocean by an artificial levee. SFRPD pumps water from Horse Stable Pond via a pumping system to an outfall on the beach that discharges to the ocean.

Laguna Salada is located within and surrounded by the Sharp Park Golf Course. Laguna Salada is also connected to Horse Stable Pond via a thousand-foot long artificial canal known as "the connector channel." The connector channel conveys flow from Laguna Salada to Horse Stable Pond.

SFRPD discharges storm water and irrigation water runoff into Laguna Salada via two culverts that run across the Sharp Park Golf Course. See Exhibits 1 and 2 (maps depicting Sharp Park's waterways) (attached). The first of these culverts ("Culvert 1") enters the golf course near the golf course club house and then flows into the southeastern margin of Laguna Salada. *Id.* The second of these culverts ("Culvert 2") enters the eastern edge of the golf course and then flows into the northern end of Laguna Salada. *Id.* Culverts 1 and 2 receive storm water and irrigation water from various storm drains and drainage features along the culverts' pathways, including storm water and irrigation water runoff from the golf course. This storm water and irrigation water runoff from the golf course contains elevated pollutants from the fertilizers and chemicals applied to the golf course. The flows in Culverts 1 and 2 further contain various elevated pollutants from the various other urban storm water and irrigation water discharges to the Culverts.

Storm water and irrigation water runoff from the golf course also flows into Sanchez Creek via various drainage features. Again, this storm water runoff from the golf course contains elevated pollutants from the fertilizers and chemicals applied to the golf course. Storm water and/or irrigation water runoff also flows into Sanchez Creek from Highway 1 and a nearby

---

<sup>1</sup> In its original condition, Laguna Salada was similar to other backbarrier lagoons along coastal California: it trapped winter runoff until the water overtopped the dunes and flowed outward to the ocean. Construction of the Sharp Park golf course and completion of a levee prevented natural freshwater outflow, resulting in flooding.

residential neighborhood. These runoff flows also contain various elevated levels of pollutants which add to the pollutant loading in Sanchez Creek.

Horse Stable Pond contains elevated levels of fertilizers and pesticides applied to the golf course that flow into Sanchez Creek and Laguna Salada and then into the Pond and from the runoff from Highway 1 and the nearby residential neighborhood. Horse Stable Pond contains elevated levels of various other pollutants from other unknown sources. In particular, the Pond contains elevated levels of the following pollutants: E. coli, fecal coliform, nitrite, ammonia, nitrogen, phosphates, zinc, mercury, selenium, copper, and excessive total dissolved solids and turbidity. San Francisco discharges these pollutants to the Pacific Ocean when it pumps water in Horse Stable Pond into the ocean.

San Francisco's pollutant discharges to Sanchez Creek, Laguna Salada, and Horse Stable Pond are environmentally injurious as these waters and their associated wetlands provide valuable habitat for numerous important species. Surveys in these waters have documented the presence of several amphibian and reptile species, including the threatened California red-legged frog--which have been observed to breed in Laguna Salada and Horse Stable Pond. Surveys have also documented the presence of threatened San Francisco garter snakes in the Laguna Salada area. These waters also provide habitat for numerous bird species, including grebes, rails, ducks, and red-wing blackbirds. The elevated levels of pollutants present in these waters as a result of SFRPD's discharges are endangering the health of these species.

San Francisco's pollutant discharges from Horse Stable Pond to the Pacific Ocean are also environmentally injurious as the ocean waters adjoining Sharp Park are biologically rich and provide habitat for numerous marine species, including various marine mammals. The elevated levels of pollutants in discharges from Horse Stable Pond are endangering the health of these species.

### **III. STATUTORY BACKGROUND**

The CWA prohibits the discharge of pollutants by any person from any point source to waters of the United States except in compliance with a permit duly issued under the CWA. CWA § 301(a), 33 U.S.C. § 1311(a). The CWA authorizes EPA, or states with permit programs approved by EPA, to issue National Pollutant Discharge Elimination System (NPDES) permits allowing for the discharge of pollutants into waters of the United States. CWA § 402, 33 U.S.C. § 1342.

NPDES permits must include effluent limitations set according to the level of pollutant reduction attainable via the application of best available technology economically achievable. CWA § 301(b)(2), 33 U.S.C. § 1311(b)(2). In addition, NPDES permits must include any more stringent effluent limitations necessary to meet state water quality standards. CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C).

EPA has approved the State of California's State Water Resources Control Board ("State Board") and Regional Water Quality Control Boards to administer an NPDES permit program in

California.

40 C.F.R. § 122.21(a) imposes a duty to apply for NPDES permit authorization on all persons who discharge pollutants to waters of the United States from a point source. San Francisco has not applied for nor acquired NPDES permit authorization from the State Board or the California Regional Water Quality Control Board, Region 2 ("the Regional Board") for any of the discharges identified in this notice letter.

San Francisco has repeatedly violated the CWA by discharging pollutants without NPDES permit authorization.

#### **IV. VIOLATIONS OF THE FEDERAL CLEAN WATER ACT**

##### **A. Unpermitted Discharges of Pollutants to Laguna Salada**

As noted above, San Francisco has repeatedly discharged storm water and irrigation water runoff via Culverts 1 and 2 into Laguna Salada that has contained elevated levels of various pollutants, including pesticides, fertilizers, oil and grease, trash, E. coli, fecal coliform, nitrite, ammonia, nitrogen, phosphates, zinc, mercury, selenium, copper, excessive total dissolved solids and turbidity. Culverts 1 and 2 are confined, discrete conveyances and constitute point sources. In addition, San Francisco has discharged storm water and irrigation water runoff from the Sharp Park Golf Course to Culverts 1 and 2, and thus ultimately Laguna Salada, via various drainage features on the golf course. These drainage features are also point sources. Laguna Salada is ultimately a tributary of the Pacific Ocean and/or a wetland adjacent to the Pacific Ocean, hence a water of the United States. San Francisco does not have NPDES permit authorization to discharge pollutants from point sources to Laguna Salada. All such discharges have thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), which expressly provides:

Except as in compliance with this section and sections . . . 1342 [which provides for NPDES permit authorization for pollutant discharges] . . . the discharge of any pollutant by any person shall be unlawful.

33 U.S.C. § 1311(a).

San Francisco has discharged polluted storm water from Culverts 1 and 2 into Laguna Salada and from golf course drainage features to Culverts 1 and 2 (and thus to Laguna Salada) during at least every significant local rain event over 0.1 inches in the last five years preceding the date of this notice letter. Significant local rain events are reflected in the rain gauge data available at <http://cdec.water.ca.gov> and <http://lwf.ncdc.noaa.gov/oa/ncdc.html>. In addition, San Francisco has discharged polluted irrigation runoff water from Culverts 1 and 2 into Laguna Salada and from golf course drainage features to Culverts 1 and 2 (and thus to Laguna Salada) during every day that it has irrigated the golf course. The dates of such irrigation events are well known to San Francisco, as it performs the irrigation operations in question. Each such day of discharge into Laguna Salada from each of these point sources is a separate and distinct CWA

violation.

### **B. Unpermitted Discharges of Pollutants to Sanchez Creek**

As noted above, San Francisco has repeatedly discharged storm water and irrigation water runoff via various drainage features on the golf course into Sanchez Creek that contain elevated levels of various pollutants, including pesticides, fertilizers, trash, E. coli, fecal coliform, nitrite, ammonia, nitrogen, phosphates, excessive total dissolved solids and turbidity. These drainage features are confined, discrete conveyances and constitute point sources. Sanchez Creek is ultimately a tributary and/or connected to the Pacific Ocean, hence a water of the United States. San Francisco does not have NPDES permit authorization to discharge pollutants from point sources to Sanchez Creek. All such discharges have thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

San Francisco has discharged polluted storm water from golf course drainage features into Sanchez Creek during at least every significant local rain event over 0.1 inches in the last five years preceding the date of this notice letter. Significant local rain events are reflected in the rain gauge data available at <http://cdec.water.ca.gov> and <http://lwf.ncdc.noaa.gov/oa/ncdc.html>. In addition, San Francisco has discharged polluted irrigation runoff water from golf course drainage features into Sanchez Creek during every day that it has irrigated the golf course. The dates of such irrigation events are well known to San Francisco, as it performs the irrigation operations in issue. Each such day of discharge into Sanchez Creek from each of these point sources is a separate and distinct CWA violation.

### **C. Unpermitted Discharges of Pollutants to Horse Stable Pond**

San Francisco has repeatedly discharged storm water and irrigation water runoff into Horse Stable Pond that contain elevated levels of various pollutants, including pesticides, fertilizers, oil and grease, trash, E. coli, fecal coliform, nitrite, ammonia, nitrogen, phosphates, zinc, mercury, selenium, copper, and excessive total dissolved solids and turbidity, by discharging such runoff via point sources into Laguna Salada and Sanchez Creek—which in turn flow into Horse Stable Pond. Alternatively, the connector channel and/or Sanchez Creek are point sources from which San Francisco discharges pollutants into Horse Stable Pond on every day there is flow in either the connector channel or Sanchez Creek into Horse Stable Pond. Horse Stable Pond is ultimately a tributary of the Pacific Ocean and/or a wetland adjacent to the Pacific Ocean, hence a water of the United States. San Francisco does not have NPDES permit authorization to discharge pollutants from point sources to Horse Stable Pond. All such discharges have thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

San Francisco has discharged polluted storm water and irrigation water runoff into Horse Stable Pond on all the dates that it has discharged pollutants into Laguna Salada as discussed above during which there also were flows in the connector channel from Laguna Salada to Horse Shoe Pond. In addition, San Francisco has discharged polluted storm water and irrigation water runoff into Horse Stable Pond on all the dates that it has discharged pollutants into Sanchez

Creek as discussed above. Each such day of discharge into Horse Stable Pond from Laguna Salada and the connector channel is a separate and distinct CWA violation. Each such day of discharge into Horse Stable Pond from Sanchez Creek is also a separate and distinct CWA violation.

**D. Unpermitted Discharges of Pollutants to the Pacific Ocean.**

As noted above, San Francisco has repeatedly discharged pollutants to the Pacific Ocean on each day that it has pumped water from Horse Stable Pond into the ocean via the outfall it maintains on the beach adjoining Horse Stable Pond. This outfall on the beach is a confined and discrete conveyance, hence a point source. The Pacific Ocean is a water of the United States. San Francisco does not have NPDES permit authorization to discharge pollutants from point sources to the Pacific Ocean. All such discharges have thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

San Francisco has discharged pollutants from Horse Stable Pond to the Pacific Ocean on each day that it pumped water from Horse Stable Pond to the beach outfall identified above. Each such day of discharge from outfall point source is a separate and distinct CWA violation.

**E. Failure to Apply for NPDES Permit Authorization.**

San Francisco's failure to obtain an NPDES Permit for the discharge of pollutants discussed herein is an ongoing violation of the CWA and 40 C.F.R. § 122.21(a), which imposes a duty to apply for NPDES permit authorization on all persons who discharge pollutants to waters of the United States from a point source. Each day that San Francisco maintains the point sources identified herein without applying for and obtaining NPDES Permit authorization for discharges of pollutants from these point sources is a separate and distinct CWA violation.

**F. Continuing Violations**

WEI will include in its suit against San Francisco claims for additional violations when additional information becomes available. San Francisco has taken inadequate affirmative steps to eliminate the discharges identified in this notice letter, thus these violations are ongoing and will continue in the future.

**IV. NOTICE OF INTENT TO SUE SAN FRANCISCO FOR VIOLATIONS OF THE CLEAN WATER ACT**

WEI contends that San Francisco has failed in the respects set forth above to comply with the requirements imposed by CWA section 301(a). CWA section 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his/her intention to sue. 40 C.F.R. section 135.2 provides that, if the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. This section further provides that a copy of the notice shall be mailed to the chief administrative officer of the water

Mayor Newsom  
General Manager Ginsburg  
December 14, 2009

-8-

pollution control agency for the State in which the violation is alleged to have occurred, the EPA Administrator and the EPA Regional Administrator for the EPA Region in which such violation is alleged to have occurred. Accordingly, this notice is being sent to you as the Mayor of San Francisco and the head of SFRPD. We are also sending copies to the EPA Administrator, the Regional Administrator of EPA Region 9, the Executive Director of the State Board, and the Executive Director of the Regional Board (and a courtesy copy to the U.S. Department of Justice).

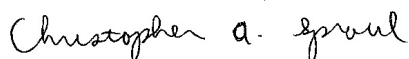
By this letter, pursuant to CWA section 505(a) and (b), 33 U.S.C. §1365(a) and (b), WEI hereby puts you on notice that after the expiration of sixty (60) days from the date of this Notice of Intent To File Suit, WEI intends to file an enforcement action in federal court against San Francisco for the latter's CWA violations.

WEI intends to seek civil penalties and, in addition, injunctive relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. section 19.4, each of the above-described CWA violations subjects San Francisco to a penalty of up to \$37,500 per day per violation for all separate CWA violations. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004).

In addition to the violations set forth above, this notice covers all ongoing CWA violations and violations evidenced by information that becomes available to WEI after the date of this Notice of Intent to File Suit.

WEI is interested in discussing effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of further litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. Although WEI is always interested in avoiding unnecessary litigation, it does not intend to delay the filing of a complaint in federal court if discussions are continuing when the notice period ends.

Sincerely,



Christopher Sproul  
Environmental Advocates



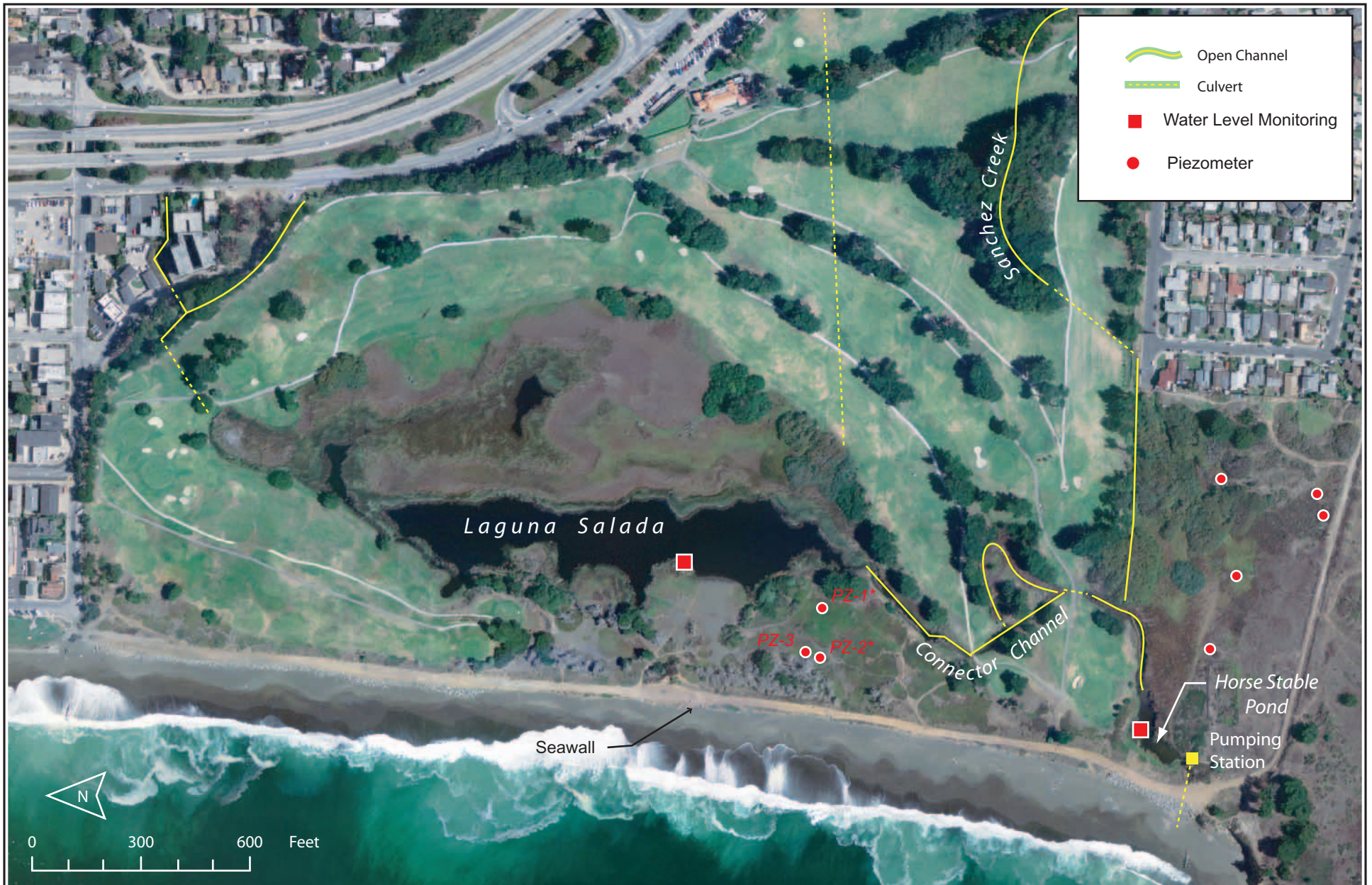
Mayor Newsom  
General Manager Ginsburg  
December 14, 2009

-9-

cc:

Lisa Jackson, Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460	Eric Holder, U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001
Laura Yoshii Acting Regional Administrator U.S. Environmental Protection Agency, Region 9 75 Hawthorne Street San Francisco, California 94105-3901	Dorothy R. Rice, Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814
Bruce Wolf, Executive Director Regional Water Quality Control Board San Francisco Bay Region 1515 Clay Street, Suite 1400 Oakland, CA 94612	

# EXHIBIT 1



KAMMAN HYDROLOGY  
& ENGINEERING, INC.



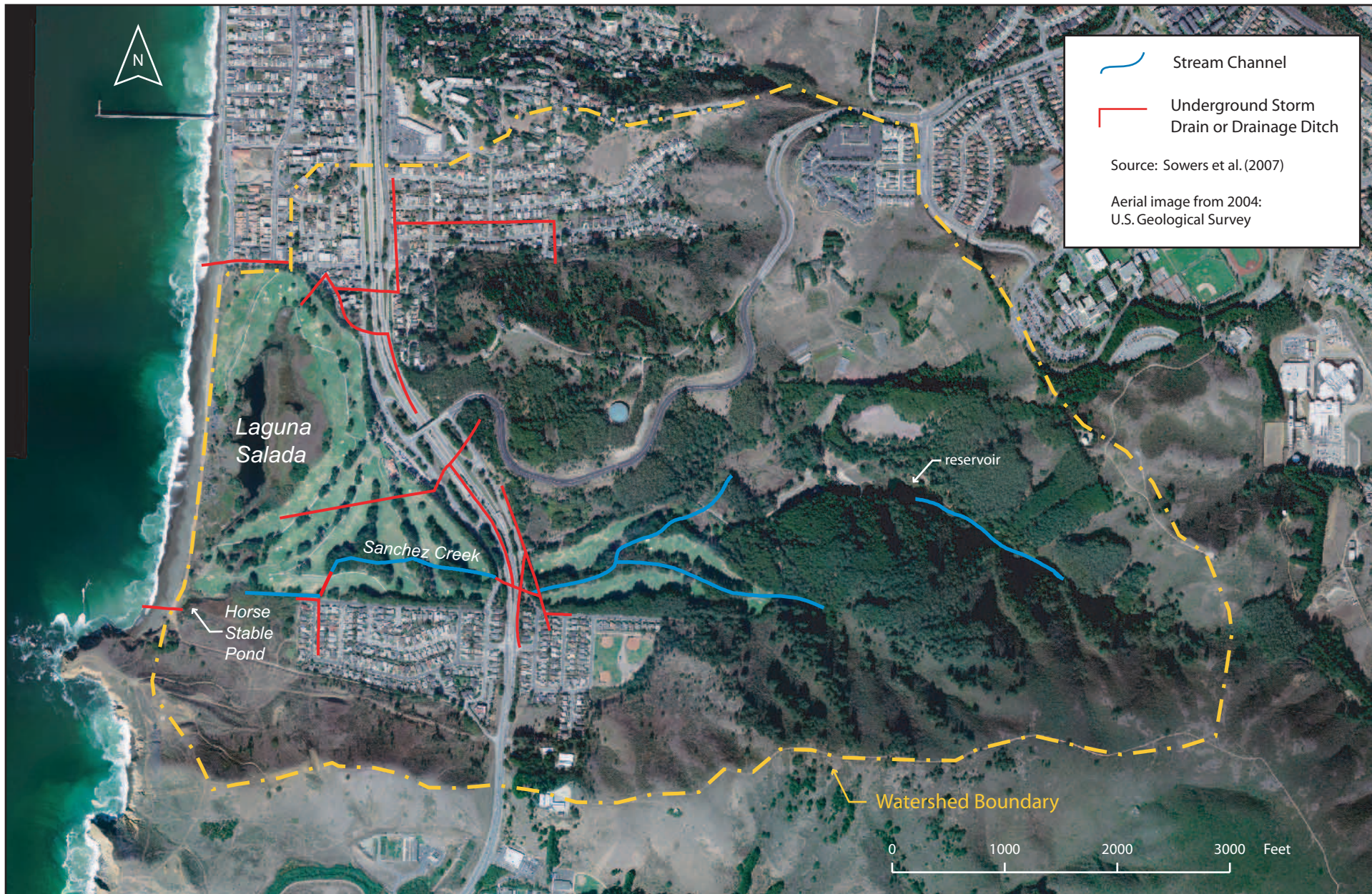
## Hydrologic Features and Monitoring Locations Laguna Salada Wetlands

FIGURE

4

# EXHIBIT 2





KAMMAN HYDROLOGY  
& ENGINEERING, INC.



## Drainage Network Map Laguna Salada Wetlands

FIGURE

3