



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Office of Spill Prevention and Response
1700 K. Street, Ste 250
Sacramento, California 95811
Telephone: (916) 445-9338
www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor

John McCamman, Director



RECEIVED

SEP 17 2010

**SACRAMENTO FISH
& WILDLIFE OFFICE**

September 15, 2010

Ms. Janet Whitlock
Chief, NRDAR Branch
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room 2605
Sacramento, California 95825

Mr. Greg Baker
NOAA Office of Response and Restoration
Assessment and Restoration Division
345 Middlefield Road, MS-999
Menlo Park, California 94025

Mr. Peter Perrine
Wildlife Conservation Board
1807 Thirteenth Street, Suite 103
Sacramento, California 95811

RE: Cullinan Ranch Project

Dear Ms. Whitlock, Messrs. Baker and Perrine:

Enclosed is a fully-executed copy of the Final Agreement among the Department of Fish and Game, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration and the Wildlife Conservation Board for the above-referenced project.

If you have any questions or concerns, please feel free to contact me at (916) 324-9799.

Sincerely,

Marguerite L. Diaz
Associate Governmental Program Analyst
Department of Fish and Game
Office of Spill Prevention and Response

Enclosure

cc: Mr. Bruce Joab
Mr. Charles McKinley
Mr. Christopher Plaisted
Ms. Katherine Verrue-Slater

Conserving California's Wildlife Since 1870

AGREEMENT
among
**THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE U.S. FISH AND WILDLIFE
SERVICE, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**
and
THE WILDLIFE CONSERVATION BOARD

Regarding the

CULLINAN RANCH PROJECT

I. OBJECTIVE

This Agreement sets forth the understandings and terms agreed to by the California Department of Fish and Game (CDFG), the United States Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration (NOAA) (collectively referred to as the "Trustee Plaintiffs") on the one hand, and the Wildlife Conservation Board (WCB) on the other, regarding implementation of the Cullinan Ranch project, described herein. Implementation of the Cullinan Ranch project will compensate the public, in part, for injuries to natural resources caused by historic wastewater discharges from a petroleum refinery owned and operated by Chevron Products Company (Chevron) in Richmond, California into Castro Cove (the "Castro Cove discharges"), a small embayment within San Pablo Bay. The Castro Cove discharges resulted in elevated concentrations of mercury and polycyclic aromatic hydrocarbons in Castro Cove sediments. Pursuant to a Consent Decree entered by the United States District Court for the Northern District of California (Civil No. C10-00375 JSW) on March 18, 2010, the Trustee Plaintiffs recovered settlement funds to address injuries to natural resources resulting from the Castro Cove discharges (the "Castro Cove settlement").

The Trustee Plaintiffs are duly authorized Federal and State natural resource trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. § 9601, *et seq.*] and other Federal or State laws, and in that capacity have the authority to utilize the recovered settlement funds to restore resources injured by the Castro Cove discharges and to enter into this Agreement. The Secretary for Natural Resources of the State of California has designated WCB as a State natural resource trustee under CERCLA for purposes of implementing the Castro Cove/Chevron Richmond Refinery Restoration Plan (the "Restoration Plan"). In addition, the WCB has authority under State law to preserve, protect and restore wildlife habitat within California and acts in the latter capacity in entering into this Agreement.

II. BACKGROUND

In October 2009, the USFWS, NOAA and CDFG, as trustees for the injured natural resources from the Castro Cove discharges, prepared the Restoration Plan and anticipate publishing the final version of this document in the near future. The Cullinan Ranch project is one (1) of two (2) restoration projects identified as the preferred alternative in the Restoration Plan. Cullinan Ranch is part of the San Pablo Bay National Wildlife Refuge. Pursuant to the terms of the Castro Cove settlement, Chevron paid 2.85 million dollars for natural resource damages of which 1.65 million dollars are earmarked for the Cullinan Ranch project.

The overall goal of the Cullinan Ranch project is to return approximately 1,500 acres of diked bay lands to their historical wetland state as mature tidal marsh. The Castro Cove settlement will fund a proportional share of this project equating to ±158 acres of tidal marsh restoration that will provide resource benefits similar to those lost in Castro Cove as a result of

the Castro Cove discharges. Trustee Plaintiffs propose to transfer the 1.65 million dollars of Castro Cove settlement funds earmarked for the Cullinan Ranch Project to WCB. The settlement funds allocated to this project are expected to act as a catalyst for additional funding for the larger restoration project.

WCB was also awarded one (1) million dollars through the 2010 National Coastal Wetlands Conservation Grant program to restore the 1,500 acre Cullinan Ranch parcel and has approved the allocation of grants totaling \$8,226,853.00 to Ducks Unlimited for the Cullinan Ranch Project and \$1,623,147 for the associated enhancement of ponds one (1) and three (3) at the Napa Sonoma Marshes Wildlife Area immediately adjacent to Cullinan Ranch. (*See, Attachments A and B for WCB Grant Agreements with Ducks Unlimited.*) The enhancement of ponds one (1) and three (3) at the Napa Sonoma Marshes Wildlife Area is an integral part of Cullinan Ranch's restoration plan. The Grant Agreements include the Castro Cove settlement funds, which provide a portion of the non-federal cost share funding for the project.

III. PURPOSE

The purpose of this Agreement is to create a mechanism between the Trustee Plaintiffs and WCB to ensure that the Cullinan Ranch project (described in the Restoration Plan and in the Grant Agreements) is implemented in accordance with the general purpose set forth in the Restoration Plan and Grant Agreements. The overall objective of the Parties is to return approximately 1,500 acres of diked bay lands to their historical wetland state as mature tidal marsh.

IV. AUTHORITY

The Parties enter into this Agreement under the authority of the Grant and Cooperative Agreement Act [31 U.S.C. §§ 6301, et seq.]; the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. §§ 9601, et seq.]; the Fish and Wildlife Coordination Act [16 U.S.C. §§ 661, et seq.]; the Wildlife Conservation Law of 1947 [Fish & G Code §1300, et seq.] and all other applicable Federal and State laws.

V. PERIOD OF PERFORMANCE

The period of performance of this Agreement will commence upon execution by all Parties and will remain in effect until completion of the activities funded by the Grant Agreement as determined by the Parties, including any required monitoring, unless terminated earlier by agreement of the Parties.

VI. SPECIFIC OBLIGATIONS OF EACH PARTY

A. The WCB shall, in consultation with the Trustee Plaintiffs:

1. Designate a primary point of contact for purposes of communications with the Trustee Plaintiffs;
2. Authorize Trustee Plaintiffs to examine and audit grantee's financial accounts, documents, and records relating to the Grant Agreements for three years after final payment, and designate Trustee Plaintiffs as third party beneficiaries of the Grant Agreements.
3. Provide copies of grantee Invoices, including descriptions of services performed and backup materials, to the Trustees for review.

4. Provide copies of the final report of accomplishments, including pre- and post-project photographs and a final design or site plan of the project to the Trustees within thirty (30) days of receipt from the Grantor.

5. Prepare an annual accounting on the expenditure of the funds described in Section B(2) and B(3) below, until such funds are exhausted;

B. The Trustee Plaintiffs shall:

1. Designate a primary point of contact to act on behalf of the Trustee Plaintiffs for purposes of communication with WCB.

2. Review and/or approve any changes to the Grant Agreement Work Plans and Budgets for the Cullinan Ranch Project, to the extent that such work plans and budgets are funded by the Castro Cove settlement,

3. Cause to be paid to the WCB the sum of 1.65 million dollars to implement a portion of the Cullinan Ranch project upon completion of the National Environmental Policy Act (NEPA) decision documents and approval of the Final Restoration Plan by Trustee Plaintiffs officials. Such funds shall be disbursed in advance in annual installments/ or in a single lump sum in accordance with the approved budget for the project;

4. Review any annual reports and monitoring data associated with the Cullinan Ranch project;

5. Monitor implementation of the Cullinan Ranch project and compliance with the approved Work Plans for the projects.

VII. REMEDIES FOR FAILURE TO PERFORM

The Parties agree that Trustee Plaintiffs shall be the intended third party beneficiaries of the amended Grant Agreements, in accordance with California Civil Code section 1559 and common law, and as such shall hold the same rights as WCB to enforce its terms.

The remedies provided in this paragraph shall be the only remedies available in the event the Parties are unable to resolve a dispute regarding implementation of the Cullinan Ranch project or this Agreement, or for failure of the WCB to perform its obligations under this Agreement.

VIII. OTHER CLAIMS

Except as specifically provided herein, nothing in this Agreement shall be construed as giving any of the Parties the right or ability to bind any of the other Parties or to create any joint liability with regard to or as a result of the activities of any Party undertaken to implement this Agreement. By entering into this Agreement, each Party assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of any of the other Parties. The Plaintiff Trustees shall not be parties to or be held out as parties to any contract or Grant Agreement entered into by the WCB or its officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Agreement, and the WCB shall not be a party to or be held out as a party to any contract entered into by the Plaintiff Trustees, their officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out activities pursuant to this Agreement.

IX. RESERVATION OF RIGHTS

Nothing in this Agreement is intended to imply that any signatory is in any way abrogating or ceding any responsibility or authority inherent in its control.

X. LIMITATIONS

Nothing in this Agreement shall be construed as obligating any of the Parties, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law. The obligations of the WCB under the approved Work Plan(s) for the Projects shall be subject to funding and staffing limitations, but the WCB agrees to make a good faith effort to implement this Agreement and the approved Work Plan(s) for the Projects. However, these limitations shall not be construed to limit the remedies of the Parties set forth in Section VI of this Agreement.

XI. NOTICES

All written communications, data submission, and notices shall be sent to the following designated representatives of the Parties:

CDFG:	Mr. Bruce Joab California Department of Fish and Game Office of Spill Prevention and Response 1700 K Street, Suite 250 Sacramento, California 95811 Telephone: (916) 322-7561 Facsimile: (916) 324-8829	Ms. Katherine Verrue-Slater California Department of Fish and Game Office of Spill Prevention and Response 1700 K Street, Suite 250 Sacramento, California 95811 Telephone: (916) 324-9813 Facsimile: (916) 324-5662
USFWS:	Ms. Janet Whitlock Chief, NRDAR Branch U.S. Fish and Wildlife Service Sacramento Fish and Wildlife Office 2800 Cottage Way, Room 2605 Sacramento, California 95825 Telephone: (916) 414-6599 Facsimile: (916) 414-6713	Mr. Charles McKinley U.S. Department of Interior Office of the Solicitor 1111 Jackson Street, Suite 735 Oakland, California 94607 Telephone: (510) 817-1461 Facsimile: (510) 419-0143
NOAA:	Mr. Greg Baker NOAA Office of Response and Restoration Assessment and Restoration Division 345 Middlefield Road, MS-999 Menlo Park, California 94025 Telephone: (650) 329-5048 Facsimile: (650) 329-5190	Mr. Christopher Plaisted NOAA General Counsel for Natural Resources 501 W. Ocean Boulevard, Suite 4470 Long Beach, California 90802 Telephone: (562) 980-3237 Facsimile: (562) 980-4065
WCB:	Mr. Peter Perrine Wildlife Conservation Board 1807 Thirteenth Street, Suite 103 Sacramento, California 95811 Telephone: (916) 445-1109 Facsimile: (916) 323-0280	

XII. MODIFICATIONS

This Agreement may be modified upon written agreement of all the Parties.

XIII. EFFECTIVE DATE

The Effective date of this Agreement shall be the date of the last affixed signature. The Effective date of any attachment hereafter developed and incorporated into this Agreement shall be the date set forth in such Attachment.

XIV. MISCELLANEOUS

A. The terms of this Agreement shall be governed by and interpreted in accordance with the applicable State and Federal laws. Should any provision of this Agreement be found void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.

B. None of the Parties shall assign any rights or obligations granted or assigned to it by this Agreement to a third party without the prior approval of the other Parties.

C. None of the Parties waives any of the privileges and immunities from liability that it would otherwise have.

D. This document represents the entire understanding of the Parties as it pertains to the rights and responsibilities of each Party to the Agreement.

E. This Agreement shall not affect any existing agreements between the Parties or any Party and third parties.

F. All employees or agents of a Party shall remain employees or agents of that Party and shall be subject to the laws, procedures, rules and policies governing that Party's employees or agents.

XV. OFFICE OF MANAGEMENT AND BUDGET (OMB) CIRCULARS COMPLIANCE

The OMB circulars for Grants and Cooperative Agreements with State and Local Governments (A-102), Cost Principles for State, Local and Indian Tribal Governments (A-87), and Audits of State, Local Governments, and Non-Profit Organizations (A-133) are hereby incorporated by reference. These circulars are available upon request.

XVI. EXECUTION AND SIGNATORIES

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Agreement. Each undersigned representative of a signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind such signatory, its directors, officers, employees, agents, successors and assigns to this document.

Dated: ~~July 27, 2010~~

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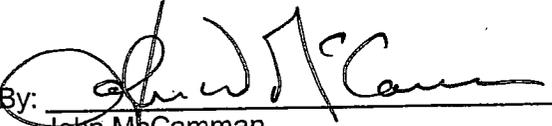
U.S. FISH AND WILDLIFE SERVICE

By: 
Ren Lohdefener
Regional Director
Pacific Southwest Region

Dated: ~~July~~, 2010

aug 2, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: 
John McCamman
Director

8/3/10
Dated: July ~~2~~ 2010

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

By: Katherine A. Pease
for Craig R. O'Connor
Special Counsel for Natural Resources

Dated: July __, 2010

WILDLIFE CONSERVATION BOARD

By: 
John P. Donnelly
Executive Director