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10 Attorneys for Plaintiff
 11 SAN FRANCISCO BAYKEEPER

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15 SAN FRANCISCO BAYKEEPER, a non-profit
 16 corporation,

17 Plaintiff,

18 v.

19 JAMES F. TAYLOR dba PINOLE RODEO
 20 AUTO WRECKERS,

21 Defendant.

Civil No. 3:15-cv-05825-MEJ

**REQUEST FOR ENTRY OF
~~[PROPOSED]~~ SETTLEMENT
 AGREEMENT AND DISMISSAL;
~~[PROPOSED]~~ ORDER**

(Federal Water Pollution Control Act, 33
 U.S.C. § 1251 *et seq.*)

Honorable Maria-Elena James

1 WHEREAS, on September 19, 2016, Plaintiff San Francisco Baykeeper (“Baykeeper”)
2 notified the Court that Baykeeper and Defendant James F. Taylor dba Pinole Rodeo Auto
3 Wreckers (“PRAW”) (collectively, the “Parties”) had reached a tentative settlement in this action
4 and would be sending a copy of the [Proposed] Settlement Agreement to the U.S. Department of
5 Justice and to the U.S. Environmental Protection Agency for a mandatory 45-day review period
6 under 33 U.S.C. § 1365(c)(3) and 40 C.F.R. § 135.5, *see* Dkt. No. 20;

7 WHEREAS, on November 7, 2016, the U.S. Department of Justice notified the Court and
8 the Parties that it did not object to the entry of the [Proposed] Settlement Agreement, *see* Dkt.
9 No. 22;

10 WHEREFORE, Baykeeper respectfully requests that the Court approve and enter the
11 [Proposed] Settlement Agreement as an Order of the Court, order that the above-captioned action
12 be dismissed with prejudice, and retain jurisdiction over the Parties for the sole purpose of
13 enforcing compliance by the Parties with the terms of the Settlement Agreement until the
14 Settlement Agreement terminates;

15 WHEREFORE, Baykeeper respectfully requests the Court to approve and enter the
16 [Proposed] Order attached hereto.

17
18 DATE: November 7, 2016

Respectfully Submitted,

/s/ Nicole C. Sasaki

Nicole C. Sasaki
Attorneys for Plaintiff
SAN FRANCISCO BAYKEEPER

~~PROPOSED~~ ORDER

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IT IS HEREBY ORDERED that the [Proposed] Settlement Agreement, attached hereto as Exhibit A, is fully incorporated herein by reference and is entered as an Order of the Court.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the Parties for the sole purpose of enforcing compliance by the Plaintiff and Defendant with the terms of the Settlement Agreement until the Settlement Agreement terminates.

IT IS FURTHER ORDERED that the above-captioned action against Defendant is dismissed with prejudice.

IT IS SO ORDERED.

Date: January 19, 2017

NORTHERN DISTRICT OF CALIFORNIA



Honorable Maria-Elena James
United States District Court

EXHIBIT A

1 Erica A. Maharg (Bar No. 279396)
2 Nicole C. Sasaki (Bar No. 298736)
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4 1736 Franklin Street, Suite 800
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10 Attorneys for Plaintiff
11 SAN FRANCISCO BAYKEEPER

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 SAN FRANCISCO BAYKEEPER, a non-profit
16 corporation,

17 Plaintiff,

18 v.

19 JAMES F. TAYLOR dba PINOLE RODEO
20 AUTO WRECKERS,

21 Defendant.

Case No.: 4:15-cv-05825-MEJ

~~PROPOSED~~ SETTLEMENT
AGREEMENT

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

Honorable Maria-Elena James

1 **SETTLEMENT AGREEMENT**

2 WHEREAS, San Francisco Baykeeper, Inc. (“Baykeeper”) is a non-profit public benefit
3 corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and
4 natural resources of San Francisco Bay and other area waters;

5 WHEREAS, James F. Taylor, doing business as Pinole Rodeo Auto Wreckers (“PRAW”)
6 operates an automobile dismantling facility, located at 700 Parker Avenue, Rodeo, California 94572 (the
7 “Facility”);

8 WHEREAS, Baykeeper and PRAW are collectively referred to herein as the “Parties”;

9 WHEREAS, stormwater discharges associated with industrial activity at the Facility are
10 regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit
11 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ
12 (hereinafter “Industrial Stormwater Permit”), issued pursuant to Section 402 of the Federal Water
13 Pollution Control Act (the “Clean Water Act” or “Act”), 33 U.S.C. § 1342. These industrial activities
14 include, *inter alia*, the dismantling and wrecking of used motor vehicles to recycle and resell parts;

15 WHEREAS, the Industrial Stormwater Permit includes the following requirements for all
16 permittees, including PRAW: (1) develop and implement a stormwater pollution prevention plan
17 (“SWPPP”), (2) control pollutant discharges using, as appropriate, best available technology
18 economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to prevent
19 or reduce pollutants, (3) implement BAT and BCT through the development and application of Best
20 Management Practices (“BMPs”), which must be included and updated in the SWPPP, and (4) when
21 necessary, implement additional BMPs to prevent or reduce any pollutants that are causing or
22 contributing to any exceedance of water quality standards;

23 WHEREAS, on September 18, 2015, Baykeeper served PRAW, the Administrator of the U.S.
24 Environmental Protection Agency (“EPA”), the Executive Director of the State Water Resources
25 Control Board (“State Water Board”), the Executive Officer of the Regional Water Quality Control
26 Board, San Francisco Bay Region (“Regional Water Board”), and the Regional Administrator of EPA
27 Region IX, with a notice of intent to file suit (“60-Day Notice”) under Section 505(b)(1)(a) of the Clean
28 Water Act, 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial Stormwater

1 Permit and its previous version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality
2 Order 97-03-DWQ), at the Facility;

3 WHEREAS, on December 18, 2015, Baykeeper filed a complaint (“Complaint”) alleging certain
4 violations of the Act and the Industrial Stormwater Permit and its previous version, Water Quality Order
5 No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at the Facility;

6 WHEREAS, PRAW denies all allegations and claims contained in the Complaint and reserves all
7 rights and defenses with respect to such allegations and claims;

8 WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full
9 Baykeeper’s allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and
10 uncertainties of litigation;

11 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES,
12 AND ORDERED BY THE COURT, AS FOLLOWS:

13 **I. OBJECTIVES**

14 1. It is the express purpose of the Parties to further the objectives set forth in the Clean Water Act,
15 33 U.S.C. §§ 1251 et seq., and to resolve those issues alleged by Baykeeper in its 60-Day Notice and
16 Complaint. In light of these objectives and as set forth fully below, PRAW agrees to comply with the
17 provisions of this Settlement Agreement and to comply with the Industrial Stormwater Permit and all
18 applicable provisions of the Clean Water Act.

19 **II. TERM OF SETTLEMENT AGREEMENT**

20 2. **Effective Date:** The Effective Date of this Settlement Agreement shall be the last day for the
21 U.S. Department of Justice to provide comment on this Settlement Agreement, i.e., the 45th day
22 following the U.S. Department of Justice’s receipt of the Settlement Agreement.

23 3. **Term of Settlement Agreement:** This Settlement Agreement shall continue in effect until
24 November 15, 2019 (the “Term”), at which time the Settlement Agreement, and all obligations under it,
25 shall automatically terminate, unless one of the Parties has invoked Dispute Resolution in accordance
26 with Paragraph 24.

27 4. **Early Termination:** If PRAW should cease industrial operations at the site and file a Notice of
28 Termination (“NOT”) under the Industrial Stormwater Permit before the termination date stated in

1 Paragraph 3, PRAW shall send Baykeeper a copy of the proposed NOT concurrent with its submittal to
2 the Regional Water Board. Within ten (10) days of the Regional Water Board's approval of the NOT,
3 PRAW shall notify Baykeeper in writing of the approval and remit all outstanding payments, including
4 stipulated payments, to Baykeeper. This Settlement Agreement shall terminate on the day that PRAW
5 has notified Baykeeper of an approved NOT and has remitted all outstanding payments. In the event a
6 new successor or assign continues industrial operations at the site and assumes responsibility for
7 implementation of this Settlement Agreement pursuant to Paragraph 43, PRAW shall notify Baykeeper
8 within ten (10) days of the transition.

9 III. BEST MANAGEMENT PRACTICES

10 5. In order to further reduce or prevent pollutants associated with industrial activity from
11 discharging via stormwater to the waters of the United States, PRAW shall implement additional
12 appropriate structural and non-structural Best Management Practices ("BMPs") to, at a minimum,
13 comply with the requirements of the Industrial Stormwater Permit.

14 6. **Site Map:** Within thirty (30) days of the Effective Date, PRAW shall update the Site Map
15 included in the Facility SWPPP to comply with the Industrial Stormwater Permit, Section X.E.
16 Specifically, the Site Map shall clearly denote (a) the topography and the direction of stormwater flow
17 for each drainage area of the Facility, (b) property boundaries, (c) known or suspected drop inlets, (d)
18 ground type (pervious or impervious), (e) berms and the materials they are composed of, (f) any
19 permanent structures and features, (g) discharge points, (h) sampling points, and (i) all other physical
20 structures or items relevant under the Industrial Stormwater Permit and this Settlement Agreement,
21 including, but not limited to, the berms, crusher area, detention basin, and drainage ditch. During the
22 Term, if PRAW makes significant changes to the Facility, such as moving a discharge or sampling
23 point, modifying the topography of the site so as to change a drainage area, or removing or adding
24 structural BMPs, PRAW shall update the SWPPP within forty-five (45) days and submit the revised
25 SWPPP to Baykeeper and upload to the Storm Water Multiple Application and Report Tracking System
26 ("SMARTS"), consistent with the requirements of Paragraph 11, below.

27 7. **Non-Structural Best Management Practices.** Beginning on the October 31, 2016, unless
28 otherwise stated, PRAW shall implement the following non-structural BMPs:

1 A. **Storm Drain Inlet/Catch Basin Best Management Practices:**

2 i. Storm Drain Inlet/Catch Basin Inspections: Within thirty (30) days of the
3 Effective Date and between September 1 and October 1 of each subsequent year, PRAW shall inspect
4 any storm drain inlets, catch basins, discharge and sampling points, filtration/treatment devices, and
5 other BMPs in place at the Facility. PRAW shall promptly clean, as needed, each drain inlet, catch
6 basin, discharge and sampling point, filtration/treatment device, and other BMPs in order to remove any
7 accumulated dust, sediment, solids, or debris.

8 ii. Storm Drain Inlet/Catch Basin Maintenance and Cleaning: On a weekly basis
9 between October 1 to May 31 of each year (“Wet Season”), PRAW shall inspect all storm drain inlets,
10 catch basins, discharge and sampling points, filtration/treatment devices, and other BMPs in place at the
11 Facility to ensure that they are not in a condition that would materially impair their efficacy, and clean
12 out accessible deposited sediment or debris. PRAW shall properly dispose of any dust, sediment, debris,
13 or other removed pollutants. Between June 1 and September 15 of each year (“Dry Season”), PRAW
14 shall cover all storm drain inlets to prevent accumulation of debris and dry-weather discharge.

15 B. **Site Sweeping:** PRAW shall sweep by hand the accessible paved areas of the Facility at
16 least two (2) times per day during the Wet Season and at least one (1) time per day during the remaining
17 portion of the year (“Dry Season”) on each day that PRAW is actively operating.

18 C. **Vehicle Dismantling:** All vehicles shall be dismantled under cover; dismantling shall
19 include, at a minimum, disconnecting all hoses and wires; draining all oil and all other fluids from the
20 vehicle to the extent feasible; and removing the engine and all other mechanical parts in the vehicle that
21 may contribute to oil and grease or heavy metals in the Facility’s stormwater discharges.

22 D. **Abandoned or Inutile Equipment Storage and Removal:** PRAW shall either store
23 under cover or remove from the Facility all abandoned or broken equipment or materials no longer
24 considered for future use that have the potential to serve as a source for pollutant loading.

25 E. **Vehicle and Equipment Management:** PRAW shall implement BMPs to reduce or
26 minimize pollutant release from equipment such as forklifts, hydraulic lifts, trucks, and other heavy
27 equipment that are parked or stored in areas of the Facility from which stormwater discharges. Such
28 BMPs shall include relocating the vehicles offsite to better facilitate sweeping of paved areas, placing

1 drip pans under equipment stored or parked for a week or longer, weekly inspections for evidence of
2 leaks from such equipment, and prompt clean-up of spills, drips, or leaks from such equipment. Any
3 spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance
4 with all local, state, and federal laws and regulations.

5 **F. Vehicle and Equipment Maintenance:** PRAW shall not conduct routine (*i.e.*, non-
6 emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor, uncovered
7 areas from which stormwater discharges during rainfall events.

8 **8. Structural Best Management Practices:** PRAW shall develop and implement the following
9 structural BMPs:

10 **A. Berm to Prevent Offsite Stormwater Discharges:** No later than October 31, 2016,
11 PRAW shall construct an impervious berm with plastic lining around the Facility to prevent offsite
12 stormwater discharges during the 2016-2017 Wet Season.

13 **B. Concrete Pad Expansion:** No later than October 31, 2016, PRAW shall expand the
14 existing concrete pad in the Facility's crusher area to extend to and include the following areas:

- 15 i. The access road/driveway southwest of the crusher;
- 16 ii. A minimum of ten (10) feet behind the crusher to the east/northeast;
- 17 iii. The area north of the crusher up to the north fence; and
- 18 iv. An area of a minimum of 100 square feet behind the crusher to the east/southeast.

19 No later than October 31, 2016, PRAW shall install a concrete berm around the perimeter of the
20 expanded concrete pad, and shall install a roofed structure to cover the crusher area to minimize
21 stormwater exposure.

22 **C. Regrade and Pave or Stabilize Northwest Yard:** No later than January 31, 2017,
23 PRAW shall clean out all debris, contaminated soil, scrap, and/or junk located in the northwest yard and
24 properly dispose of all removed material offsite; regrade the northwest yard to drain south/southeast; and
25 pave the regraded surface with concrete or asphalt, or stabilize the regraded surface with Department of
26 Transportation recycled concrete road base or 3/4-inch drain rock underlined with filter fabric.

1 D. **Berm to Prevent Offsite Run-On:** No later than January 31, 2017, PRAW shall
2 construct an impervious berm made out of compacted recycled road base and lined with plastic lining
3 along the Facility's northwest and west property lines to prevent stormwater run-on from offsite sources.

4 E. **Stormwater Detention Basin:** No later than October 31, 2016, PRAW shall complete
5 excavation of an extended detention basin at the south end of the Facility, with the entire Facility graded
6 to drain to the basin. The basin shall be a minimum of 600 cubic feet, have a flat bottom, and 3:1 slopes
7 on the sides. No later than January 31, 2017, PRAW shall line the basin with filter fabric and cover the
8 sides with rock and/or vegetation.

9 F. **Drainage Ditch:** No later than April 30, 2017, PRAW shall construct a drainage ditch
10 along the inside of the Facility's northwest and east property lines. PRAW shall grade the drainage
11 ditch to convey stormwater to the stormwater detention basin at the south end of the Facility, and line
12 the drainage ditch with filter fabric covered with rock and/or vegetation.

13 G. **Sump Pump and Treatment System:** No later than July 31, 2017, PRAW shall install a
14 sump pump on the floor of the stormwater detention basin to regulate the volume of stormwater stored
15 in the basin to control for flooding and vectors. No later than April 30, 2017, PRAW shall submit to
16 Baykeeper the specifications for a proposed advanced stormwater treatment system sized to treat to a
17 minimum flow-through treatment standard of 14 gallons per minute. Baykeeper shall have fourteen (14)
18 days to comment and approve of the proposed treatment system. No later than July 31, 2017, PRAW
19 shall install the agreed upon treatment system. Under high-volume conditions, PRAW shall pump
20 stormwater from the basin to the treatment system prior to discharge offsite.

21 H. PRAW shall diligently file and pursue all required permit applications for the structural
22 BMPs and shall diligently procure contractors, labor, and materials needed to complete all structural
23 BMPs by the required deadlines.

24 I. **Maintenance of BMP Structural Controls:** Beginning on the Effective Date or the
25 date of installation, PRAW shall maintain all structural BMPs at the Facility in good operating condition
26 and shall promptly repair any damaged or degraded structural BMPs.

27 9. **Employee Training:** Beginning on the Effective Date, and annually thereafter, and within thirty
28 (30) days of hiring of new employees, PRAW shall conduct training for all appropriate employees to

1 explain the requirements of the Facility's SWPPP to the extent applicable to such employee. Training
2 shall focus on the employee's role in implementing various stormwater control measures including, for
3 example, implementation of BMPs, sweeping, vehicle maintenance, or facility inspections. Training
4 shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language) to the extent that such
5 employee is not reasonably able to comprehend training in English. If and when appropriate, PRAW
6 shall integrate any new training requirements resulting from this Settlement Agreement into the Facility
7 SWPPP. PRAW shall also update the SWPPP, if and when appropriate, to identify the positions
8 responsible for carrying out stormwater management, monitoring, sampling, and SWPPP
9 implementation.

10 **10. Amendment of SWPPP:**

11 A. Within thirty (30) days of the Effective Date, PRAW shall amend the Facility SWPPP to
12 incorporate the requirements and BMPs set forth in this Section III of the Settlement Agreement and
13 Section X of the Industrial Stormwater Permit and submit the updated SWPPP to Baykeeper within ten
14 (10) business days thereafter. Baykeeper shall have thirty (30) days from receipt of the amended
15 SWPPP to propose any changes to the SWPPP. Within thirty (30) days of notification by Baykeeper of
16 any proposed changes to the SWPPP, PRAW shall make all of Baykeeper's changes to the amended
17 SWPPP unless PRAW timely requests a meet and confer in accordance with Paragraph 24 to discuss any
18 concerns. Compliance with the SWPPP, as amended in accordance with this Paragraph, shall at all
19 times be a requirement of this Settlement Agreement.

20 B. PRAW shall revise the Facility SWPPP if there are any material changes in the Facility's
21 operations, including, but not limited to, changes to stormwater discharge points or BMPs, such as
22 installation of the detention basin and treatment system. These SWPPP revisions shall occur within
23 forty-five (45) days of the changes in operations.

24 C. PRAW shall submit any revised SWPPP within ten (10) days of the revisions. Baykeeper
25 shall provide comments, if any, to PRAW within thirty (30) days of receipt of the revised SWPPP.
26 Within thirty (30) days of notification by Baykeeper of any proposed changes to the SWPPP, PRAW
27 shall make all of Baykeeper's changes to the amended SWPPP unless PRAW timely requests a meet and
28 confer in accordance with Paragraph 24 to discuss any concerns.

1 D. PRAW shall upload the Facility SWPPP to SMARTS within thirty (30) days of finalizing
2 revisions in accordance with this Settlement Agreement.

3 11. **Additional BMPs:** The BMPs included in this Section constitute a preliminary approach to
4 stormwater management at the Facility for the first two Wet Seasons of the agreement (i.e., the 2016-
5 2017 and 2017-2018 Wet Seasons). If, after implementing these BMPs, the sampling conducted in
6 accordance with Section IV indicates that the Facility's stormwater discharges continue to exceed the
7 Target Levels in Exhibit 1, or otherwise do not meet water quality standards, PRAW shall propose
8 additional BMPs as part of any Action Plan prepared in accordance with Paragraph 14.

9 **IV. SAMPLING, MONITORING, INSPECTION & REPORTING**

10 12. **Sampling Program - Stormwater:** Beginning with the 2017-2018 Wet Season, PRAW shall
11 collect and analyze stormwater samples from all discharge points according to the following schedule:

12 A. PRAW shall collect and analyze samples from the first two (2) qualifying storm events,
13 as defined in Section XI.B. of the Industrial Stormwater Permit ("QSEs"), within the first half of each
14 Wet Season during the Term (October 1 to December 31).

15 B. PRAW shall collect and analyze samples from the first two (2) QSEs within the second
16 half of each Wet Season during the Term (January 1 to May 31).

17 C. If PRAW is unable to take a sample from any discharge point during any of the first two
18 (2) QSEs of the first half of the Wet Season or the first two (2) QSEs of the second half of the Wet
19 Season, PRAW shall continue to sample from any subsequent QSE until four (4) samples have been
20 collected from all discharge points in that Wet Season.

21 D. In the event that PRAW is unable to collect four (4) samples in a Wet Season, PRAW
22 shall explain in writing in the End-of-Season Summary under Paragraph 13 why it was unable to collect
23 the required sample(s).

24 E. Each stormwater sample must be analyzed for the presence of each of the parameters
25 listed in Exhibit 1.

26 F. Should industrial processes materially change at the Facility, PRAW shall conduct
27 sampling for any additional analytical parameters listed in Table 1 of the Industrial Stormwater Permit
28 and additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in the Facility's

1 stormwater discharges in significant quantities as a result of the changed industrial processes. PRAW
2 shall notify Baykeeper of any such changes within thirty (30) days of such a change.

3 **G. Certified Lab:** Except for pH samples, PRAW shall have all stormwater samples
4 collected pursuant to this Settlement Agreement delivered to a California state certified environmental
5 laboratory for analysis within the time needed for analysis within laboratory method allowable hold
6 times. The laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or
7 below the Target Levels set forth in Exhibit 1. Baykeeper shall be permitted, and PRAW will authorize
8 Baykeeper, to verify that the lab analyzing PRAW's stormwater samples that their analysis is proper.

9 **H. Sample Result Reporting:** After the Effective Date, PRAW shall provide complete
10 results from sampling and analysis to Baykeeper within ten (10) calendar days and to SMARTS within
11 thirty (30) days of receipt of the laboratory report from each sampling event.

12 **13. End-of-Season Summary:** By July 31 following each Wet Season, beginning with the 2017-
13 2018 Wet Season, that occurs during the Term, PRAW shall prepare and send to Baykeeper an End-of-
14 Season Summary that includes: (1) a summary chart with all of the sample results from the previous
15 Wet Season including the constituent concentration(s) from sample(s) collected at the Facility exceeding
16 the Target Levels in Exhibit 1 ("Exceedance(s)"); and (2) identification of any new BMP(s) that PRAW
17 has implemented or will implement not already discussed in a prior End-of-Season Summary or Action
18 Plan for the immediately previous Wet Season.

19 **14. Action Plan:** Beginning with the 2017-2018 Wet Season, if any stormwater sample result
20 during a Wet Season exceeds any Target Level set forth in Exhibit 1, PRAW shall submit an Action
21 Plan in addition to an End-of-Season Summary by July 31.

22 **15. Contents of Action Plan:** If an Action Plan is required, it shall include the following:

- 23 A. The possible sources of the Exceedance(s) during the applicable Wet Season;
- 24 B. A proposal for and evaluation of new site-specific BMPs designed to reduce pollutants in
25 future stormwater discharges to the Target Levels in Exhibit 1 and to achieve BAT and BCT for those
26 constituents;
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1 C. Data, drawings, and other design rationale demonstrating that the proposed site-specific
2 BMPs will reduce pollutants in future stormwater discharges to the Target Levels in Exhibit 1 and
3 achieve BAT and BCT; and

4 D. A schedule to implement any revised and/or additional BMPs by the earliest practicable
5 time, and no later than October 1 of the next Wet Season. In any Action Plan, PRAW shall consider
6 appropriate structural BMPs as necessary to adequately address its Exceedances.

7 **16. Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to
8 propose revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper's proposed
9 revisions, PRAW shall consider each of Baykeeper's recommended revisions to the Action Plan and
10 accept them or timely request to meet and confer, in accordance with Paragraph 24.

11 **17. Implementation of Action Plan:**

12 A. PRAW shall implement the Action Plan(s) adopted pursuant to this Settlement
13 Agreement as an obligation of this Settlement Agreement.

14 B. PRAW shall diligently file and pursue all required local agency applications for permits
15 and/or approvals for the BMPs included in any Action Plan. PRAW shall further diligently pursue the
16 procurement of contractors, labor, and materials to complete all BMPs by the October 1 deadline.

17 C. Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Settlement
18 Agreement are implemented, PRAW shall amend the Facility SWPPP to include all BMP revisions or
19 additions not otherwise already implemented and included in the SWPPP and shall provide Baykeeper
20 with a copy of such revised SWPPP.

21 **18.** During each Wet Season, PRAW has an ongoing obligation to evaluate the BMPs implemented
22 at the Facility and included in this Settlement Agreement and any current or previous Action Plans, and,
23 if the Target Levels are exceeded, make attempts to reduce the concentrations to Target Levels for the
24 remainder of the Wet Season. PRAW shall use the results from subsequent stormwater samples as they
25 become available to assist with their ongoing evaluation of the effectiveness of BMPs.

26 **19. Site Access:** During the Term, PRAW shall permit representatives of Baykeeper to perform up
27 to two (2) physical inspections per year of the Facility during operating hours ("Site Inspection").
28 Baykeeper shall provide PRAW forty-eight (48) hours' notice in advance of such Site Inspections.

1 Baykeeper shall comply with all safety instructions provided to Baykeeper by PRAW's staff during all
2 Site Inspections. During Site Inspections, Baykeeper shall be allowed to inspect and sample any
3 stormwater discharges, logs, and take photos and/or videos. Any samples, photos, and/or videos taken
4 by Baykeeper shall be used exclusively by Baykeeper for internal purposes only.

5 20. **Reports:** During the Term, PRAW shall provide Baykeeper with a copy of all documents
6 submitted to the Regional Water Board or the State Water Board concerning the Facility's compliance
7 with the Industrial Stormwater Permit. Such documents and reports shall be transmitted to Baykeeper
8 via electronic mail at the time the documents are submitted to the Regional Water Board or State Water
9 Board.

10 V. FEES AND COSTS

11 21. **Reimbursement of Fees and Costs:** PRAW shall reimburse Baykeeper in the amount of ten
12 thousand dollars (\$10,000.00) to help cover Baykeeper's reasonable investigation, expert, and attorneys'
13 fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the
14 Facility related to this Settlement Agreement, bringing these matters to PRAW's attention, and
15 negotiating a resolution of this action. PRAW shall tender five thousand dollars (\$5,000.00), payable to
16 Baykeeper, within thirty (30) days of the Effective Date. PRAW shall tender five thousand dollars
17 (\$5,000.00), payable to Baykeeper, by July 31, 2017.

18 22. **Compliance Monitoring Funds:** PRAW shall provide to Baykeeper a total of one thousand
19 dollars (\$1,000.00) for costs and fees associated with monitoring PRAW's compliance with this
20 Settlement Agreement through the termination date of this agreement. PRAW shall tender a compliance
21 monitoring fund payment of one thousand dollars (\$1,000.00), payable to Baykeeper, by July 31, 2018.

22 VI. DISPUTE RESOLUTION AND STIPULATED PENALTIES

23 23. **Dispute Resolution:** If a dispute under this Settlement Agreement arises or the Parties believe
24 that a breach of this Settlement Agreement has occurred, they shall follow the following procedure:

25 A. The Parties shall schedule a meet and confer within ten (10) business days of receiving
26 written notification from the other Party of a request for a meeting to determine whether a violation of
27 this Settlement Agreement has occurred and to develop a mutually agreed upon plan, including
28 implementation dates, to resolve the dispute.

1 B. If the Parties fail to meet and confer or the meet and confer does not resolve the issue,
2 after at least seven (7) business days have passed after the meet and confer occurred or should have
3 occurred, either Party shall be entitled to all rights and remedies under the law, including bringing a
4 motion before the United States District Court for the Northern District of California for the limited
5 purpose of enforcing the terms of this Settlement Agreement.

6 C. The Parties shall be entitled to seek fees and costs incurred in any such action pursuant to
7 the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and
8 applicable case law interpreting such provisions.

9 24. **Stipulated Payments:** PRAW shall pay the following stipulated payments during the Term.

10 A. \$100 for each failure to collect a sample required under this Settlement Agreement;

11 B. \$50 per day after the report due date for each failure to timely submit any document,
12 report or other communication required in this Settlement Agreement; and

13 C. \$50 per day payment for every business day (Monday through Friday, excluding state and
14 federal holidays) past the due date that PRAW fails to submit any payments due under Paragraphs 21-23
15 of this Settlement Agreement.

16 D. Any stipulated payments described above shall be paid to Baykeeper within thirty (30)
17 days of notification of the failure to comply. Baykeeper shall forgive stipulated payments if PRAW
18 corrects the failure within five (5) business days of notification by Baykeeper of PRAW's failure to
19 comply.

20 **VII. JURISDICTION AND DISMISSAL OF COMPLAINT**

21 25. **Jurisdiction.** For the purposes of this Settlement Agreement, the Parties stipulate that the
22 United States District Court of California, Northern District of California, has jurisdiction over the
23 Parties and subject matter of this Settlement Agreement. The Parties stipulate that venue is appropriate
24 in the Northern District of California and that Baykeeper has standing to bring the Complaint or any
25 subsequent action or motion pursuant to the Dispute Resolution procedures herein.

26 26. **Jurisdiction to Enforce Settlement Agreement.** The Court referenced above shall retain
27 jurisdiction over the Parties and subject matter of this Settlement Agreement for the purpose of
28 adjudicating all disputes among the Parties that may arise under the provisions of this Settlement

1 Agreement. The Court shall have the power to enforce this Settlement Agreement with all available
2 legal and equitable remedies.

3 **27. Submission of Settlement Agreement to DOJ.** Within three (3) business days of receiving all
4 of the Parties' signatures to this Settlement Agreement, Baykeeper shall submit this Settlement
5 Agreement to the U.S. Department of Justice ("DOJ") and EPA for agency review consistent with 40
6 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by DOJ,
7 evidenced by correspondence from DOJ establishing the review period. In the event DOJ comments
8 negatively on the provisions of this Settlement Agreement, the Parties agree to meet and confer to
9 attempt to resolve the issues raised by DOJ.

10 **28. Dismissal of Complaint:** If there is no objection by DOJ to this Settlement Agreement, the
11 Parties shall (a) request the approval and entry of this Settlement Agreement in the exact form presented
12 to DOJ, and (b) concurrently stipulate to and request dismissal of this action with prejudice. Such
13 dismissal shall not affect the rights and obligations of the Parties under this Settlement Agreement, nor
14 shall it affect the power of the Court to enforce this Settlement Agreement.

15 **VIII. WAIVER AND RELEASES**

16 **29. Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on
17 behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors
18 and assigns releases PRAW, its owners, officers, directors, employees, members, parents, subsidiaries,
19 affiliates, successors or assigns, agents, attorneys and other representatives from and waives all claims
20 raised in the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
21 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could
22 have been claimed for matters included in the 60-Day Notice and/or the Complaint.

23 **30. PRAW's Waiver and Release of Baykeeper:** PRAW, on its own behalf and on behalf of its
24 owners, officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or
25 assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and
26 affiliates, and each of their successors and assigns from, and waive all claims which arise from or
27 pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
28 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could

1 have been claimed for matters included in the 60-Day Notice and/or the Complaint.

2 **IX. MISCELLANEOUS PROVISIONS**

3 31. **Execution in Counterparts:** The Settlement Agreement may be executed in one or more
4 counterparts which, taken together, shall be deemed to constitute one and the same document.

5 32. **Signatures:** The Parties' signatures to this Settlement Agreement transmitted by facsimile or
6 electronic mail transmission shall be deemed binding.

7 33. **Construction:** The language in all parts of this Settlement Agreement, unless otherwise stated,
8 shall be construed according to its plain and ordinary meaning. The captions and paragraph headings
9 used in this Settlement Agreement are for reference only and shall not affect the construction of this
10 Settlement Agreement.

11 34. **Authority to Sign:** The undersigned are authorized to execute this Settlement Agreement on
12 behalf of their respective Party and have read, understood and agreed to all of the terms and conditions
13 of this Settlement Agreement.

14 35. **Integrated Settlement Agreement:** All agreements, covenants, representations and warranties,
15 express or implied, oral or written, of the Parties concerning the subject matter of this Settlement
16 Agreement are contained herein.

17 36. **Severability:** In the event that any of the provisions of this Settlement Agreement are held by a
18 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

19 37. **Choice of Law:** This Settlement Agreement shall be governed by the laws of the United States
20 or, where applicable, the laws of the State of California.

21 38. **Full Settlement:** This Settlement Agreement constitutes a full and final settlement of this
22 matter.

23 39. **Effect of Settlement Agreement:** Compliance with this Settlement Agreement does not mean
24 PRAW is complying with the Industrial Stormwater Permit, Clean Water Act, or any other law, rule, or
25 regulation.

26 40. **Negotiated Agreement:** The Parties have negotiated this Settlement Agreement, and agree that
27 it shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly
28 prepared this Settlement Agreement, and any uncertainty and ambiguity shall not be interpreted against

1 any one Party.

2 41. **Modification of the Agreement:** This Settlement Agreement, and any provisions herein, may
3 not be changed, waived, or discharged unless by a written instrument signed by each of the Parties.

4 42. **Assignment:** Subject only to the express restrictions contained in this Settlement Agreement, all
5 of the rights, duties and obligations contained in this Settlement Agreement shall inure to the benefit of
6 and be binding upon the Parties, and their successors and assigns.

7 43. **Notices and Submissions:** Any notices or documents required or provided for by this
8 Settlement Agreement or related thereto that are to be provided to Baykeeper pursuant to this Settlement
9 Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses
10 listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with return receipt,
11 or by hand delivery to the following address:

12 San Francisco Baykeeper
13 Attention: Nicole Sasaki
14 1736 Franklin Street, Suite 800
15 Oakland, California 94612
16 Email: nicole@baykeeper.org

17 Unless requested otherwise by PRAW, any notices or documents required or provided for by this
18 Settlement Agreement or related thereto that are to be provided to PRAW pursuant to this Settlement
19 Agreement shall, to the extent feasible, be provided by electronic mail transmission to the e-mail
20 addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with
21 return receipt, or by hand delivery to the addresses below:

22 Pinole Rodeo Auto Wreckers
23 Attention: James F. Taylor
24 700 Parker Avenue
25 Rodeo, California 94572
26 Email: pinolerodeoauto@aol.com

27 Notifications of communications shall be deemed submitted on the date that they are emailed, or
28 postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any
changes of address or addressees shall be communicated in the manner described above for giving
notices.

44. **Impossibility of Performance:** No Party shall be considered to be in default in the performance

1 of any of its obligations under this Settlement Agreement when performance becomes impossible due to
2 circumstances beyond the Party's control, including without limitation any act of God, act of war or
3 terrorism, fire, earthquake, and flood. "Circumstances beyond the Party's control" shall not include
4 normal inclement weather, economic hardship, or inability to pay. Any Party seeking to rely upon this
5 Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid,
6 and which by exercise of due diligence has been unable to overcome, the impossibility of performance.
7

8 The Parties hereto enter into this Settlement Agreement, Order and Final Judgment and submit it
9 to the Court for its approval and entry as a final judgment.

10 SAN FRANCISCO BAYKEEPER

11 Date: September 16, 2016

12 

13 _____
14 Nicole C. Sasaki
15 Associate Attorney, San Francisco Baykeeper

16 JAMES F. TAYLOR dba PINOLE RODEO AUTO WRECKERS

17 Date:

18 _____
19 James F. Taylor
20 Owner, Pinole Rodeo Auto Wreckers
21

22 APPROVED AND SO ORDERED, this ____ day of _____.

23
24 UNITED STATES DISTRICT JUDGE

25 _____
26 Honorable Maria-Elena James
27
28

1 of any of its obligations under this Settlement Agreement when performance becomes impossible due to
2 circumstances beyond the Party's control, including without limitation any act of God, act of war or
3 terrorism, fire, earthquake, and flood. "Circumstances beyond the Party's control" shall not include
4 normal inclement weather, economic hardship, or inability to pay. Any Party seeking to rely upon this
5 Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid,
6 and which by exercise of due diligence has been unable to overcome, the impossibility of performance.
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9 to the Court for its approval and entry as a final judgment.

10 SAN FRANCISCO BAYKEEPER

11 Date: September 16, 2016

12 

13 _____
14 Nicole C. Sasaki
15 Associate Attorney, San Francisco Baykeeper

16 JAMES F. TAYLOR dba PINOLE RODEO AUTO WRECKERS

17 Date:

18  9-16-16

19 _____
20 James F. Taylor
21 Owner, Pinole Rodeo Auto Wreckers

22 APPROVED AND SO ORDERED, this 19 day of January 2017.

23
24 UNITED STATES DISTRICT JUDGE

25 
26 _____
27 Honorable Maria-Elena James
28

EXHIBIT 1

Target Levels for Stormwater Sampling

Constituent	Target Levels	Source
pH	6 – 9 SU	<i>California Industrial General Permit 2014-0057-DWQ</i>
Total Suspended Solids	100 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Oil and Grease	15 mg/L	<i>Multi-Sector General Permit 2000 benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Aluminum	0.75 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Iron	1.0 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Lead	0.262 mg/L	<i>California Industrial General Permit 2014-0057-DWQ</i>