

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) November 16, 2009

**PACIFIC ETHANOL, INC.**

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(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

000-21467

(Commission File Number)

41-2170618

(IRS Employer Identification No.)

400 Capitol Mall, Suite 2060, Sacramento, CA

(Address of principal executive offices)

95814

(Zip Code)

Registrant's telephone number, including area code: (916) 403-2123

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(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

**First Amendment to Settlement Agreement dated as of November 16, 2009 by and between Campbell-Sevey, Inc. and Pacific Ethanol, Inc.**

**Settlement Agreement dated as of August 6, 2009 by and between Campbell-Sevey, Inc. and Pacific Ethanol, Inc.**

On November 16, 2009, Pacific Ethanol, Inc. (the "Company") entered into a First Amendment to Settlement Agreement with a judgment creditor (the "Amendment"). The Amendment amends a Settlement Agreement entered into by the Company on or about August 6, 2009 with the judgment creditor (the "Settlement Agreement") under which the Company entered into a consent judgment, and judgment was entered against the Company in the amount of approximately \$1,900,000 (the "Judgment"). The Settlement Agreement resolved litigation between the Company and the judgment creditor concerning the Company's alleged obligations as a guarantor of certain purported liabilities of one of the Company's indirect subsidiaries. The Settlement Agreement provided that the judgment creditor would not undertake any efforts to enforce or collect on the Judgment until December 1, 2009. The Settlement Agreement contains other customary terms and conditions, including mutual releases by the parties.

The Amendment provides that the judgment creditor will not undertake any efforts to enforce or collect on the Judgment until April 1, 2010. The Amendment also provides that the Company is to remit approximately \$214,000 to the judgment creditor on or before November 20, 2009 and is to remit \$150,000 to the judgment creditor on or before December 18, 2009. Each payment is to apply to and reduce the amount of the Judgment; provided, that if the Company fails to timely make the second payment, then \$150,000 of the first payment will not reduce the amount of the Judgment.

As a result of the Amendment, the Company has successfully deferred most of the approximately \$1,900,000 payment previously due December 1, 2009 through the end of the first quarter of 2010.

The foregoing descriptions of the Amendment and the Settlement Agreement do not purport to be complete and are qualified in their entireties by reference to the Amendment and the Settlement Agreement, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
10.1	First Amendment to Settlement Agreement dated as of November 16, 2009 by and between Campbell-Sevey, Inc. and Pacific Ethanol, Inc. (*)
10.2	Settlement Agreement dated as of August 6, 2009 by and between Campbell-Sevey, Inc. and Pacific Ethanol, Inc. (*)

\* Filed herewith

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**PACIFIC ETHANOL, INC.**

Date: November 20, 2009

By: /s/ CHRISTOPHER W. WRIGHT

Christopher W. Wright,  
Vice President, General Counsel & Secretary

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**EXHIBITS FILED WITH THIS REPORT**

<u>Number</u>	<u>Description</u>
10.1	First Amendment to Settlement Agreement dated as of November 16, 2009 by and between Campbell-Sevey, Inc. and Pacific Ethanol, Inc.



**FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

This **FIRST AMENDMENT TO SETTLEMENT AGREEMENT ("Agreement")** dated as of November 16, 2009 ("Effective Date") is entered into by and between **CAMPBELL-SEVEY, INC.**, a Minnesota corporation, ("Campbell-Sevey"), on the one hand, and **PACIFIC ETHANOL, INC.**, a Delaware corporation, ("PEI") on the other hand (collectively referred to herein as "Parties").

**I. RECITALS**

**WHEREAS**, the Parties entered into that certain Settlement Agreement dated as of August 6, 2009 (the "Settlement Agreement").

**WHEREAS**, the Parties desire to amend the Settlement Agreement on the terms set forth below.

**II. TERMS**

**FOR AND IN CONSIDERATION** of the foregoing premises and the mutual agreements hereinafter set forth, the Parties agree as follows:

1. The second sentence of paragraph 1 of the Settlement Agreement is hereby amended to read in its entirety as follows:

"Under the terms of the consent judgment, judgment shall enter against PEI in the amount of **\$1,909,555.76** (the "Judgment") and Campbell-Sevey shall not undertake any efforts to enforce or collect on the Judgment until April 1, 2010."

2. PET shall remit to Campbell-Sevey by wire transfer: (i) \$213,821.48 on or before November 20, 2009; and (ii) \$150,000.00 on or before December 18, 2009. Each such payment (which is related to past interest and attorney's fees per previous agreement of the parties) shall apply to and reduce the Judgment; provided that if PEI fails to make the second payment on or before December 18, 2009, then \$150,000 of the November 20<sup>th</sup> remittance shall not apply to the Judgment. For the avoidance of doubt, if PEI makes both payments timely, then the Judgment shall be reduced to \$1,545,734.28. But if PEI makes the first payment timely and does not make the second payment, then the amount of the Judgment shall be \$1,845,734.28.

3. The Settlement Agreement, as amended hereby, shall remain in full force and effect and shall bind the heirs, personal representatives, successors, assigns, executors and administrators of each party, and inure to the benefit of each party, its heirs, successors and assigns.

4. This First Amendment to Settlement Agreement may be executed in one or more counterparts, any of which need not contain the signatures of more than one party but all signed counterparts taken together will constitute one and the same agreement. A facsimile signature will be deemed as valid as an original signature.

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IN WITNESS WHEREOF, the parties have duly authorized and caused this Agreement to be executed as follows:

**Campbell-Sevey, Inc.**

By: /s/ Brian Ross

Its: President

Date: November 17, 2009

**Pacific Ethanol, Inc.**

By: /s/ Neil M. Koehler

Its: CEO

Date: November 16, 2009







SETTLEMENT AGREEMENT

This **Settlement Agreement** ("Agreement") dated as of August \_\_, 2009 ("Effective Date") is entered into by and between **Campbell-Sevey, Inc.**, a Minnesota corporation, ("Campbell-Sevey"), on the one hand, and **Pacific Ethanol, Inc.**, a Delaware corporation, ("PEI") on the other hand (collectively referred to herein as "Parties").

**I. Recitals**

**Whereas**, Campbell-Sevey and PEI entered into a certain Joinder Agreement on or about July 28, 2008, in which PEI is guarantor of its subsidiary Pacific Ethanol Imperial, LLC's obligations under a Payment Agreement Pacific Ethanol Imperial, LLC entered into with Campbell-Sevey.

**Whereas**, a dispute arose between Campbell-Sevey and PEI as to PEI's obligations as guarantor.

**Whereas**, Campbell-Sevey filed a lawsuit against PEI and Pacific Ethanol Imperial, LLC styled *Campbell-Sevey, Inc. v. Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC, Case No. 09-cv-00408-RPM* in the United States District Court for the District of Colorado (the "Lawsuit").

**Whereas**, the Parties desire to fully and finally settle, resolve and release each other from all claims and disputes they may have against each other on the terms set forth below.

**II. Terms**

**FOR AND IN CONSIDERATION** of the compromise and full settlement of all claims and disputes, the Parties agree as follows:

**1. Entry of Consent Judgment Against PEI.** PEI consents to the entry of a consent judgment in the form attached hereto as Exhibit A. Under the terms of the consent judgment, judgment shall enter against PEI in the amount of \$1,909,555.76 and Campbell-Sevey shall not undertake any efforts to enforce or collect on the consent judgment until December 1, 2009. Any amounts received by Campbell-Sevey on its claims in the assignment for benefit of creditors by Pacific Ethanol Imperial, LLC prior to December 1, 2009 shall be deducted from the \$1,909,555.76 judgment amount.

**2. Mutual Releases.** Other than the obligations contained herein or arising out of this Agreement, including the consent judgment, the Parties hereby release each other and all of their past, present, and future shareholders, officers, directors, employees from and against any and all claims of every kind and nature, regardless of the legal theory upon which they are based, whether known or unknown, now existing or arising at any time in the future, arising out of any and all agreements, events, acts, omissions or conduct relating to, in connection with, or arising out of the subject matter of the Lawsuit, including but not limited to any claims for payment under the Payment Agreement or Joinder Agreement.

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**3. No Release of Claims Against Pacific Ethanol Imperial, LLC.** The Parties expressly acknowledge and agree that nothing in this Agreement constitutes a release of Campbell-Sevey's claims against Pacific Ethanol Imperial, LLC, including but not limited to claims made in Pacific Ethanol Imperial, LLC's assignment for the benefit of creditors; provided, however, that upon PEI's complete satisfaction of the consent judgment, the releases in paragraph 2 of this Agreement shall become effective as to Pacific Ethanol Imperial, LLC. Further, concurrent with the filing of the consent judgment against PEI, Campbell-Sevey agrees to file a stipulation of dismissal without prejudice of its claims against Pacific Ethanol Imperial, LLC to become effective upon the court's entry of the consent judgment.

**4. Acknowledgment and Waiver of Future Claims.** The Parties hereby acknowledge California Civil Code Section 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." The Parties, having been made aware of California Civil Code Section 1542, hereby waive the provisions of said section and any all future claims based on, or in connection with, the subject matter of the Lawsuit.

**5. Future Discovery.** The Parties acknowledge that they may hereafter discover facts relating to the Lawsuit that occurred prior to the date of this Agreement and are different from, or in addition to, those which they now know or believe to be true, and the Parties agree that this Agreement shall be and remains effective and applicable in all respects, notwithstanding such different or additional facts, or the discovery thereof.

**6. Voluntarily and Knowingly.** The Parties acknowledges they have read this Agreement and understand all of its terms, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance. Each Party to this Agreement has received independent legal advice from his, her or its attorney with respect to the legal consequences of making the settlement and release provided for herein and with respect to the execution of this Agreement.

**7. Warranty of Capacity to Execute Agreement.** The Parties represent and warrant that no other person or entity has or has had any interest to the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein, and that the parties have the sole right and exclusive authority to execute this Agreement and receive the sums specified herein, and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action released or referred to in this Agreement. The Parties represent and warrant that they have the legal power and authority to enter into and bind the parties to the terms and conditions contained in this Agreement.

8. **Construction.** The Parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. All Parties agree they have had ample opportunity to influence the choice of language and terms in this Agreement.

9. **Duty to Effectuate.** Each of the Parties agrees to perform any lawful additional acts, including the execution of additional agreements, as are reasonably necessary to effectuate the purpose of this Agreement.

10. **Sufficiency of Consideration.** Other than the terms set forth in this Agreement, the Parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed between them by virtue of this Agreement to render this Agreement valid and enforceable.

11. **Entire Agreement.** Except for those agreements expressly referenced herein, this Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between the parties with regard to the subject matter hereof. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein. The Agreement may not be modified except in a writing signed by a duly authorized officer of each of the parties.

12. **Governing Law and Forum.** This Agreement will be governed by and construed according to the laws of the State of Colorado without regard to choice of law principles. The Parties agree and acknowledge that any controversy arising out of or relating to this Agreement or the breach thereof, or any claim or action to enforce this Agreement or portion thereof, or any controversy or claim requiring interpretation of this Agreement must be brought in federal or state court within the State of Colorado.

13. **Attorney Fees.** Should any Party breach the terms of this Settlement Agreement, the breaching party shall be liable to the non-breaching party for damages. Damages shall include but not be limited to, attorney fees and costs.

14. **Severable.** If any provision of this Agreement is determined to be invalid, void or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement, and the provision in question shall be modified so as to be rendered enforceable.

15. **Enforce According To Terms.** The Parties intend this Agreement to be enforced according to its terms.

16. **Successors and Assigns.** This Agreement shall bind the heirs, personal representatives, successors, assigns, executors and administrators of each party, and inure to the benefit of each party, its heirs, successors and assigns.

17. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by written instruments signed by the party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**18. Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, any of which need not contain the signatures of more than one party but all signed counterparts taken together will constitute one and the same agreement. A facsimile signature will be deemed as valid as an original signature.

**19. Section Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

[remainder of the page left blank intentionally]

IN WITNESS WHEREOF, the parties have duly authorized and caused this Agreement to be executed as follows:

**Campbell-Sevey, Inc.**

**Pacific Ethanol, Inc.**

By: /s/ Brian Ross

By: /s/ John T. Miller

Its: President

Its: COO

Date: August 5, 2009

Date: August 6, 2009

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00408-RPM

CAMPBELL-SEVEY, INC., a Minnesota Corporation,

Plaintiff,

v.

PACIFIC ETHANOL, INC., a Delaware Corporation, and PACIFIC ETHANOL IMPERIAL, LLC, a California Limited Liability Corporation,

Defendants.

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**CONSENT JUDGMENT**

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On February 26, 2009, Plaintiff Campbell-Sevey, Inc. ("Campbell-Sevey") filed this action against Pacific Ethanol, Inc. ("PEI") as guarantor under a certain Payment Agreement entered into between Campbell-Sevey, PEI and Pacific Ethanol Imperial, LLC. Campbell-Sevey and PEI have entered into a Settlement Agreement pursuant to which they have agreed to settle the controversy between them based on certain terms and conditions, including the entry of the following Consent Judgment.

**I. CONSENT JUDGMENT**

Having considered the matters, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
  2. This Court has personal jurisdiction over Campbell-Sevey and PEI and venue is proper in this District under 28 U.S.C. § 1391.
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3. Pursuant to the Settlement Agreement, judgment shall enter against PEI in the amount of \$1,909,555.76. However, pursuant to the Settlement Agreement, this amount of this judgment shall be reduced by any amounts Campbell-Sevey receives on its claims in the assignment for benefit of creditors by Pacific Ethanol Imperial, LLC.

4. Pursuant to the Settlement Agreement, Campbell-Sevey (or its assignees, if any) shall not undertake any efforts to enforce or collect on this Consent Judgment until December 1, 2009.

5. Campbell-Sevey is expressly permitted to assign or pledge (without further consent or notice) all or any portion of this judgment remaining outstanding at any time.

The Clerk of the Court is directed to enter this Consent Judgment forthwith.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2009

BY THE COURT:

\_\_\_\_\_  
United States District Court Judge





