

1 Daniel Cooper (Bar No. 153576)
 2 EMAIL: Daniel@lawyersforcleanwater.com
 3 LAWYERS FOR CLEAN WATER, INC.
 4 1004A O'Reilly Avenue
 5 San Francisco, California 94129
 6 Telephone: (415) 440-6520
 7 Fax: (415) 440-4155

8 Linda Krop (Bar No. 118773)
 9 EMAIL: lkrop@edcnet.org
 10 ENVIRONMENTAL DEFENSE CENTER
 11 906 Garden Street
 12 Santa Barbara, CA 93101
 13 PH: (805) 963-1622
 14 FAX: (805) 962-3152

15 Attorneys for Plaintiff
 16 SANTA BARBARA CHANNELKEEPER and
 17 ENVIRONMENTAL DEFENSE CENTER

18 *Additional Plaintiffs' counsel on next page*

19 UNITED STATES DISTRICT COURT
 20 CENTRAL DISTRICT OF CALIFORNIA
 21 WESTERN DIVISION – LOS ANGELES

22 SANTA BARBARA
 23 CHANNELKEEPER, a California non-
 24 profit corporation, and
 25 ENVIRONMENTAL DEFENSE
 26 CENTER, a California non-profit
 27 corporation,
 28
 29 Plaintiffs,
 30
 31 v.
 32 DAVID SEROR, Solely in His
 33 Capacity as Chapter 7 Trustee of
 34 Halaco Engineering Co., et al.,
 35
 36 Defendants.

Case No.: CV 01-00456 GW (RZx)

Hon. George H. Wu

**FINDINGS OF FACT AND
 CONCLUSIONS OF LAW;**

**ORDER GRANTING
 PLAINTIFFS' APPLICATION
 FOR APPOINTMENT OF
 RECEIVER**

Status Conference: October 14, 2010
 Time: 8:30 a.m.
 Courtroom: 10

1 Martin McCarthy (Bar No.194915)
2 EMAIL: martin_mccarthy@yahoo.com
3 LAW OFFICE OF MARTIN MCCARTHY
4 9618 National Blvd.
5 Los Angeles, CA 90034
6 PH: (310) 601-6214
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 On June 29, 2010, Plaintiffs Santa Barbara Channelkeeper and
2 Environmental Defense Center (“Channelkeeper”) filed their Notice of Application
3 and Application to Appoint a Receiver, and Notice of Motion and Motion Add
4 Richard Sloan as a Defendant and Judgment Debtor (“Motion”). Dkt. Nos. 414
5 and 415. Chickadee filed its Opposition to Application for Appointment of
6 Receiver and Motion to Amend Judgment (“Opposition”) on July 9, 2010. Dkt.
7 No. 416.

8 On July 22, 2010 the Court held a status conference and heard oral
9 argument on Channelkeeper’s Motion. Dkt. No. 419. Channelkeeper and
10 defendants Chickadee Environmental Remediation Company (“Chickadee”)
11 (collectively “the Parties”) appeared. Id. The Court held further status
12 conferences regarding Channelkeeper’s Motion on August 2, 2010 (Dkt. No. 420),
13 August 23, 2010 (Dkt. No. 422), August 30, 2010 (Dkt. No. 423), and September
14 20, 2010 (Dkt. No. 427). On September 14, 2010, Channelkeeper filed a
15 supplemental statement regarding Chickadee’s accounting documents produced
16 (Dkt. No. 424) and Chickadee filed its objections on September 16, 2010 (Dkt. No.
17 426).

18 **Findings of Fact and Conclusions of Law**

19 Having considered the Motion, the Opposition, supplemental briefing,
20 and evidence and oral argument presented at the five status conferences the Court
21 hereby makes the following Finds of Fact and Conclusions of Law:

22 1. A district court has broad discretion in appointing a receiver and may
23 consider a host of relevant factors, no single one of which is dispositive. *Canada*
24 *Life Assurance Co. v. LaPeter*, 563 F.3d 837, 845 (9th Cir. 2009).

25 2. Among other things, the court may consider whether there is an
26 imminent danger of loss of property, the inadequacy of legal remedies, and
27 whether harm to be caused by denying the appointment would outweigh harm to

1 the party opposing the appointment of a receiver, if one is appointed. *Id.*; *Solis v.*
2 *Matheson*, 563 F.3d 425, 438 (9th Cir. 2009).

3 3. Channelkeeper has a property interest in Chickadee's assets as a
4 judgment creditor.

5 4. Given that Chickadee has refused to pay any amount of the judgment
6 against it since October of 2008, almost two years ago, and has repeatedly failed to
7 fully comply with Channelkeeper's reasonable discovery requests concerning
8 Chickadee's financial assets and status, and whereas a receiver can take exclusive
9 control and possession over Chickadee's assets for the purpose of executing the
10 judgment entered in this case there is a clear necessity to protect Channelkeeper's
11 property interest through receivership.

12 5. Channelkeeper has a valid claim in the underlying action as evidenced in
13 the settlement agreement first entered by this Court on October 31, 2008 (Dkt. No.
14 330), subsequently modified and ordered on December 11, 2008 (Dkt. No. 345),
15 and because Channelkeeper has obtained orders from this Court finding Chickadee
16 in civil contempt. Dkt. Nos. 372, 374, and 386.

17 6. There is imminent risk of fraudulent conduct. Chickadee has repeatedly
18 disobeyed this Court's orders, including this Court's May 4, 2010 order granting
19 Channelkeeper's motion for civil contempt, its August 25, 2009 order requiring
20 payment by September 25, 2009, and the U.S. Magistrate Judge's order for
21 debtor's exam. Dkt. Nos. 372, 386, 391, 410 at ¶ 9, respectively. Further,
22 Chickadee gave post-judgment discovery responses that were inconsistent with the
23 information it provided during the October 2009 debtor's exam. *See* Dkt. No. 410,
24 ¶ 20. Finally, though Channelkeeper had been seeking payment of its judgment
25 since at least October 20, 2008, Chickadee concealed the existence of outstanding
26 state court judgments in Texas until the debtor's examination of Chickadee, which
27 was conducted approximately one year later. *See* Dkt. No. 410, ¶ 9.

1 7. There is also imminent risk of loss of Channelkeeper’s property interest.
2 Chickadee has failed to pay any portion of the judgment against it first obtained by
3 Channelkeeper on October 31, 2008 – almost two years ago. *See* Dkt. No. 410,
4 ¶¶ 5 and 8. Chickadee has also failed to pay according to the payment schedule
5 stipulated and ordered by the Court to on December 11, 2008. *See* Dkt. Nos. 344
6 and 345; *see also* Dkt. No. 410, ¶ 6. Chickadee’s President Richard Sloan testified
7 during the examination that Chickadee lacked the cash or corporate assets
8 sufficient to pay the judgment, and that Chickadee would not have any assets with
9 which to pay the judgment until one or more of Chickadee’s site remediation
10 transactions cleared escrow or resulted in income to Chickadee. Dkt. No. 410, ¶ 9.
11 However, Chickadee failed, despite repeated requests, and despite Channelkeeper’s
12 duly propounded post judgment discovery, to produce adequate financial
13 documentation to allow Channelkeeper to identify corporate assets sufficient to
14 satisfy the Judgment and this Court’s orders. *See* Dkt. No. 410, ¶¶ 9-23. On
15 August 2, 2010, Chickadee this Court ordered Chickadee to provide
16 Channelkeeper all accounting documents relating to Chickadee within two weeks
17 of that date. Dkt. No. 420. Chickadee was then ordered to have its accountant
18 contact counsel for Channelkeeper no later than August 25, 2010 (Dkt. No. 422),
19 and was again ordered to provide all accounting documents on September 7, 2010
20 (Dkt. No. 423). Chickadee failed to produce a complete set of the required
21 documents. *See* Dkt. No. 427. Further, Richard Sloan, Chickadee’s President, also
22 disclosed at the October 2009 debtor’s examination conducted by Channelkeeper
23 that, in addition to this Court’s August 25, 2009 order totaling nearly \$293,000,
24 two other outstanding money judgments were pending against Chickadee in the
25 State of Texas totaling approximately \$300,000.00. *See* Dkt. No. 410, ¶ 9. Sloan
26 further revealed that a receiver had been appointed by a Texas state court to
27 recover one of these judgments. *See id.*

1 8. The legal remedies available to Channelkeeper are, and have been to
2 date, inadequate due to Chickadee's repeated refusal to comply with this Court's
3 prior orders. On May 4, 2009, the Court issued an Order granting Channelkeeper's
4 Contempt Motion, which awarded Channelkeeper the money due, as well as
5 interest and Channelkeeper's attorneys' fees and costs, and allowed Chickadee, at
6 its request, on or before July 13, 2009 to pay. Dkt. No. 372. Chickadee failed to
7 make any payment under that order. See Dkt. No. 410, ¶ 5. After Channelkeeper
8 notified the Court that no payment was made, Chickadee's President, Richard
9 Sloan, signed and filed a Declaration with the Court on August 19, 2009 asserting
10 that in a matter of weeks Chickadee would obtain the funds it needed to begin
11 paying the judgment, and further requesting a 30-day extension of time in which to
12 pay. Dkt. No. 381. On August 25, 2009, the Court entered an order awarding
13 Channelkeeper all money past due, Channelkeeper's additional attorneys' fees and
14 costs, and a contempt sanction of \$1,000.00 for a total of \$292,909.68. Dkt. No.
15 386. That order also awarded Channelkeeper attorneys' fees and costs for
16 conducting the debtor examination, and interest on the judgment at the rate of 10 %
17 per annum. *Id.* Chickadee has failed to pay any portion of that August 25, 2009
18 order. See Dkt. No. 410, ¶ 8. Additionally, Chickadee has not complied with the
19 Court's orders issued on August 2, 2010, August 25, 2010, and August 30, 2010
20 relating to Chickadee's failure to produce post-judgment discovery documents.
21 See Dkt. Nos. 420, 422, 423, and 425.

22 9. There is no harm to Chickadee in appointing a receiver to protect
23 Channelkeeper's interests and effectuate payment of the judgment against it by
24 Chickadee. Chickadee has already agreed to pay Channelkeeper the judgment
25 amount as established by the settlement agreement executed on or about July 31,
26 2008, and entered by this Court in October 2008. See Dkt. No. 330. Chickadee
27 has represented to the Court that payment would be made in a declaration

1 from its President Richard Sloan filed on August 19, 2009 (Dkt. No. 381), and
2 during the civil contempt proceedings in May of 2009. *See* Dkt. No. 410, ¶ 6.

3 10. Further, any harm to Chickadee is outweighed by the harm to
4 Channelkeeper because Channelkeeper is a non-profit public interest organization
5 with a valid property interest as a judgment creditor. *See* Dkt. No. 410, ¶¶ 4-5.

6 11. Channelkeeper was successful on its claims underlying this action as it
7 obtained the settlement agreement entered by this Court in October 2008. Dkt.
8 Nos. 326, 330 and 345. Appointing a receiver with authority to control, assess, and
9 distribute, as necessary, Chickadee's assets in satisfaction of Channelkeeper's
10 property interest in the judgment will provide a reasonable remedy to
11 Channelkeeper, as discussed above, thus preventing irreparable injury resulting
12 from Chickadee's non-payment.

13 12. It is unclear when, if ever, that Channelkeeper will recover its property
14 interest in the judgment absent appointment of a receiver. On August 19, 2009,
15 Chickadee filed a declaration stating it had insufficient funds to satisfy the
16 judgment, or that payment would be delayed until its site remediation projects were
17 approved and the funds released from escrow. Dkt. No. 381. Chickadee has failed
18 to make any payments on the judgment, however, and Channelkeeper has
19 established that there are other judgments entered against Chickadee in Texas (Dkt.
20 No. 410, ¶ 9); further, Chickadee has failed to provide Channelkeeper with all
21 financial records and accounts as required and ordered by this Court (*See* Dkt. Nos.
22 420, 422, 423, and 425).

23 13. In the Courts' discretion to consider the above facts, the Court finds that
24 imposing a receivership upon Chickadee for the purpose of executing the judgment
25 entered in favor of Channelkeeper in this case is warranted.
26
27

1 **[Proposed] Order**

2 Having reviewed Channelkeeper’s Application for Appointment of
3 Receiver and Motion to Amend Judgment to Add Richard Sloan as a Defendant
4 and Judgment Debtor, Chickadee’s Opposition to Application for Appointment of
5 Receiver and Motion to Amend Judgment, and having considered the Parties’ oral
6 argument during the Status Conference held October 14, 2010 and the previous
7 hearings before this Court held on August 2, 2010, August 23, 2010, August, 30,
8 2010, and September 20, 2010, and having made the above Findings of Fact and
9 Conclusions of Law:

10 IT IS HEREBY ORDERED that David J. Pasternak is appointed as
11 Limited Receiver of Chickadee Environmental Remediation Company, effective
12 upon filing of a Receiver’s oath in this Court to faithfully perform his duties. The
13 Receiver is appointed for the limited purpose of executing the judgment entered in
14 this case, including all past and future awards of attorneys’ fees and costs, and all
15 receivership costs of administration.

16 IT IS FURTHER HEREBY ORDERED that the Receiver’s duties and
17 powers are as follows:

18 I. Duties and Authority of the Receiver

19 a. Exclusive Management, Possession, and Control

20 14. The Receiver has full and exclusive power, duty, and authority to
21 administer and manage all of the business affairs, funds, assets, choses in action
22 and any other property of Chickadee, and is vested with all of the powers of the
23 shareholders, directors and officers of Chickadee. No one other than the Receiver
24 has authority to file any voluntary bankruptcy petition on behalf of Chickadee.

25 15. The Receiver is authorized to, and shall, take exclusive possession and
26 control of any and all documents, records, property and assets, wherever located
27

1 within or without this state, of Chickadee including, but not limited to, the
2 following:

3 All accounts, contract rights, general intangibles and payment
4 intangibles, including without limitation, contracts and accounts, all
5 proceeds thereof, and all writings or other records in whatever form
6 (including electronic) which document any of them, including, but not
7 limited to, written agreements, purchase orders, invoices, receipts,
8 checkbooks, check registers, passbooks, journals, ledgers and books
9 of account from which Chickadee receives payments or other data
10 used in or related to its business.

11 The Receiver is also authorized to, and shall, take possession of any and all real
12 property owned by Chickadee, or in which Chickadee has an interest. Title of any
13 such assets taken under the Receiver's exclusive possession and control is vested
14 by operation of law in the Receiver. The Receiver shall comply with the
15 requirements of 28 U.S.C. § 754.

16 16. The Receiver is authorized to take all necessary steps to receive, collect,
17 and review all mail addressed to Chickadee. At the Receiver's discretion, the
18 Receiver is authorized to instruct the U.S. Postmaster to reroute, hold, and/or
19 release said mail to the Receiver. Mail the Receiver reviews in performance of his
20 duties, will promptly thereafter be made available to Chickadee at its request for
21 inspection.

22 17. The Receiver is authorized to, and shall, take possession of all bank
23 accounts, wherever located within or without this state, and shall receive
24 possession of any money on deposit in said bank accounts. Any bank or other
25 financial institution maintaining any such account shall, upon presentation of a
26 copy of this order, immediately deliver any such funds to the Receiver and shall
27

1 provide the Receiver with copies of any documents or records concerning such
2 accounts as the Receiver may request.

3 18. The Receiver is authorized to, and shall, demand, collect, and hold all
4 accounts receivable of Chickadee and all proceeds thereof including, but not
5 limited to, any escrow accounts containing funds to be dispersed upon the
6 occurrence of a particular event.

7 19. The Receiver is authorized to, and shall, present for payment any checks,
8 money orders, negotiable instruments or commercial paper through which
9 Chickadee is compensated for its goods and/or services. The Receiver is
10 authorized to, and shall, endorse the same and collect the proceeds, including, but
11 not limited to, the proceeds from any escrow accounts containing funds to be
12 dispersed upon the occurrence of a particular event.

13 20. The Receiver is authorized to, and shall, cause to be sold any real
14 property taken under the Receiver's exclusive possession and control if such sale is
15 necessary to the discharge of the duties and powers set forth in this order.

16 21. The Receiver is authorized to, and shall, deposit all proceeds collected
17 and taken under the Receiver's exclusive possession and control into an interest
18 bearing bank account ("Receiver Trust Account") to be thereafter used and
19 maintained by the Receiver in furtherance of the Receiver's duties and powers set
20 forth herein. The Receiver shall keep detailed accounting records of all deposits to
21 and all expenditures from the Receiver Trust Account, and shall maintain those
22 accounting records until the expiration the receivership.

23 22. The Receiver may employ agents, employees, clerks, accountants,
24 attorneys, and property managers to administer the receivership estate, purchase
25 materials, supplies and services, and pay for them at the ordinary and usual rates
26 out of the funds which shall come into the Receiver's possession and shall do all
27 things and incur the risks and obligations ordinarily incurred by

1 owners, property managers and operators of similar properties and enterprises as
2 such Receiver. No such risk or obligation so incurred shall be the personal risk or
3 obligation of the Receiver, but shall be the risk and obligation of the receivership
4 estate.

5 23. The Receiver and his office personnel shall be paid their usual hourly
6 billable rates, and reimbursement of costs. The Receiver's current hourly billable
7 rate is \$495. The Receiver shall prepare and serve monthly statements reflecting
8 the Receiver's fees and administrative expenses, including fees and costs of agents,
9 accountants and attorneys engaged by the Receiver to assist in the administration
10 of the receivership estate, incurred for each monthly period in the operation and
11 administration of the receivership estate. Fees and expenses shall be submitted to
12 the Court for its approval and confirmation in the form of either a properly noticed
13 interim request for fees, stipulation of all parties, or Receiver's Final Accounting
14 and Report.

15 24. The Receiver is authorized to, and shall, execute and prepare all
16 documents, and perform all acts, either in Chickadee's name or in the Receiver's
17 own name which are necessary or incidental to preserving, protecting, managing,
18 and controlling Chickadee's assets, accounts, and other real or personal property.

19 25. The Receiver is authorized enter into contracts as the Receiver
20 reasonably believes necessary for the maintenance and operation of Chickadee and
21 the purposes of this receivership.

22 26. The Receiver is authorized to, and shall, disperse funds deposited in the
23 Receiver Trust Account in satisfaction of the judgment entered in this case against
24 Chickadee in favor of Channelkeeper, including all past and future awards to
25 Channelkeeper of attorneys' fees and costs, and interest, at which time there are
26 sufficient deposits to make such dispersal. The Receiver shall not expend any
27 funds deposited into the Receiver Trust Account for any purpose other than that

1 expressly provided in this order. In the event that the Receiver determines that the
2 Receiver Trust Account will not have a balance sufficient to satisfy the judgment
3 entered in this case, including all past and future awards of attorneys' fees and
4 costs and interest, the Receiver may apply to this Court for further instructions
5 and/or powers, including, but not limited to, an application to include the personal
6 assets of Richard Sloan in the receivership estate in accordance with the
7 investigation into Chickadee's corporate status as described below.

8 27. The Receiver is authorized to take depositions of Chickadee, its agents,
9 directors, officers, shareholders, employees, and/or third parties subject to three (3)
10 business days notice as the Receiver deems necessary to carry out the duties and
11 powers set forth in this order. Notice of such deposition will be sufficient if made
12 orally, by facsimile, electronic mail, or overnight courier. These depositions may
13 be taken telephonically. The Receiver is also authorized to serve interrogatories,
14 requests for the production of documents, and requests for admissions upon
15 Chickadee, its agents, directors, officers, shareholders, employees, and/or third
16 parties. The party receiving such discovery requests shall respond within seven (7)
17 business days of service. Service of discovery requests shall be sufficient if made
18 by facsimile, electronic email, or overnight courier.

19 28. The Receiver is authorized to institute, prosecute, defend, compromise,
20 adjust, intervene in, or become party to such actions or proceedings in state or
21 federal courts or arbitrations or mediations as may in his opinion be necessary or
22 proper for the protection, maintenance, and preservation of Chickadee or its
23 property or the carrying out of the terms of this order, and likewise to defend,
24 compromise, adjust, or otherwise dispose of any or all actions or proceedings
25 instituted against him as receiver or against Chickadee, and also to appear in and
26 conduct the defense of any suit or adjust or compromise any actions or proceedings
27 now pending in any court or arbitration or mediation by or against Chickadee

1 where such prosecution, defense, or other disposition of those actions or
2 proceedings will in the judgment of the Receiver be advisable or proper for the
3 protection of Chickadee or its property.

4 29. The Receiver is authorized to engage a locksmith for the purposes of
5 gaining entry to any Chickadee business location or real property, and through any
6 security system, in order to obtain any documents to which the Receiver is entitled
7 pursuant to this Order, as well as giving any notices which may be required in
8 performing the Receiver's duties. The Receiver may either have the locks changed
9 or have a key created that will work for the locks.

10 30. The Receiver shall, within thirty (30) days of the effective date of this
11 appointment, file and serve an inventory setting forth a list of all assets,
12 documents, and records of which the Receiver has taken exclusive possession
13 pursuant to this order to the Court. The Receiver shall file a supplemental
14 inventory if he takes possession of any additional assets, documents and/or records
15 pursuant to this order after thirty (30) days of the effective date.

16 31. The Receiver shall, within sixty (60) days after the effective date of this
17 appointment, file and serve a detailed accounting of Chickadee's assets listed in the
18 inventory with the Court. In this report, the Receiver shall assess whether the
19 inventoried assets are sufficient to satisfy the judgment entered in this case, or
20 whether the inventoried assets will in the future be sufficient to satisfy the
21 judgment.

22 32. The Receiver shall also investigate whether Chickadee is, or was, under
23 capitalized, has failed to meet corporate formalities, and is controlled by Richard
24 Sloan. The Receiver shall conduct this investigation by examining the documents,
25 records, and other relevant information taken into the Receiver's exclusive control
26 and possession under the duties and powers set forth in this order. Within sixty
27 (60) days of the effective date of this order, the Receiver shall file his

1 findings relating to this investigation with the Court along with the records and
2 other documentation supporting those findings. The Receiver may in accordance
3 with such findings, at his discretion, apply for an order from this Court to add
4 Sloan as a defendant and judgment debtor. The Receiver may seek the assistance
5 of legal counsel in making this application; such legal counsel is entitled to
6 reasonable compensation payment of which shall be approved by the Court when
7 included in the Receiver's interim request for fees. The Court will consider an
8 application to add Sloan as a defendant and judgment debtor, and will amend or
9 modify this order as warranted.

10 33. The parties, and each of them, on receipt of this order shall provide the
11 Receiver with any tax identification numbers utilized by Chickadee. The Receiver
12 shall also be entitled to utilize such tax identification numbers during his operation
13 of the receivership estate.

14 34. The Receiver shall determine upon taking possession of the estate
15 whether in the Receiver's judgment there is sufficient insurance coverage. With
16 respect to any insurance coverage, the Receiver shall be named as an additional
17 insured on the policies for the period that the Receiver shall be in possession of the
18 estate. If sufficient insurance coverage does not exist, the Receiver shall
19 immediately notify the parties to this lawsuit and shall have thirty (30) days to
20 procure sufficient all-risk and liability insurance on the estate (including if
21 appropriate earthquake and flood insurance) provided, however, that if the
22 Receiver does not have sufficient funds to do so, the Receiver shall seek
23 instructions from the Court with regard to whether insurance shall be obtained and
24 how it is to be paid for. If consistent with existing law, the Receiver shall not be
25 responsible for claims arising from the lack of procurement or inability to obtain
26 insurance.

27 35. Upon reasonable notice, the parties shall have access to all non-

1 privileged documents in the Receiver's possession, and may copy any such
2 documents at their expense.

3 36. If the Receiver receives notice that a bankruptcy has been filed and part
4 of the bankruptcy estate may include property that is the subject of this order, the
5 Receiver shall have the following duties:

6 a. The Receiver shall immediately contact plaintiffs' counsel and
7 determine whether plaintiffs intend to move in the bankruptcy
8 court for an order for (1) relief from the automatic stay, and
9 (2) relief from the Receiver's obligation to turn over the property
10 (11 U.S.C. § 543). If the party has no intention to make such a
11 motion, the Receiver shall immediately turn over the subject
12 property to the appropriate entity, either to the trustee in
13 bankruptcy if one has been appointed or, if not, to the debtor in
14 possession – and otherwise comply with 11 U.S.C. § 543.

15 b. If any party intends to seek relief immediately from both the
16 automatic stay and the Receiver's obligation to turn over the
17 subject property, the Receiver may remain in possession and
18 preserve the property pending the ruling on those motions (11
19 U.S.C. § 543(a)). The Receiver's authority to preserve the
20 property shall be limited as follows:

21 c. The Receiver may continue to collect any income;

22 d. The Receiver may make only those disbursements necessary
23 preserve and protect the subject property;

24 e. The Receiver shall not execute any new long-term contracts;
25 and

26 f. The Receiver shall do nothing that would effect a material
27

1 change in the circumstances of the subject property.

2 g. If no party files a motion within 10 court days after receipt of
3 notice of the bankruptcy filing, the Receiver shall immediately
4 turn over the subject property to the appropriate entity, either to
5 the trustee in bankruptcy if one has been appointed or, if not, to
6 the debtor in possession and otherwise comply with 11 U.S.C.
7 § 543.

8 37. Within sixty (60) days of satisfaction of the judgment entered in this
9 case, including all past and future awards of attorneys' fees and costs, and interest
10 to Channelkeeper, the Receiver shall submit to the Court a Final Accounting and
11 Report of all remaining assets, deposits, real or personal property, and any other
12 tangibles or intangibles taken under the Receiver's exclusive control and
13 possession. The Final Accounting and Report shall include detailed information
14 relating to (1) total proceeds received listed by source, (2) total expenditures made
15 enumerated by major categories, (3) net amount of any surplus or deficit, and (4)
16 any other information the Receiver has in his exclusive control and possession as
17 authorized by this order.

18 II. Cooperation

19 a. Defendants

20 38. Chickadee, and all agents, or persons within the employ, of Chickadee
21 (including contract employees), and all persons in concert and participation with
22 Chickadee and its employees, shall fully cooperate with the Receiver in the
23 discharge of his duties and powers under this order, and shall promptly respond to
24 all inquiries and requests related to compliance with the Court's orders in this case.
25 Chickadee, its agents, and/or employees shall take no action, directly or indirectly,
26 to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the
27 Receiver's duties and powers authorized by this order.

1 39. Any such person who interferes with the Receiver's access, as
2 authorized by this order, or otherwise thwarts or delays the Receiver's performance
3 of his duties under this Order, shall be subject to contempt proceedings before this
4 Court. The Receiver may, as necessary, seek the assistance from legal counsel, in
5 ensuring full cooperation by Chickadee, its agents, and/or employees, including
6 filing civil contempt proceedings against those who do not cooperate.

7 40. Chickadee and its officers, directors, agents, employees, shareholders,
8 and other persons who are in custody, possession, or control of any assets, books,
9 records, or other property of Chickadee shall deliver forthwith upon demand such
10 property, monies, books and records to the Receiver, and shall grant to the
11 Receiver the authorization to be a signatory as to all accounts at banks, brokerage
12 firms, escrow companies, or financial institutions which have possession, custody
13 or control of any assets or funds in the name of or for the benefit of Chickadee,
14 including, but not limited to, any escrow accounts containing funds the dispersal of
15 which is contingent upon the occurrence of a particular event.

16 41. Unless authorized by the Receiver, Chickadee, its agents, and/or
17 employees, shall take no action, nor purport to take any action in the name of or on
18 behalf of Chickadee.

19 b. Counsel

20 42. Counsel for Chickadee shall cooperate with the Receiver's duties and
21 powers under this order, and shall turn over any and all non-privileged records,
22 documents, and other information in counsel's possession relevant to the
23 Receiver's duties and powers.

24
25
26 c. Third Parties

27 43. All banks, brokerage firms, financial institutions, and other business

1 entities, including but not limited to, escrow companies, which have possession,
2 custody or control of any assets, funds or accounts in the name of, or for the
3 benefit of Chickadee shall cooperate in the granting of control and authorization as
4 a necessary signatory as to all assets and accounts to the Receiver.

5 44. No bank, savings and loan association, or other financial institution, or
6 any other person or entity shall exercise any form of set off, alleged set off, lien, or
7 any form of self-help whatsoever, or refuse to transfer any funds or assets to the
8 Receiver's control without the permission of this Court.

9 III. Bond and Jurisdiction

10 a. Bond

11 45. No bond shall be required in connection with appointment of the
12 Receiver. Except for an act of gross negligence, the Receiver shall not be liable for
13 any loss or damage incurred by Chickadee or by the Receiver's officers, agents, or
14 employees, or any other person, by reason of any act performed or omitted to be
15 performed by the Receiver in connection with the discharge of the Receiver's
16 duties and powers.

17 b. Jurisdiction

18 46. The Receiver shall be relieved of all duties and powers authorized by
19 this order, and the receivership herein imposed shall expire, upon satisfaction of
20 the judgment entered in this case, including all past and future awards of attorneys'
21 fees and costs, and interest, to Channelkeeper, and approval of the Receiver's final
22 accounting and report. Any and all remaining assets, records, documents, and
23 other tangibles or intangibles taken under the Receiver's exclusive control and
24 possession, as set forth in the final accounting and report, shall be delivered to
25 Chickadee within thirty (30) days after the termination of the receivership.

26 47. In the event the judgment entered in this case is not satisfied, or for other
27 extenuating circumstances, upon application to and approval from this

1 Court the Receiver may be relieved of his duties and powers.

2 48. This Court shall retain jurisdiction of this matter for all purposes. The
3 Receiver may at any time apply to this Court for any further instructions or powers
4 necessary to enable the Receiver to perform his duties properly.

5
6 IT IS SO ORDERED.

7 Dated: October 14, 2010



8
9 Honorable George H. Wu
10 United States District Court
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27