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6 [ADDITIONAL PARTIES AND COUNSEL
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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **FRESNO DIVISION**

12
13 NATIONAL PETROCHEMICAL &
REFINERS ASSOCIATION, et al.,

14 Plaintiffs,

15 v.

16 JAMES GOLDSTENE, et al.,

17 Defendants

18
19 ROCKY MOUNTAIN FARMERS UNION;
et al.,

20 Plaintiffs,

21 v.

22 JAMES N. GOLDSTENE,

23 Defendant.

24
25 And related intervenor actions
26

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Case No. 1:10-CV-00163-LJO-DLB

**STIPULATION AND [PROPOSED]
ORDER CONSOLIDATING CASES**

Related with Case No. 1:09-CV-02234-
LJO-DLB

1 **WHEREAS** on December 23, 2009, Plaintiffs Rocky Mountain Farmers Union,
2 Redwood County Minnesota Corn and Soybean Growers, Penny Newman Grain, Inc., Growth
3 Energy, and Renewable Fuels Association filed their Complaint for Declaratory and Injunctive
4 Relief in the matter of *Rocky Mountain Farmers Union, et al. v. Goldstene*, Case No. 1:09-CV-
5 02234-LJO-DLB (the “RMFU Action”).

6 **WHEREAS** Rex Nederend, Nisei Farmers League, the Fresno County Farm
7 Bureau, and the California Dairy Campaign were subsequently added as Plaintiffs in the RMFU
8 Action in Plaintiffs’ January 11, 2010, First Amended Complaint for Declaratory and Injunctive
9 Relief, and Plaintiffs’ January 28, 2010, Second Amended Complaint for Declaratory and
10 Injunctive Relief.

11 **WHEREAS** the National Petrochemical & Refiners Association (“NPRA”),
12 American Trucking Associations, The Center for North American Energy Security, and The
13 Consumer Energy Alliance filed a Complaint for Declaratory and Injunctive Relief and Jury
14 Demand on February 2, 2010, which challenges the same regulation at issue in this action. *See*
15 *National Petrochemical & Refiners Association, et al. v. Goldstene, et al.*, Eastern District Case
16 No. 10-CV-00163 LJO DLB (the “NPRA Action”).

17 **WHEREAS** the Parties in both the RMFU Action and the NPRA Action have
18 conferred, and the Parties are in agreement that the RMFU Action should be consolidated with
19 the NPRA Action because the cases involve the same regulation and common questions of law
20 and fact, and because consolidation would advance the interests of judicial economy.

21 **IT IS HEREBY STIPULATED**, by and between Plaintiffs and Defendants and
22 Defendant Intervenors in both the RMFU Action and the NPRA Action, by and through their
23 respective counsel, that:

24 1. Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the RMFU
25 Action and the NPRA Action are hereby consolidated.

26 2. The RMFU Action and the NPRA Action shall be consolidated for purposes of
27 briefing, scheduling, discovery, pretrial proceedings, trial, and any post-trial motions or
28 proceedings. Plaintiffs in the actions reserve the right to file separate briefing on motions, but

1 will coordinate among themselves to avoid unnecessary duplication of arguments. Said actions
2 shall not be consolidated for purposes of judgment or appeal.

3 3. A copy of this Order shall be filed in each of the above-captioned cases, but all
4 further pleadings and papers in these cases shall be filed only under Eastern District Case No.
5 1:09-CV-02234-LJO-DLB, which shall be designated as the "Lead Case" file. In such
6 subsequent pleadings and papers, the case number shall appear on the face of all pleadings and
7 papers as follows:

8 **LEAD CASE No. 1:09-CV-02234-LJO-DLB**
9 **Consolidated With Case No. 10-CV-00163 LJO DLB**

10 4. Except on initial pleadings (*i.e.*, complaints or answers), or as otherwise required
11 by the Federal Rules of Civil Procedure or the Eastern District of California's Local Rules, the
12 caption used on all subsequent pleadings and papers may be of the "short form," listing the first
13 Plaintiff and Defendant in the Lead Case, and referring collectively to all additional parties in
14 the Lead Case and to all of the other cases consolidated for purposes of trial as "and Related
15 Consolidated Action."

16
17 Dated: October 11, 2010

STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE

18
19 By: /s/ Mark Poole
20 Mark Poole,
Attorneys for All Defendants

21 Dated: October 11, 2010

NATURAL RESOURCES DEFENSE COUNCIL

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23 By: /s/ David Pettit
24 David Pettit,
Attorney for Defendant Intervenor
25 Natural Resources Defense Council
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Dated: October 11, 2010

SIERRA CLUB

By: /s/ Pat Gallagher
Pat Gallagher,
Attorney for Defendant Intervenor
Sierra Club

Dated: October 11, 2010

ENVIRONMENTAL DEFENSE FUND

By: /s/ Timothy O'Connor
Timothy O'Connor,
Attorney for Defendant Intervenor
Environmental Defense Fund

Dated: October 11, 2010

CONSERVATION LAW FOUNDATION

By: /s/ Jane West
Jane West,
Attorney for Defendant Intervenor
Conservation Law Foundation

Dated: October 11, 2010

SIDLEY AUSTIN LLP

BY: /s/ Roger R. Martella, Jr.,
Roger R. Martella, Jr.,
Attorneys for the NPRA Plaintiffs

Dated: October 11, 2010

JONES HELSLEY PC

BY: /s/ John P. Kinsey
John P. Kinsey,
Attorneys for the RMFU Plaintiffs

1 **ORDER**

2 The Court having reviewed the foregoing Stipulation, and good cause appearing
3 therefor:

4 **IT IS HEREBY ORDERED** that, pursuant to Rule 42(a) of the Federal Rules
5 of Civil Procedure, the following actions are hereby consolidated:

- 6 A. *Rocky Mountain Farmers Union, et al. v. Goldstene*, Case No. 1:09-CV-02234-
7 LJO-DLB (the “RMFU Action”); and
8 B. *National Petrochemical & Refiners Association, et al. v. Goldstene, et al.*,
9 Eastern District Case No. 10-CV-00163 LJO DLB (the “NPRA Action”).

10 **IT IS ALSO ORDERED** that The RMFU Action and the NPRA Action shall be
11 consolidated for purposes of briefing, scheduling, discovery, pretrial proceedings, trial, and any
12 post-trial motions or proceedings. Plaintiffs in the actions reserve the right to file separate
13 briefing on motions, but they will coordinate among themselves to avoid unnecessary
14 duplication of arguments. Said actions shall not be consolidated for purposes of judgment or
15 appeal.

16 **IT IS ALSO ORDERED** that the consolidation is for the purpose of advancing
17 judicial economy but “does not affect any of the substantive rights of the parties” *J.G. Link &*
18 *Co. v. Continental Cas. Co.*, 470 F.2d 1133, 1138 (9th Cir. 1972), and does not merge these
19 separate lawsuits into a single action, *Geddes v. United Fin. Group*, 559 F.2d 557, 561 (9th Cir.
20 1977).

21 **IT IS FURTHER ORDERED** that a copy of this Order shall be filed in each of
22 the above-captioned cases, but all further pleadings and papers in these cases shall be filed only
23 under Eastern District Case No. 1:09-CV-02234-LJO-DLB, which shall be designated as the
24 “Lead Case” file. In such subsequent pleadings and papers, the case number shall appear on the
25 face of all pleadings and papers as follows:

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LEAD CASE No. 1:09-CV-02234-LJO-DLB
Consolidated With Case No. 10-CV-00163 LJO DLB

IT IS ALSO ORDERED that, except on initial pleadings (*i.e.*, complaints or answers), or as otherwise required by the Federal Rules of Civil Procedure or the Eastern District of California’s Local Rules, the caption used on all subsequent pleadings and papers may be of the “short form,” listing the first Plaintiff and Defendant in the Lead Case, and referring collectively to all additional parties in the Lead Case and to all of the other cases consolidated for purposes of trial as “and Related Consolidated Action.”

IT IS SO ORDERED.

Dated: October 15, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE