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15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
 17 **SACRAMENTO DIVISION**

17 ARC ECOLOGY, et al.,
 18
 Plaintiffs,
 19 v.
 20 UNITED STATES MARITIME
 ADMINISTRATION, *et al.*,
 21 Defendants.

Case No.: 2:07-cv-2320-GEB-GGH

**STIPULATION AND PROTECTIVE
 ORDER**

22 CALIFORNIA REGIONAL WATER
 QUALITY CONTROL BOARD, SAN
 23 FRANCISCO BAY REGION,
 24 Plaintiff-Intervenor,
 25 v.
 26 UNITED STATES MARITIME
 ADMINISTRATION, *et al.*,
 27 Defendants.

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2 Plaintiffs Arc Ecology, San Francisco Baykeeper, and Natural Resources Defense Council, Inc.
3 (collectively “Environmental Plaintiffs”), Plaintiff-Intervenor California Regional Water Quality
4 Control Board, San Francisco Bay Region, and defendants United States Maritime Administration
5 (“MARAD”), James E. Caponiti, in his official capacity as Acting Deputy Maritime Administrator,
6 United States Department of Transportation, and Ray H. LaHood, in his official capacity as Secretary
7 of Transportation (collectively “Defendants”), by and through their respective counsel, stipulate and
8 agree that a protective order should be entered in this action to protect confidential and
9 commercially sensitive information that may be produced or otherwise disclosed by MARAD. To
10 facilitate production and receipt of information during discovery, the parties stipulate and agree
11 that a protective order be entered, subject to the approval of the Court, as follows:

12
13 **Materials Covered**

14 I. Disclosure of the following documents, or highlighted portions thereof, consist of
15 one or more of the following categories: Proprietary and Source Selection Data – information
16 related to the government decision making process (including the decision itself) for an award of a
17 contract to industry. Consistent with FAR Part 3.104.5 this Proprietary and source selection
18 information may only be disclosed to individuals authorized by the head of an agency. Further,
19 some of these documents contain confidential business information (“CBI”). Disclosure of these
20 data would impair Defendants’ ability to gather this type of information in the future. Further,
21 there is likelihood of substantial competitive harm in the event information contained in the
22 following documents is disclosed in that competitors could use this information to undercut future
23 offers, especially in regards to vessel recycling services.

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MARAD001639
MARAD001730
MARAD001731

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1	MARAD002116
	MARAD002124
2	MARAD002187
3	MARAD004978
4	MARAD005366
	MARAD025007-13
5	MARAD025017-22
6	MARAD025111-12
	MARAD025117-29
7	MARAD025142-43
8	MARAD025144-45
	MARAD025146-47
9	MARAD025148-49
10	MARAD025158-59
	MARAD025160-65
11	MARAD025166-67
12	MARAD025191-92
13	MARAD025229-30
	MARAD025240-43
14	MARAD025326-27
15	MARAD025375-76
	MARAD025455-56
16	MARAD025467-68
17	MARAD025561-63
	MARAD025564-65
18	MARAD025566-68
19	MARAD025569-70
20	MARAD025573-75
	MARAD025671-72
21	MARAD025674-75
22	MARAD026009-10
	MARAD026181-82
23	MARAD026194-207
24	MARAD026483-84
	MARAD026615-16
25	MARAD026617-18
26	MARAD026620-21
27	MARAD026931-32

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1	MARAD026973-74
2	MARAD027029-41
3	MARAD027042-51
4	MARAD029494-514
5	MARAD062893-94
6	MARAD062896-97
7	MARAD062899-900
8	MARAD062901-03
9	MARAD062905-06
10	MARAD063767-875
11	MARAD063858-916
12	MARAD064077-228
13	MARAD064229-231
14	MARAD000045-47

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- Transcript of United States’ Maritime Administration Designated Representative Curt Michanczyk at 509-512, Arc Ecology et al v. U.S. Maritime Administration, et al., No. 2:07-cv-2320 (E.D. Cal. June 10, 2009).

Method of Designation

II. Defendants may designate as “Confidential” the entirety of or any portion of the documents listed in Section I above, provided the designation is made in good faith, as follows:

A. “Confidential” materials are any materials containing information listed in Section I.

B. Documents or other tangible documents or information produced by MARAD may be designated as “Confidential” by stamping, attaching, or writing the legend “Confidential” on the document or other information at or before production; including the legend “Confidential” on the cover of any multipage document shall designate all pages of the document as confidential, unless otherwise indicated.

1 C. Where only portions of documents or information are designated as
2 “Confidential,” MARAD shall designate the parts of said materials for which confidentiality is
3 claimed, and only those parts shall be subject to this Stipulation and Protective Order.

4 D. Inadvertent failure to designate documents or information as “Confidential”
5 at the time of production or disclosure shall not operate to waive the right to later seek an order of
6 the Court designating such Documents or information as “Confidential.”
7

8 **Treatment of “Confidential” Documents or Information**

9 III. No copies of “Confidential” documents or information shall be made except to the
10 extent necessary for the preparation of and conduct of this litigation, including discovery, motion
11 practice, trial, or appeal. Any person responsible for making such copies must ensure that the
12 copies adequately reflect the “Confidential” designation.
13

14 IV. Documents or information designated as “Confidential,” including any copies,
15 notes, abstracts or summaries thereof, shall be maintained in confidence by the person to whom
16 such materials are produced or disclosed, and shall not be disclosed to any person except the
17 following and such disclosures shall only be made to the extent necessary:

18 A. the Court;

19 B. court reporters who record depositions or other testimony in this action;

20 C. counsel of record to the parties in this litigation, and the legal associates,
21 paralegals and support staff who are employed by such counsel and are actually
22 involved in assisting in this litigation;
23

24 D. any other person upon the written agreement of MARAD, or pursuant to Court
25 order.

26 V. All persons authorized by this Protective Order to receive information from
27 documents or information designated as “Confidential” shall maintain such information in
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1 accordance with this Protective Order, and shall use such information solely for the purpose of
2 preparing for and conducting the above-captioned litigation and for no other purpose. Documents
3 or information designated as “Confidential” and the contents thereof shall not be used for any
4 business, commercial or competitive purpose, or used in any other litigation or proceeding. The
5 restrictions placed by this Order on a party in possession of documents or information shall not
6 apply to materials that were in the receiving party’s lawful possession prior to disclosure in this
7 litigation unless the receiving party previously received the information under an obligation of
8 confidentiality.
9

10 VI. All persons authorized to receive “Confidential” documents or information under
11 this Protective Order (other than the Court and court reporter), shall be shown a copy of this
12 Protective Order, and, if not a lawyer acting as counsel to a party in this action or an employee of
13 such counsel, shall, in a written and signed certificate in the form attached hereto as Appendix A,
14 state that he or she has read this Protective Order and agrees to be bound by its terms. Counsel of
15 record for that party shall then retain the Certificate until the conclusion of the litigation, and shall
16 make such Certificates available to other counsel upon written request after the conclusion of the
17 litigation.
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19 **Inadvertent Disclosure**

20 VII. In the event that information from documents or information designated as
21 “Confidential” is disclosed to someone not authorized to receive such information under this
22 Protective Order, counsel of record for the party involved shall immediately give notice of such
23 unauthorized disclosure to counsel of record for MARAD, and also shall describe the
24 circumstances of the unauthorized disclosure.
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1 **Filing and Use in Court**

2 VIII. If documents or information designated as “Confidential” or quotes from or
3 references to such materials are to be included in papers filed with or otherwise disclosed to the
4 Court, such papers shall be labeled “Confidential Subject to Protective Order.” If any party
5 includes documents or information designated as “Confidential” or quotes from or references to
6 such materials in papers filed with or otherwise disclosed to the Court, such party shall notify each
7 of the other parties hereto of the use of such documents, information, quotes or references. Within
8 60 days of receiving such notice, any party to this agreement may move the Court for an order
9 directing that all or any part of any documents or information designated as “Confidential” or any
10 quotes from or references to such materials in papers filed with or otherwise disclosed to the Court
11 shall be maintained under seal and not be available for public review. Any such motion must
12 demonstrate a particularized showing of good cause. Means to preserve the confidentiality of
13 information presented at a hearing or the trial of this matter shall be considered and implemented
14 prior to the beginning of such hearing or trial.

17 IX. Nothing herein shall prevent any of the parties from using “Confidential”
18 documents or information in connection with any trial, hearing or other proceeding in this matter
19 or from seeking further protection with respect to the use of any “Confidential” documents or
20 information in connection with such trial, hearing or other proceeding in this matter.

22 **Conclusion of Litigation**

23 X. Within thirty (30) days of the conclusion of the above captioned matter, including
24 any post-trial motions or appellate proceedings, counsel of record for the parties shall secure the
25 return to the producing party of all documents or information designated as “Confidential” (and all
26 copies thereof and notes, abstracts or summaries made therefrom) from all persons to whom such
27 materials were disclosed under the terms of this Protective Order, and shall either destroy all such

1 materials or return them to counsel for the party or non-party who initially produced the
2 documents or information, except that counsel may retain their work product copies of court
3 filings and official transcripts and exhibits, provided that the party that retains the “Confidential”
4 documents or information continues to treat them in the manner provided herein. The provisions
5 of this Protective Order shall survive the conclusion of this action, and the Court will retain
6 jurisdiction to enforce them.
7

8 **Amendment of this Agreement/Counterparts**

9 XI. The provisions of this Protective Order may only be modified at any time by
10 written stipulation of the parties approved by order of the Court. In addition, a party may at any
11 time apply to the Court for modification of this Protective Order pursuant to a motion brought in
12 accordance with the rules of the Court. This Protective Order may be signed in counterparts, and
13 may include a facsimile signature as an original.
14

15 **Reservation of Rights**

16 XII. Nothing in this Protective Order shall constitute: (a) any agreement by the parties to
17 produce any documents or supply any information in discovery not otherwise agreed upon or
18 required by Court order; (b) a waiver by any person or party of any right to object to or seek a
19 further Protective Order with respect to any discovery request in this or in any other action; (c) a
20 waiver of any claim or immunity or privilege with regard to any testimony, document, or
21 information; or (d) an admission or concession by any party that the information designated
22 “Confidential” hereunder is, in fact, confidential, proprietary, a trade secret or otherwise
23 protectable.
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25 STIPULATED AND AGREED TO:

26 Dated: August 6, 2009
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1 *For Environmental Plaintiffs:*

2 August 6, 2009

By: s/ Sarah Lipton-Lubet (as authorized on 08/06/2009)

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23 *For Plaintiff-Intervenor:*

26 August 6, 2009

By: s/ Tara L. Mueller (as authorized on 08/06/2009)
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August 6, 2009

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IT IS SO ORDERED.

Dated: August 13, 2009

/s/ Gregory G. Hollows

United States Magistrate Judge

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