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16 UNITED STATES DISTRICT COURT
 17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,
 19 Plaintiff,
 20 v.
 21 PACIFIC GAS AND ELECTRIC COMPANY,
 22 Defendant.

Case No. . 2:09-CV-02877-GEB-EFB
 (Consolidated with Case No. 2:10-cv-01875)

STIPULATED PROTECTIVE ORDER

23 UNITED STATES OF AMERICA,
 24 Plaintiff,
 25 v.
 26 WESTERN ENVIRONMENTAL
 27 CONSULTANTS, INC.,
 28 Defendant.

1 WHEREAS disclosure and discovery activity in this Action are likely to involve
2 production of confidential, proprietary, or private information for which special protection from
3 public disclosure and from use for any purpose other than prosecuting litigation related to the
4 Sims Fire would be warranted.

5 WHEREAS the Parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order.

7 WHEREAS the Parties acknowledge that this Stipulated Protective Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the protection it affords
9 extends only to the limited information or items that are entitled under the applicable legal
10 principles to treatment as confidential.

11 WHEREAS the Parties, by and through their respective undersigned counsel, HEREBY
12 STIPULATE, AGREE, and REQUEST that the Court enter the following Order with respect to
13 this Action:

14 1. Proceedings and Information Governed.

15 This Stipulated Protective Order shall govern any document, information or other thing
16 furnished by any Party, or any person, including third persons, to any other Party in connection
17 with the consolidated discovery and pretrial phase of the Action. The information protected
18 includes, but is not limited to, responses to requests to produce documents or other things,
19 responses to interrogatories, responses to requests for admissions, deposition testimony and all
20 copies, extracts, summaries, compilations, designations and portions thereof.

21 This Stipulated Protective Order does not govern proceedings during trial nor does it
22 prohibit any Party from seeking a protective order to govern proceedings during trial. The Parties
23 reserve for future agreement the procedure to be followed in using “Confidential Information”
24 (defined below) at trial.

25 2. Definitions.

26 2.1 Party: any party to this Action, including all of its officers, directors, employees,
27 consultants, retained Experts, and Outside Counsel (and their support staff) (more than one Party
28 collectively referred to as “Parties”).

1 2.2 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner generated, stored, or maintained (including, among other things, testimony,
3 transcripts, or tangible things) that are produced or generated in disclosures or responses to
4 discovery in this matter.

5 2.3 Receiving Party: a Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 2.4 Producing Party: a Party or non-party that produces Disclosure or Discovery
8 Material in this Action.

9 2.5 Designating Party: a Party or non-party that designates information or items that it
10 produces in disclosures or in responses to discovery as “Confidential.”

11 2.6 Outside Counsel: attorneys who are not employees of a Party but who are retained
12 to represent or advise a Party in this Action.

13 2.7 House Counsel: attorneys who are employees of a Party.

14 2.8 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
15 support staffs).

16 2.9 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who has been retained by a Party or its Counsel to serve as an Expert witness or as
18 a consultant in this Action. This definition includes a professional jury or trial consultant retained
19 in connection with this litigation.

20 2.10 Action: the above-captioned matter, designated as *United States of America v.*
21 *Pacific Gas and Electric Company*, Case No. 2:09-CV-02877-GEB-EFB, and the consolidated
22 matter designated as *United States of America v. Western Environmental Consultants, Inc.*, Case
23 No. 2:10-cv-01875

24 3. Designation of Information for Protection Under This Stipulated Protective Order.

25 Any Disclosure or Discovery Material produced in this Action that is reasonably believed
26 by any party to be nonpublic and/or proprietary and/or confidential and/or contain/constitute
27 trade secrets may be designated as “Confidential Information” as described more fully in
28 paragraph 4, below. Such designation may be made by labeling or otherwise clearly marking the

1 material as “Confidential” in such a manner as will not interfere with the legibility thereof. In the
2 case of written material, documents or tangible items, the designation shall be made, to the extent
3 possible, at the time the copy of the writing or thing is produced. In the case of materials
4 produced by a non-party or any other Party, the designation may be made by any Party within
5 ninety (90) days following the date the Designating Party receives a copy of the documents so
6 produced. In the case of deposition testimony, a Party seeking to invoke the protections of this
7 Stipulated Protective Order shall give notice thereof as set forth in paragraph 9, below.

8 4. Disclosure of Confidential Information.

9 Confidential Information may be disclosed and disseminated by the Receiving Party only
10 to:

11 (a) The Parties and their officers, directors and employees;

12 (b) The attorneys of record in the Action, and their respective associates, clerks and
13 legal assistants, and any organizations retained by such attorneys to provide litigation support
14 services in the Action and the employees of said organizations;

15 (c) Independent consultants and Expert witnesses retained in the Action by the
16 attorneys of record, and the employees of such consultants and Expert witnesses who are
17 assisting them;

18 (d) The Court and its administrative staff, including law clerks and the jury at trial (if
19 any);

20 (e) Stenographic reporters engaged in deposition proceedings; and

21 (f) Such other persons as hereafter may be designated by written agreement of all
22 Parties in the Action or by order of the Court, such order obtained on noticed motion (or on
23 shortened time as the Court may allow), permitting such disclosure.

24 5. Unauthorized Disclosure of Confidential Information.

25 If a Party learns that, by inadvertence or otherwise, it or another Party has disclosed
26 Confidential Information to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, that Party must immediately (a) notify in writing the Producing
28 and/or Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 copies of the Confidential Information, and (c) inform the person or persons to whom
2 unauthorized disclosures were made of all the terms of this Stipulated Protective Order.

3 6. Use.

4 Except as otherwise provided by this Stipulated Protective Order or by further order of
5 the Court, documents or testimony designated as Confidential Information, and all information
6 contained therein, shall not be used for any purpose other than in connection with prosecution of
7 the Action or any other action arising out of the Sims Fire, and any appellate proceeding
8 concerning the same.¹ No person who is furnished Confidential Information shall disclose or
9 disseminate it to any person not entitled under this Stipulated Protective Order to receive and
10 review it.

11 To the extent Confidential Information is used in an action arising out of the Sims Fire
12 other than this Action, the parties shall follow the procedures that have been agreed upon or are
13 otherwise required in such other actions for filing such materials.

14 No duplicates, copies, reproductions, or reprints of any Confidential Information, or any
15 parts thereof, shall be made unless reasonably necessary.

16 If there is a disclosure or utilization of Confidential Information in violation of the terms
17 of this Stipulated Protective Order, the Party who becomes aware of such disclosure or
18 utilization shall promptly notify the attorneys of record for the other Parties. In addition to any
19 other remedy the Court may order, the Party making the disclosure shall be obligated to take all
20 reasonable steps to limit further utilization or dissemination of Confidential Information in
21 violation of this Stipulated Protective Order.

22 7. Challenging Confidentiality Designations.

23 7.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
24 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
25 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
26

27 _____
28 ¹ In the event a party attempts to use Confidential Information in litigation arising out of the Sims
Fire other than the Action, the provisions set forth in paragraph 7 shall not be construed as a
waiver or admission that said Confidential Information is legally admissible in that litigation.

1 waive its right to challenge a confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 7.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
4 Party's confidentiality designation must do so in good faith and must begin the process by
5 conferring with counsel for the Designating Party. In conferring, the challenging Party must
6 explain the basis for its belief that the confidentiality designation was not proper and must give
7 the Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
9 designation. A challenging Party may proceed to the next stage of the challenge process only if it
10 has engaged in this meet and confer process first.

11 7.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
12 designation after considering the justification offered by the Designating Party may file and
13 serve a motion under Local Rules 230 and 251 (and in compliance with Local Rule 141, if
14 applicable) that identifies the challenged material and sets forth in detail the basis for the
15 challenge. Each such motion must be accompanied by a competent declaration that affirms that
16 the movant has complied with the meet and confer requirements imposed in the preceding
17 paragraph and that sets forth with specificity the justification for the confidentiality designation
18 that was given by the Designating Party in the meet and confer dialogue.

19 8. Disclosure to Author or Addressee.

20 Nothing herein shall prohibit a Party or Party's attorney from disclosing a document
21 which has been designated as Confidential Information to the person the document identifies as
22 an author or addressee of such document.

23 9. Party's Own Information.

24 The restrictions on the use of Confidential Information established herein are applicable
25 only to the use by a Party of Confidential Information received from another Party or any
26 nonparty.

27 This Stipulated Protective Order shall not restrict a Party's use of such documents,
28 information and other things which that Party possessed before the commencement of this

1 Action or acquired after the commencement of this Action through informal means not involving
2 discovery or other compulsory process.

3 10. No Waiver.

4 Neither the taking of nor the failure to take any Action to enforce the provisions of this
5 Protective Order, nor the failure to object to any designation or any such Action or omission,
6 shall constitute a waiver of any right to seek and obtain protection or relief other than as
7 specified herein of any claim or defense in the Action or any other Action including, but not
8 limited to, the claim or defense that any information is or is not proprietary to any Party, is or is
9 not entitled to particular protections or that such information embodies trade secrets of any Party.

10 The procedures set forth herein shall not affect the rights of the Parties to object to
11 discovery on grounds other than those related to trade secrets or proprietary information claims,
12 nor shall it relieve a Party of the necessity of proper response to discovery devices.

13 11. No Probative Value.

14 This Stipulated Protective Order shall not abrogate or diminish any contractual, statutory
15 or other legal obligation or right of any Party or person with respect to any Confidential
16 Information. The fact that information is designated “Confidential Information” under this
17 Stipulated Protective Order shall not be deemed to be determinative of what a trier of fact may
18 determine to be confidential or proprietary. This Stipulated Protective Order shall be without
19 prejudice to the right of any Party to bring before the Court the question of: (i) whether any
20 particular material is or is not confidential; (ii) whether any particular information or material is
21 or is not entitled to a greater or lesser degree of protection than provided hereunder; (iii) whether
22 any particular information or material is or is not relevant to any issue of this case, or (iv) how to
23 provide reasonable protection for Confidential Information during any trial or other public legal
24 proceeding in this matter, provided that in doing so the Party complies with the foregoing
25 procedures.

26 Absent a stipulation of all Parties, the fact that information has been designated
27 Confidential under this Stipulated Protective Order shall not be admissible during the trial of the
28 Action, nor shall the jury be advised of such designation. The fact that any information is

1 disclosed, used or produced in discovery or trial herein shall not be construed admissible, or
2 offered in any Action or proceeding before any court, agency or tribunal as evidence of or
3 concerning whether or not such information is confidential or proprietary.

4 12. Return of Confidential Information.

5 At the conclusion of the Action, all Confidential Information and all documents which
6 repeat such information, including all copies, extracts and summaries thereof, shall, upon the
7 request of the Party furnishing such Confidential Information, be delivered to that Party.

8 Alternatively, Counsel may certify in writing to the Party furnishing the Confidential
9 Information that all such Confidential Information, together with all copies, extracts and
10 summaries thereof, have been destroyed and that no additional copies are known to exist.

11 13. Court's Jurisdiction.

12 The Court retains jurisdiction to make such amendments, modifications, deletions and
13 additions to this Stipulated Protective Order as the Court may from time to time deem
14 appropriate. This Stipulated Protective Order shall remain in effect for the duration of the
15 litigation unless terminated by agreement executed by Counsel of record for the Parties or
16 pursuant to an order of the Court. The provisions of this Stipulated Protective Order regarding
17 the use and/or disclosure of Confidential Information shall survive the termination of the Action,
18 and the Court shall retain jurisdiction with respect to this Stipulated Protective Order.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: April 8, 2011

U.S. ATTORNEY'S OFFICE

21 By: /s/ Richard M. Elias

22 Richard M. Elias
23 Attorneys for Plaintiff
UNITED STATES OF AMERICA

24 DATED: April 8, 2011

MATHENY SEARS LINKERT & JAIME LLP

25 By: /s/ Richard S. Linkert

26 Richard S. Linkert
27 Attorneys for Defendant
28 WESTERN ENVIRONMENTAL CONSULTANTS,
INC.

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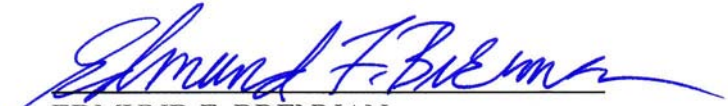
DATED: April 8, 2011

SEDGWICK LLP

By: /s/ Gregory C. Read
Gayle L. Gough
Gregory C. Read
Mark J. Hancock
Peter J. Messrobian
Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

IT IS SO ORDERED:

DATED: April 12, 2011


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE