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16 *Local Counsel for Plaintiffs*

17 UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19 SIERRA CLUB, et al.,) Case No. 3:08-cv-01409-WHA
20)
Plaintiffs,)
21 v.) STIPULATION TO EXTEND
) DEADLINE FOR FILING MOTION
22 STEPHEN JOHNSON, et al.,) FOR AN AWARD OF ATTORNEYS'
) FEES AND COSTS; ~~PROPOSED~~
23) ORDER
Defendants,)
24 and)
)
25 SUPERFUND SETTLEMENTS PROJECT, et al.,)
)
26 Defendant-Intervenors.)

27
28 STIPULATION TO EXTEND DEADLINE FOR FILING MOTION FOR
AN AWARD OF ATTORNEYS' FEES AND COSTS;
~~PROPOSED~~ ORDER (Case No. 3:08-cv-01409-WHA) 1

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1 Plaintiffs Sierra Club, Great Basin Resource Watch, Amigos Bravos, and Idaho
2 Conservation League and Federal Defendants United States Environmental Protection Agency
3 (“EPA”) and United States Department of Transportation (“DOT”) hereby agree and stipulate to
4 extend the deadline for filing a motion for an award of attorneys’ fees and costs in this matter as
5 follows:

6 1. On February 25, 2009, this Court issued an order granting in part and denying in
7 part Plaintiffs’ motion for summary judgment, and ordered EPA to publish a notice of classes of
8 facilities for which financial assurance requirements will be first developed under CERCLA
9 Section 108(b), 42 U.S.C. § 9608(b). On July 28, 2009, EPA published in the Federal Register a
10 notice identifying classes of facilities within the hardrock mining industry for which EPA will
11 first develop financial responsibility requirements under CERCLA Section 108(b). 74 Fed. Reg.
12 37213 (July 28, 2009). On August 5, 2009, the Court granted the Federal Defendants’ motion
13 for summary judgment on the remaining issue of EPA’s duty to promulgate and impose financial
14 assurance requirements under CERCLA Section 108(b), and dismissed the case.

15 2. Plaintiffs maintain that, as a result of the Court’s February 25, 2009 order and
16 EPA’s subsequent actions, and pursuant to CERCLA’s citizen suit provision, 42 U.S.C. §
17 9659(f), they are entitled to an award of attorneys’ fees and other costs from the Federal
18 Defendants in this case. Federal Defendants are still evaluating the Court’s orders and retain
19 their right to dispute both (1) Plaintiffs’ entitlement to an award of reasonable attorneys’ fees and
20 costs and (2) the reasonable amount of such attorneys’ fees and costs, if such an award were
21 appropriate. Federal Defendants also enter this stipulation without waiving their right to pursue
22 any appeals.

23 3. Nonetheless, Plaintiffs and the Federal Defendants believe that it is appropriate
24 for the parties to attempt to negotiate Plaintiffs’ claim for fees and costs first, before seeking
25 resolution from the Court.

26 4. The Federal Rules of Civil Procedure and the Local Rules of this Court provide
27 that any motion for attorneys’ fees and costs will be filed within 14 days of entry of judgment,

1 unless extended by motion or stipulation. See L.R. 54-6; 6-2. In the commentary accompanying
2 Local Rule 54-6, counsel are advised to seek an extension to this deadline “as expeditiously as
3 possible.”

4 5. Plaintiffs and the Federal Defendants, accordingly, agree that the deadline for
5 filing any motion for attorneys’ fees and costs should be extended from 14 days to ~~90~~⁴⁵ days from
6 entry of judgment in order to facilitate the discussion of a negotiated agreement.

7 6. The Federal Defendants agree and stipulate that they will not oppose a motion for
8 an award of fees on the grounds that Plaintiffs’ fee application is not timely under CERCLA, the
9 local rules of this Court, or any other requirement.

10 NOW THEREFORE, Plaintiffs and Federal Defendants, by and through their undersigned
11 counsel, hereby stipulate that any motion for an award of attorneys’ fees and costs in this matter
12 must be served and filed within ~~90~~⁴⁵ days of entry of judgment.

13
14 Respectfully submitted this 1st day of September, 2009.

15 /s/ Jan Hasselman (by permission)

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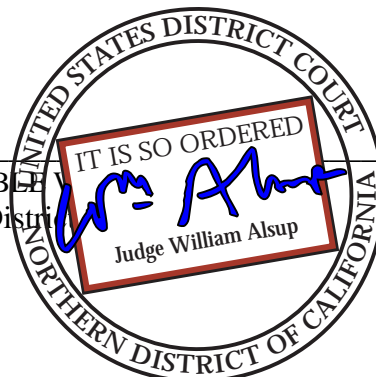
[PROPOSED] ORDER

PURSUANT TO THE STIPULATION AS MODIFIED, IT IS SO ORDERED.

~~PURSUANT TO STIPULATION, IT IS SO ORDERED.~~

DATED this 4th day of September _____, 2009.

THE HONORABLE
United States District Judge



STIPULATION TO EXTEND DEADLINE FOR FILING MOTION FOR
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~~[PROPOSED]~~ ORDER (Case No. 3:08-cv-01409-WHA) 3

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