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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 UNITED STATES OF AMERICA,

No. C 09-4503 SI

9 Plaintiff,  
10 and

**ORDER CONTINUING HEARING ON  
WILD EQUITY'S MOTION TO  
INTERVENE AND UNITED STATES'  
MOTION TO ENTER AMENDED  
CONSENT DECREE; AND ORDERING  
FURTHER BRIEFING**

11 COMMUNITIES FOR A BETTER  
ENVIRONMENT,

12 Intervenor-Plaintiff,

13 v.

14 PACIFIC GAS & ELECTRIC,

15 Defendant.  
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17 There are several motions scheduled for a hearing on January 21, 2011. The Air District's  
18 motion to dismiss CBE's amended complaint will remain on calendar on January 21, 2011.

19 The Court has reviewed the briefs on Wild Equity Institute's motion to intervene, and finds that  
20 further briefing is warranted. The Court finds that serious questions have been raised as to the  
21 timeliness of Wild Equity's motion to intervene, and the Court is not persuaded by Wild Equity's  
22 contention that it may intervene as of right pursuant to the Clean Air Act. However, the parties' papers  
23 did not thoroughly address the question of whether the proposed consent decree constitutes an "agency  
24 action" that triggers the consultation requirements of the Endangered Species Act.

25 Accordingly, the Court continues the January 21, 2011 hearing on Wild Equity's motion and the  
26 United States' motion to enter the amended consent decree to **February 25, 2011 at 9:00 am**. The  
27 United States, PG&E and Wild Equity shall submit simultaneous supplemental briefs on the question  
28 of whether the proposed consent decree is an "agency action" under the ESA by **February 4, 2011**, and

1 simultaneous reply briefs by **February 11, 2011.**

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3 **IT IS SO ORDERED.**

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5 Dated: January 19, 2011

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SUSAN ILLSTON  
United States District Judge