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9 Attorneys for Plaintiff United States of America

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 and
 16 COMMUNITIES FOR A BETTER
 ENVIRONMENT,
 17 Intervenor-Plaintiff,
 18 v.
 19 PACIFIC GAS and ELECTRIC COMPANY.
 20 and
 21 COMMUNITIES FOR A BETTER
 22 ENVIRONMENT,
 23 Intervenor-Plaintiff,
 24 v.
 25 BAY AREA AIR QUALITY
 MANAGEMENT DISTRICT, and
 26 JACK BROADBENT, in his capacity as AIR
 POLLUTION CONTROL OFFICER OF BAY
 AREA AIR QUALITY MANAGEMENT
 27 DISTRICT.
 28 Defendants.

Civil Action No. 09-4503 SI
 SECOND JOINT STATUS REPORT
 AND [PROPOSED] ORDER

1 In a Joint Status Report filed on July 29, 2010, the United States, Pacific Gas &
2 Electric Company (“PG&E”), and Communities for a Better Environment (“CBE”)
3 notified the Court that they would consider further amendments to the Amended Consent
4 Decree that might resolve the outstanding issues. *See Joint Status Report (Docket No.*
5 *84).*

6 Consistent with the Joint Status Report, the parties have conferred to discuss specific
7 proposals for further amendments to the Amended Consent Decree. As a result of these
8 significant discussions, the United States and PG&E have reached agreement on the terms of a
9 Second Amended Consent Decree that imposes stricter environmental controls than would have
10 been required by the Amended Consent Decree and includes other changes necessary to conform
11 the Second Amended Consent Decree to those new provisions.

12 While CBE agrees that the proposed Second Amended Consent Decree imposes stricter
13 environmental controls, CBE still objects to the decree because CBE contends it still does not
14 contain lower emissions limits that reflect the best available control technology, does not
15 increase the penalty of \$20,000, and requires no additional mitigation projects that would benefit
16 the community.

17 The United States has determined that the Second Amended Consent Decree will not be
18 republished for additional public comment. The parties therefore request that the Court set the
19 following schedule. The United States intends to file a Second Amended Consent Decree on or
20 before October 12, 2010. Each party will be permitted to file one additional brief in connection
21 with this matter on or before a date two weeks thereafter -- October 26, 2010. The parties
22 respectfully request that a hearing be scheduled for November 12, 2010, or at the Court’s
23 convenience. The November 12, 2010 hearing would relate to the United States’ Motion to
24 Enter the Second Amended Consent Decree and BAAQMD’s pending Motion to Dismiss the
25 complaint filed by CBE. *Docket No. 73.* The attached Proposed Order incorporates other
26 provisions of the Joint Status Report deeming previously filed pleadings to be refiled and
27 limiting the parties to filing one additional brief relating to the Second Amended Consent
28 Decree.

1 I, Bradley R. O'Brien, attest that concurrence in the filing of this Second Joint Status
2 Report has been obtained from David Farabee, attorney for Defendant PG&E; Deborah N.
3 Behles, attorney for Intervenor-Plaintiff CBE; and Alexander G. Crockett, attorney for
4 Defendant Bay Area Air Quality Management District.

5 Respectfully submitted,

6 FOR THE UNITED STATES OF AMERICA
7

8 Date September 27, 2010 /s/ Bradley R. O'Brien
9 W. BENJAMIN FISHEROW
10 ANGELA MO
11 BRADLEY R. O'BRIEN
United States Department of Justice

12 FOR PACIFIC GAS and ELECTRIC COMPANY
13

14 Date September 27, 2010 /s/ David Farabee
15 DAVID FARABEE
Pillsbury Winthrop Shaw Pittman LLP

16 FOR COMMUNITIES FOR A BETTER ENVIRONMENT
17

18 Date September 27, 2010 /s/ Deborah N. Behles
19 HELEN H. KANG
20 DEBORAH N. BEHLES
21 ADRIENNE BLOCH
Communities for a Better Environment

22 FOR THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
23

24 Date September 27, 2010 /s/ Alexander G. Crockett
25 BRIAN C. BUNGER
26 ALEXANDER G. CROCKETT
Bay Area Air Quality Management District

[PROPOSED] ORDER

GOOD CAUSE APPEARING,


1. A hearing is scheduled for November ¹⁰~~12~~, 2010, beginning at 9 a.m.. The Court will hear the United States' Motion to Enter the Second Amended Consent Decree, and the Bay Area Air Quality Management District's Motion to Dismiss the complaint filed by Communities for a Better Environment ("CBE"). *Docket No. 73.*

2. The United States' proposed Second Amended Consent Decree shall be filed no later than October 12, 2010. The United States, PG&E, and CBE may file one additional brief (not to exceed 25 pages) by no later than October 26, 2010, in support of, or in opposition to entry of the decree.

3. The Court deems the United States' Motion to Enter Amended Consent Decree and corresponding memorandum, originally filed on May 13, 2010 (*Docket No. 51*), to be refiled, and the Court deems the responsive memoranda filed by PG&E and CBE to be refilled. *Docket Nos. 72 and 75-76*, respectively.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date



SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE