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15 Attorneys for Intervenor-Plaintiff BAYKEEPER, INC.

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

19 UNITED STATES OF AMERICA,
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21 Plaintiff,
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23 SAN FRANCISCO BAYKEEPER,
24
25 Intervenor-Plaintiff,
26
27 v.
28 CITY OF ALAMEDA, et al.,
29
30 Defendants.

Civil Case No.: CV 09-5684 RS

STIPULATION AND ~~PROPOSED~~
ORDER TO WITHDRAW
INTERVENTION OPPOSITION, ACCEPT
SERVICE, AND LIMIT CLAIMS IN
INTERVENTION

1 **STIPULATION**

2 Whereas, on December 3, 2009, the United States of America, on behalf of the Environmental
3 Protection Agency, filed a complaint against the City of Alameda, City of Albany, City of Berkeley,
4 City of Emeryville, City of Oakland, City of Piedmont and the Stege Sanitary District (collectively,
5 “Satellites” or “Defendants”) pursuant to Section 309 of the Clean Water Act (this “Action”), which
6 complaint has not yet been served on Defendants;

7 Whereas, on December 22, 2009, San Francisco Baykeeper (“Baykeeper” or “Intervenor”) filed
8 a Notice of Motion and Motion to Intervene in this Action;

9 Whereas, on January 22, 2010, the Court granted Baykeeper’s Motion to Intervene, prior to the
10 deadline set forth in the Clerk’s January 13, 2010 Notice for filing an opposition to Baykeeper’s Motion
11 to Intervene;

12 Whereas, on January 28, 2010, Baykeeper filed a Complaint in Intervention, and served the
13 Complaint in Intervention upon the Satellites, the California State Water Resources Control Board, and
14 the California Regional Water Quality Control Board, San Francisco Bay Region, via U.S. Mail, and
15 upon the United States via United States District Court Electronic Filing service (collectively “Parties”);

16 Whereas, on January 29, 2010, Defendants timely filed a Joint Memorandum of Points and
17 Authorities in Opposition to Baykeeper’s Motion to Intervene, and on February 11, 2010, Baykeeper
18 timely filed a Reply to Defendants’ Joint Opposition;

19 Whereas, on February 10, 2010, the Court entered as an Order the Parties’ Stipulation to Stay
20 litigation, which Order allowed for the Court to rule on Baykeeper’s Motion to Intervene and January
21 22, 2010 Order during the stay period;

22 Whereas, on May 26, 2010, the Court entered as an Order the Parties’ Stipulation to extend the
23 stay period to October 8, 2010, to enable the Parties to continue settlement negotiations, which
24 settlement negotiations are ongoing;

25 Whereas, to facilitate any potential settlement of this Action, the Parties desire to resolve any
26 uncertainty regarding Baykeeper’s Motion to Intervene and Complaint in Intervention;

27 **THE PARTIES HEREBY STIPULATE THAT:**
28

1. Defendants withdraw their January 29, 2010, Joint Memorandum of Points and Authorities in Opposition to San Francisco Baykeeper's Motion to Intervene, and do not oppose Baykeeper's intervention in this Action.
2. Each Party has been served with Baykeeper's Complaint in Intervention in satisfaction of the Federal Rules of Civil Procedure, and no Party will raise as a defense or objection to Baykeeper's Complaint in Intervention, the adequacy or timing of service of Baykeeper's Complaint in Intervention.
3. The time for Defendants to respond in any way to Baykeeper's Complaint in Intervention shall be tolled while the present stay is in effect and Baykeeper shall not raise lack of timeliness as a defense or objection to the Defendants' responses.
4. Baykeeper's claims in this Action shall be limited to the claims in the United States' December 3, 2009 complaint, as such complaint may be amended, including but not limited to, include claims of the California State Water Resources Control Board and the California Regional Water Quality Control Board, San Francisco Bay Region, in this Action.

Dated: August 24, 2010

/S/ Jason Flanders
 Jason Flanders
 San Francisco Baykeeper
 For Intervenor-Plaintiff

/S/ Michelle Kenyon
 Michelle Kenyon
 City Attorney
 For Defendant City of Piedmont

/S/ Ellen J. Garber
 Ellen J. Garber
 Shute, Mihaly & Weinberger LLP
 For Defendant City of Alameda

/S/ Kenton L. Alm
 Kenton L. Alm
 Meyers Nave Riback Silver & Wilson
 Attorneys for Defendants
 City of Albany and Stege Sanitary District

/S/ Zach Cowan
 Zach Cowan
 City Attorneys
 For Defendant City of Berkeley

/S/ Marilee J. Allan
 Marilee J. Allan
 Bingham McCutchen LLP
 Attorneys for Defendant City of Oakland

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/s/ Michael G. Biddle

Michael G. Biddle
City Attorneys
For Defendant City of Emeryville

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~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

U.S. District Court Judge

8/26/10

Date