

E-Filed 9/8/10

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 12

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION
 16

17 UNITED STATES OF AMERICA, ,

18 Plaintiff,

19 v.

20 CITY OF ALAMEDA, et al.,

21 Defendants.

22 BAYKEEPER, INC., d/b/a SAN FRANCISCO
 23 BAYKEEPER, Intervenor-Plaintiff.

No. 4:09-CV-05684-RS

STIPULATION AND ~~PROPOSED~~ ORDER EXTENDING STAY

24 STIPULATION

25 Whereas, this action is a civil action brought by the United States of America ("United
 26 States") on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA")
 27 pursuant to section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, against the cities of
 28 Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, and the Stege Sanitary District
 A/73486598.2/2015792-0000342942 1

~~PROPOSED~~ ORDER GRANTING STAY

CV 09-05684 RS

1 (“Defendants”) to require compliance with CWA standards, limitations, and orders prohibiting
2 discharge of sewage without CWA permit authorization;

3 Whereas, the State of California ex rel. California State Water Resources Control Board
4 (“State Water Board”) and the California Regional Water Quality Control Board, San Francisco
5 Bay Region (“Regional Water Board”) (collectively, “Water Boards”), are joined as “a Section
6 309(e) party” -- a party (neither plaintiff nor defendant at this time) in accordance with Section
7 309(e) of the CWA, 33 U.S.C. § 1319(e), but intend to re-align as a plaintiff through motion or
8 in a future amendment to the United States’ complaint to add State law claims as part of
9 settlement of this action;

10 Whereas, Defendants have not yet been served with the United States’ complaint;

11 Whereas, Baykeeper, Inc. (“Baykeeper”) has moved to intervene as a Plaintiff in this
12 matter, which motion to intervene was granted by this Court in an Order dated January 22, 2010;

13 Whereas, the Order and Baykeeper’s Motion to Intervene was challenged by the
14 Defendants’ Joint Opposition to Motion to Intervene and supporting declarations (“Joint
15 Opposition”) filed January 29, 2010, but the parties came to agreement and filed a Stipulation to
16 Withdraw Intervention Opposition, Accept Service, and Limit Claims in Intervention on August
17 26, 2010, and this Court entered its Order thereon on August 27, 2010;

18 Whereas this Court previously granted a stay of litigation and all litigation timelines and
19 deadlines on February 10, 2010, which was further extended to and including October 8, 2010 by
20 an Order dated May 26, 2010;

21 Whereas all parties need additional time to negotiate, exchange information, and finalize
22 terms; keeping the parties informed will promote productive and timely settlement discussions;
23 and the participation of all parties is useful towards settlement;

24 IT IS HEREBY STIPULATED THAT:

- 25 1. The stay previously granted is hereby extended to and including March 1, 2011,
26 under the terms and conditions set forth herein. Except as stipulated in Paragraph 2.
27 below, all litigation activity shall continue to be stayed in *United States v. City of*
28

1 *Alameda, et al.*, USDC N.D. Cal. Case No. CV 09-05684 CW to and including March
2 1, 2011.

3 a. No party will file motions or initiate discovery.

4 b. The time for the United States to serve its summons and complaint will be
5 tolled while the stay is in effect.

6
7 c. The time for Defendants to respond in any way to Baykeeper's complaint in
8 intervention will be tolled while the stay is in effect, and Defendants preserve
9 all options and arguments for any response to Baykeeper's complaint in
10 intervention.

11
12 2. Between October 8, 2010 and March 1, 2011, the Water Boards may either move to
13 realign as a plaintiff and to add State law claims, or file with the United States
14 Plaintiff a single amended complaint to add the State law claims, if they so choose.
15 The time for Defendants to receive summons and complaint as well as to respond in
16 any way to Plaintiffs' complaint remains tolled while the stay is in effect.

17 3. Until a new Scheduling Conference is scheduled after March 1, 2011, the parties will
18 not hold their Conference under Fed. R. Civ. P. 26(f) and will not make disclosures
19 under Rule 26(a).

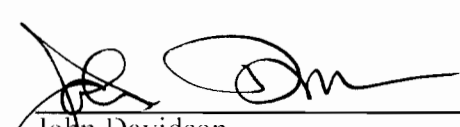
20 4. This Stipulation will not be considered a general appearance by the Defendants.

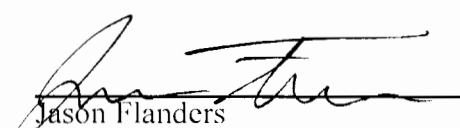
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22 5. Baykeeper shall continue to have the right to participate in negotiations with the
23 United States, Water Boards, and the Defendants regarding the Stipulated Order for
24 Preliminary Relief. During the stay period, Baykeeper shall receive copies of any
25 documents or plans due under the current Administrative Orders issued to Defendants
26 on or about November 18, 2009, and shall have the opportunity to comment on those
27 documents and plans.

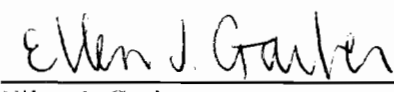
1 6. This Stay may be extended by stipulation of the parties, and further order of the
2 Court, if the settlement negotiations regarding the Stipulated Order for Preliminary
3 Relief are continuing.

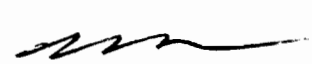
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5 Dated: September 2, 2010

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7 
8 _____
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10 United States Department of Justice
11 For Plaintiff United States

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14 John Davidson
15 California Attorney General's Office
16 For State of California, ex rel. California State Water Resources Control Board and California
17 Regional Water Quality Control Board, San Francisco Bay Region

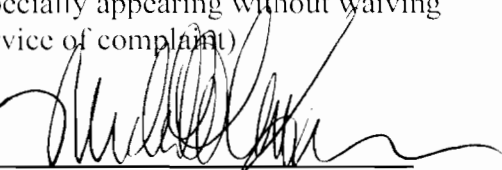
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19 _____
20 Jason Flanders
21 San Francisco Baykeeper, Inc.
22 For Intervenor-Plaintiff

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25 Ellen J. Garber
26 Shute, Mihaly & Weinberger LLP, and
27 Teresa L. Highsmith, City Attorney
28 For Defendant City of Alameda
(specially appearing without waiving
service of complaint)

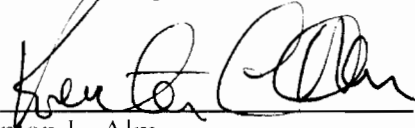
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(specially appearing without waiving
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Michael G. Biddle

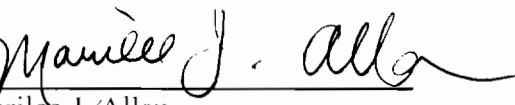
2 City Attorneys
3 For Defendant City of Emeryville
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~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.



U.S. District Court Judge

9.7.10

Date