

E-Filed 8/23/10

1 Christopher Sproul (State Bar No. 126398)
 Jodene Isaacs (State Bar No. 226895)
 2 ENVIRONMENTAL ADVOCATES
 5135 Anza Street
 3 San Francisco, California 94121
 Telephone: (415) 533-3376, (510) 847-3467
 4 Facsimile: (415) 358-5695
 Email: csproul@enviroadvocates.com
 5 Email: jisaacs@enviroadvocates.com

6 William Verick (State Bar No. 140972)
 7 Klamath Environmental Law Center
 Fredric Evenson (State Bar No. 198059)
 8 Law Offices of Fredric Evenson
 424 First Street
 9 Eureka, California 95501
 Telephone: (707) 268-8900
 10 Facsimile: (707) 268-8901
 Email: wverick@igc.org, ecorights@earthlink.net

11 Attorneys for Plaintiff
 12 ECOLOGICAL RIGHTS FOUNDATION

13
 14 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

15 ECOLOGICAL RIGHTS FOUNDATION,

Civil No. 3:10-CV-00121-RS

16 Plaintiff,

17 v.

18 STIPULATION AND ~~PROPOSED~~
 ORDER GRANTING PLAINTIFF
 19 LEAVE TO FILE THIRD AMENDED
 COMPLAINT

20 PACIFIC GAS AND ELECTRIC COMPANY.

21 Defendant.
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1 **STIPULATION**

2 WHEREAS, on January 11, 2010, Plaintiff Ecological Rights Foundation filed a Complaint
3 for Declaratory and Injunctive Relief and Civil Penalties under Clean Water Act (“CWA”) section
4 505(a)(1), 33 U.S.C. § 1365(a)(1), seeking relief for the alleged unlawful discharge of pollutants
5 from Pacific Gas and Electric Company (“PG&E”)’s corporation yards and service centers located
6 throughout Northern California (“the Facilities”) into waters of the United States in violation of the
7 CWA. *See* Docket Doc. No. 1;

8 WHEREAS, on April 8, 2010, Plaintiff filed a Notice of Motion for Leave to File First
9 Amended Complaint and Memorandum of Points and Authorities in support thereof (“Motion for
10 Leave to File First Amended Complaint”), seeking to provide additional detail on the background
11 statutory law applicable to this case and the specific way in which Plaintiff alleges that PG&E has
12 violated that law at the Facilities;

13 WHEREAS, on April 13, 2010, Plaintiff and PG&E filed a Stipulation and Proposed Order
14 Regarding Motion for Leave to File First Amended Complaint (“Stipulation and Proposed Order”);

15 WHEREAS, in the Stipulation and Proposed Order, PG&E agreed not to oppose Plaintiff’s
16 then-pending Motion for Leave to File First Amended Complaint and Plaintiff agreed that PG&E
17 would not be obligated to answer or otherwise plead to the First Amended Complaint because of
18 Plaintiff’s intention to soon file a Second Amended Complaint;

19 WHEREAS, on April 14, 2010, the Court granted the Stipulation and Proposed Order, as
20 modified;

21 WHEREAS, on February 9, 2010, Plaintiff served a Notice of Violation and Intent to File
22 Suit Under the CWA and Resource Recovery and Conservation Act (“RCRA”) (“Notice Letter”) on
23 PG&E, the U.S. Environmental Protection Agency, and relevant State agencies as required by the
24 notice provisions of the CWA and RCRA. *See* CWA section 505(b), 33 U.S.C. § 1365(b); RCRA
25 section 7002(b)(2)(A), 42 U.S.C. 6972 (b)(2)(A);

26 WHEREAS, pursuant to the notice provisions of RCRA, Plaintiff was required to wait 90
27 days from the date of service of the Notice Letter before filing suit under RCRA;

1 WHEREAS, after the expiration of the 90-day notice period, on May 13, 2010, Plaintiff and
2 Defendant filed a stipulation and proposed order granting Plaintiff leave to file a Second Amended
3 Complaint to add a claim under RCRA section 7002(a)(1)(B), 42 U.S.C. § 6972 (a)(1)(B), and to
4 make certain changes to the factual allegations in support of the CWA claims;

5 WHEREAS, the stipulation of May 13, 2010 provided that PG&E would not be obligated to
6 file an Answer or other responsive pleading to the Second Amended Complaint due to Plaintiff's
7 intention to soon file a Third Amended Complaint;

8 WHEREAS, on May 13, 2010, the Court granted the stipulation for leave to file the Second
9 Amended Complaint (Docket Doc. No. 35);

10 WHEREAS, on April 9, 2010, Plaintiff served a Supplemental Notice of Violation and Intent
11 to File Suit Under the Clean Water Act and Resource Recovery and Conservation Act
12 ("Supplemental Notice Letter"), to identify one additional facility at which Plaintiff alleges that
13 PG&E has violated the CWA and RCRA;

14 WHEREAS, the 90-day notice period has now expired on the Supplemental Notice Letter,
15 and Plaintiff seeks leave to file a Third Amended Complaint to incorporate the new facility into its
16 pleadings;

17 NOW, THEREFORE, the parties do hereby stipulate, by and through counsel, that:

18 1. Plaintiff should be granted leave to amend to file the Third Amended
19 Complaint;

20 2. PG&E's Answer or other responsive pleading to the Third Amended
21 Complaint will be due in accordance with the schedule established by the Federal Rules of
22 Civil Procedure.

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24 Dated: August 5, 2010

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/s/ Bradley S. Rochlen

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Bradley S. Rochlen

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Foley & Lardner LLP

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321 North Clark Street, Ste. 2800
Chicago, IL 60654

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(312) 832.4906
brochlen@foley.com
ATTORNEYS FOR DEFENDANT
PG&E

Christopher a. sproul

Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
(415) 386-6709
csproul@enviroadvocates.com
ATTORNEYS FOR PLAINTIFF
ECOLOGICAL RIGHTS
FOUNDATION

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PROPOSED ORDER

On August 5, 2010, Plaintiff Ecological Rights Foundation and Defendant Pacific Gas & Electric Company filed a Stipulation and Proposed Order Granting Plaintiff Leave to File Third Amended Complaint (“the Stipulation”). Having considered the Stipulation, and good cause appearing, the Court hereby GRANTS the Stipulation and orders as follows:

Plaintiff is granted leave to file the Third Amended Complaint, which will be deemed filed on the date it is lodged with the Court. PG&E’s Answer or other responsive pleading to the Third Amended Complaint will be due in accordance with the schedule established by the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: 8/23/10



RICHARD SEEBORG
United States District Judge