

Michael R. Lozeau (CA Bar No. 142893)
 e-mail: michael@lozeaudrury.com
 Richard T. Drury (CA Bar No. 163559)
 e-mail: richard@lozeaudrury.com
 LOZEAU DRURY LLP
 410 12th Street, Suite 250
 OakLAND, CA 94603
 Tel: (510) 836-4200
 Fax: (510) 836-4205

Attorneys for Plaintiff

UNITED STATE DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SAVE STRAWBERRY CANYON, a non-)
profit corporation,) Case No. C-11-01564 EDL
)
Plaintiff,) STIPULATION REQUESTING CASE
) MANAGEMENT SCHEDULE AND
v.) REQUIRING 60-DAY NOTICE TO PLAINTIFF
) PRIOR TO GROUND-DISTURBING
UNITED STATES DEPARTMENT) ACTIVITY; [PROPOSED] ORDER
OF ENERGY, et al.)
) Hearing: n/a
Defendants.) Courtroom: n/a
) Hon. Judge Elizabeth D. Laporte
)
)

On March 31, 2011, Plaintiff filed a complaint challenging the Department of Energy’s (“DOE’s”) compliance with the National Environmental Policy Act (“NEPA”) in preparing an Environmental Assessment (“EA”) for the proposed Computational Research and Theory facility (“CRT”) at the DOE’s Lawrence Berkeley National Laboratory.

Stipulation Requesting Case Management	[1]	Case No. C-11-01564 EDL
Schedule and Requiring 60-Day Notice to		
Plaintiff Prior to Ground-Disturbing Activity;		
[Proposed] Order		

In order to allow expeditious resolution of this action through summary judgment, and to avoid forcing the parties and this Court to expend resources addressing the propriety of preliminary injunctive relief, the parties stipulate as follows:

1. This is a case challenging a decision of the DOE under the Administrative Procedure Act (“APA”), and is appropriately adjudicated through review of the administrative record before the agency on motions for summary judgment without need for discovery or trial.
2. The parties agree to, and respectfully ask the Court to enter, the following schedule for adjudication of this case:
 - A. Federal Defendants shall file and serve the Administrative Record for the challenged decisions not later than May 2, 2011.
 - B. 60 days after service of the administrative record, Plaintiffs shall file a Motion for Summary Judgment and brief in support thereof.
 - C. 30 days after service of the Plaintiffs’ Summary Judgment Motion, Federal Defendants shall file one consolidated brief in support of their Cross-Motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary Judgment.
 - D. 30 days after service of Federal Defendants’ consolidated Cross-Motion and Opposition, Plaintiffs will file one consolidated brief in Opposition to Defendants’ Cross-Motion for Summary Judgment and Reply in Support of their Motion for Summary Judgment.

E. 15 days after service of the Plaintiffs' combined Opposition and Reply, Federal Defendants shall file a Reply in Support of their Cross-Motion for Summary Judgment.

30 CALENDAR

F. The parties shall notice a hearing on their cross-motions to be heard ~~14 calendar~~ days following the submission of the parties' briefs, referenced in subsections B-E, above, or as soon thereafter as the Court's motion calendar permits.

3. The schedule set forth above presumes there is no dispute over the adequacy of the administrative record. The parties will work in good faith to informally resolve any issues relating to the content of the administrative record. If such efforts fail, the Plaintiffs shall attempt in good faith to file any motion regarding the adequacy of the administrative record within 30 days after service of the administrative record. To the extent either party learns of any objection it may have to the adequacy of the administrative record after 30 days from service of the administrative record, nothing in this stipulation shall preclude such party from filing a motion to cure any such objection during the course of the briefing schedule set forth above. However, in no event shall any party file a motion regarding the adequacy of the administrative record any later than the brief deadline set forth in Paragraph 2(D) above.

A. Any such motions shall be adjudicated under the timeframes provided by the Local Rules.

B. In the event the parties submit a dispute over the administrative record to the Court within 30 days of service of the administrative record, the parties shall

confer and if necessary propose to the court an amended schedule for summary judgment briefing.

4. The parties hope this dispute can be resolved on the merits without the need for proceedings on preliminary injunctive relief. Toward that end, Defendants agree to provide Plaintiffs with no less than 60 days notice before the commencement of any ground-disturbing activities in conjunction with the construction of the CRT building. This excludes preliminary preparatory work, including utility work and supplemental geotechnical investigations, neither of which will alter or disturb the construction site. Plaintiffs agree not to file a motion for Temporary Restraining Order or Preliminary Injunction prior to receiving notice of ground-disturbing activities from Defendants.

DATED: April 1, 2011.

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

By /s/ Barclay T. Samford
BARCLAY T. SAMFORD
Trial Attorney
PETER C. WHITFIELD
Trial Attorney
Attorneys for Federal Defendants

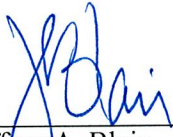
///

///

///

DATED: April 1, 2011.

CHARLES ROBINSON
OFFICE OF THE GENERAL COUNSEL
REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By 
Jeffrey A. Blair
Attorneys for UC Defendants

DATED: April 1, 2011.

LOZEAU DRURY LLP

By /s/ Michael R. Lozeau
Michael R. Lozeau
Attorneys for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____
United States District Court Judge



...

Stipulation Requesting Case Management Schedule and Requiring 60-Day Notice to Plaintiff Prior to Ground-Disturbing Activity; [Proposed] Order [5]

Case No. C-11-01564 EDL

DATED: April 1, 2011.

CHARLES ROBINSON
OFFICE OF THE GENERAL COUNSEL
REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By _____
Jeffrey A. Blair
Attorneys for UC Defendants

DATED: April 1, 2011.

LOZEAU DRURY LLP

By /s/ Michael R. Lozeau
Michael R. Lozeau
Attorneys for Plaintiff*

*I hereby attest that concurrence in the filing of this document has been obtained by the above-named signatories

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

United States District Court Judge