

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

3 ROCHELLE L. RUSSELL (Cal. Bar No. 244992)
Trial Attorney
4 U.S. Department of Justice
Environment & Natural Resources Division
5 Environmental Defense Section
301 Howard Street, Suite 1050
6 San Francisco, CA 94105
Tel: (415) 744-6566
7 Fax: (415) 744-6476
Email: rochelle.russell@usdoj.gov
8 *Counsel for Defendants*

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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ASSOCIATION OF IRRIGATED)
16 RESIDENTS, an unincorporated association,)

17 *Plaintiff,*)

18 v.)

19 UNITED STATES ENVIRONMENTAL)
20 PROTECTION AGENCY, et al.,)

21 *Defendants.*)
22)
23)
24)
25)
26)
27)
28)

Case No. 09-cv-01890 CW

STIPULATION

and

ORDER THEREON

1 WHEREAS, on April 30, 2009, the Association of Irrigated Residents filed the complaint
2 in the above-captioned matter against the United States Environmental Protection Agency et al.
3 (collectively, "EPA"), alleging that EPA has failed to undertake certain nondiscretionary duties
4 under section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2);

5 WHEREAS, Plaintiff's claims in this matter, other than the costs of litigation and
6 reasonable attorneys' fees, were resolved by a Consent Decree entered by the Court on
7 December 30, 2009, see Dkt. 20;

8 WHEREAS, Plaintiff and EPA wish to settle Plaintiff's claims for costs of litigation in
9 this matter, including reasonable attorneys' fees, in order to avoid unnecessary litigation and
10 without any admission of fact or law;

11 NOW THEREFORE, the parties, by and through their undersigned counsel, hereby
12 stipulate to the entry of an order that:

13 1. The United States shall pay, within 90 days, \$16,500 to the Center on Race,
14 Poverty & the Environment by electronic funds transfer in accordance with instructions provided
15 to Defense counsel by Plaintiff's counsel.

16 2. Any obligation of the United States to expend funds under this settlement
17 agreement is subject to the availability of appropriations in accordance with the Anti-Deficiency
18 Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to require the United
19 States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

20 3. Payment pursuant to Paragraph 1 within 90 days of the date on which the Court
21 enters this Stipulation and Order (or after 90 days if Plaintiff accepts payment after that date)
22 will constitute full and final payment of costs of litigation, including reasonable attorneys' fees,
23 incurred by Plaintiff in connection with this case prior to the Court's entry of the Consent Decree
24 and in negotiating this Stipulation and Order. Upon payment within 90 days of the date on
25 which the Court enters this Stipulation and Order (or upon payment after 90 days if Plaintiffs
26 accept payment), Plaintiff releases the United States, including EPA, from any claims regarding
27 such fees and costs incurred by Plaintiff in connection with this case prior to the Court's entry of
28 the Consent Decree and in negotiating this Stipulation and Order. The payment pursuant to
Paragraph 1 does not affect Plaintiff's right to seek to recover reasonable costs and attorneys'

1 fees that Plaintiff may incur to enforce the Consent Decree, nor does it affect the right of EPA to
2 oppose any such request for fees and costs, as provided in Paragraph 11 of the Consent Decree.

3 4. In the event the United States fails to pay the sum specified in Paragraph 1 within
4 90 days of the date on which the Court enters this Stipulation and Order, Plaintiff may file a
5 motion with the Court for its costs of litigation, including reasonable attorneys' fees. Such
6 motion shall be filed no later than 150 days after the date the Court enters this Stipulation and
7 Order. The parties agree that, in litigation over such fee application, the United States reserves
8 any defenses it may have to a fee application.

9 FOR THE DEFENDANTS: Respectfully submitted,
10 IGNACIA S. MORENO
11 Assistant Attorney General
Environment & Natural Resources Division

12 Dated: April 06, 2010 /s/ Rochelle L. Russell
13 ROCHELLE L. RUSSELL
14 United States Department of Justice
15 Environmental Defense Section
301 Howard Street, Suite 1050
San Francisco, CA 94105
(415) 744-6566
rochelle.russell@usdoj.gov
Attorney for Defendants

16 FOR THE PLAINTIFF:
17 Dated: April 06, 2010 /s/ Alegría De La Cruz (with permission)
18 BRENT NEWELL
19 ALEGRÍA DE LA CRUZ
Center on Race, Poverty & the Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108
(415) 346-4179
bnewell@crpe-ej.org
adelacruz@crpe-ej-org
Attorneys for Association of Irrigated Residents

23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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25 Dated: 4/8/2010 Claudia Wilken
26 CLAUDIA WILKEN
27 UNITED STATES DISTRICT JUDGE
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