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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA EX REL. THE REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION,

Plaintiff,

v.

C.W. RUTH, an individual in his capacity as Commissioner of the INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES SECTION, et al.,

Defendants.

Case No. 01-CV-0270 BTM (BLM)
ORDER AMENDING DECEMBER 6, 2004 FINAL JUDGMENT SETTING COMPLIANCE SCHEDULE

THE SURFDRIER FOUNDATION,

Plaintiff,

v.

C.W. RUTH, an individual in his capacity as Commissioner of the INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES SECTION, et al.,

Defendants.

1 This matter comes before the Court on the parties' Joint Motion for Order Amending
2 December 6, 2004 Final Judgment Setting Compliance Schedule. Having reviewed the Motion
3 and the record since entry of the judgment in this case, the Court FINDS:

4 On December 5, 2003, this Court granted Plaintiff California Regional Water Quality
5 Control Board, San Diego Region's ("Regional Board") Motion for Summary Judgment re:
6 liability of Defendant International Boundary and Water Commission, United States Section
7 ("USIBWC") in the above referenced action.

8 On December 6, 2004, the Court issued a final judgment entitled "Order Setting
9 Compliance Schedule," which required, among other things, USIBWC to comply not later than
10 September 30, 2008 with the effluent standards and limitations based on secondary treatment and
11 relating to acute and chronic toxicity contained in Order No. 96-50, as amended [National
12 Pollutant Discharge Elimination System Permit No. CA 0108928] ("Order No. 96-50") issued by
13 the Regional Board with respect to the International Wastewater Treatment Plant ("IWTP").

14 Since entry of the Order Setting Compliance Schedule, USIBWC, the Regional Board and
15 other interested parties have, through numerous court filings and status conferences, kept the
16 Court apprised of the progress achieved and difficulties encountered by USIBWC in
17 implementing secondary treatment as required by Order No. 96-50.

18 On September 3, 2008, the Court conducted a status conference at which USIBWC reported
19 that it would not meet the September 30, 2008 compliance deadline, but that it was engaged in
20 efforts that were reasonably likely to result in secondary treatment as required by Order No. 96-
21 50 at a later date.

22 On September 5, 2008, the Court entered an Order which suspended the December 6, 2004
23 Judgment until the next status conference, and imposed deadlines for USIBWC to obtain bids
24 responsive to USIBWC's Request for Proposal to upgrade the IWTP to provide secondary
25 treatment, to review the bids and to award a contract for the project, and to issue a notice to
26 proceed to the successful bidder. Order Suspending Judgment and Setting Compliance Deadlines
27 (Doc. # 142-1).

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1 On January 7, 2009, the Court conducted a status conference at which the parties agreed
2 that USIBWC had completed all tasks required by the Court's September 5, 2008 Order. The
3 Court issued a minute order continuing the suspension of the December 6, 2004 Judgment
4 pending the filing of a further order. Doc. # 145.

5 The USIBWC has awarded a contract for construction of secondary treatment facilities at
6 the IWTP. The contract requires the completion of work within 730 days from January 5, 2009.
7 The expanded IWTP is projected to be operational by January 5, 2011.

8 Accordingly, the December 6, 2004 Order Setting Compliance is hereby amended by
9 deleting paragraphs 2, and 5 through 10, and in lieu of the obligations imposed by those
10 paragraphs it is ORDERED that:

11 1. USIBWC shall achieve full compliance with the effluent standards and limitations
12 based on secondary treatment and relating to acute and chronic toxicity contained in Order No.
13 96-50 not later than January 5, 2011.

14 2. USIBWC shall rely on the construction schedule set forth in the "Baseline
15 Construction Schedule" dated February 2, 2009, and shall utilize sound project management
16 principles to promote timely completion of the project and compliance with Order No. 96-50.
17 The tasks and dates contained in the Baseline Construction Schedule shall serve as an integral
18 means for ensuring compliance with the January 5, 2011 deadline set forth in paragraph 1, above.

19 3. USIBWC shall post on its website monthly construction progress reports, which shall
20 include a narrative discussion of the status of the project together with appropriate project
21 management reports, Gantt charts, and photographs of the construction activities.

22 4. If USIBWC should fall more than 15 days behind in the deadlines for specific tasks
23 set forth in the Baseline Construction Schedule for any reason, it shall notify the Regional Board
24 immediately, and shall meet and confer with the Regional Board regarding adjustments to the
25 schedule of work to meet the January 5, 2011 deadline set forth in paragraph 1, above. If, after
26 meeting and conferring with the Regional Board, the Regional Board determines that USIBWC
27 will fail to meet the January 5, 2011 compliance deadline, the Regional Board may seek relief
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1 from the Court, including but not limited to, coercive penalties. USIBWC may assert any and all
2 defenses.

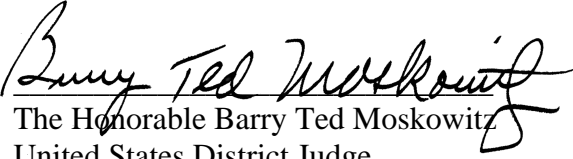
3 5. The Court retains jurisdiction over this matter and will conduct a status conference
4 every four months to monitor progress of the project. Counsel for USIBWC may appear
5 telephonically at such status conferences unless the project has fallen behind more than 20 days in
6 meeting deadlines contained in the Baseline Construction Schedule.

7 6. A status conference on this matter shall be held on May 27, 2009, at 3:00 p.m.

8 7. This Order amends the December 6, 2004 final judgment for equitable relief for all of
9 Plaintiff's claims. The Court retains jurisdiction to enforce the terms of this Order.

10 **IT IS SO ORDERED.**

11 Dated: February 13, 2009


The Honorable Barry Ted Moskowitz
United States District Judge

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