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8 **UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **SACRAMENTO DIVISION**

12 In re:  
13 CITY OF STOCKTON, CALIFORNIA,  
14 Debtor.

Case No. 2012-32118  
Chapter 9  
DC No. BB-001

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16  
17 COALITION FOR A SUSTAINABLE  
18 DELTA, BELRIDGE WATER STORAGE  
19 DISTRICT, BERRENDA MESA WATER  
20 DISTRICT, CAWELO WATER DISTRICT,  
21 NORTH OF THE RIVER MUNICIPAL  
WATER DISTRICT, WHEELER RIDGE-  
MARICOPA WATER STORAGE  
DISTRICT, AND DEE DILLON,

**MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF  
MOTION OF THE COALITION FOR A  
SUSTAINABLE DELTA AND OTHER  
PARTIES FOR LIMITED RELIEF  
FROM AUTOMATIC STAY PURSUANT  
TO 11 U.S.C. § 362(d)(1)**

Date: July 1, 2014  
Time: 9:30 a.m.  
Location: U.S. Bankruptcy Court  
Sacramento Division  
501 I Street, 6<sup>th</sup> Floor  
Courtroom 35  
Judge: Christopher M. Klein

22 Movants,  
23 v.  
24 CITY OF STOCKTON, CALIFORNIA,  
25 Respondent.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 The CITY OF STOCKTON, CALIFORNIA (“City”) jointly holds a Municipal Separate  
3 Storm Sewer System permit (“MS4 Permit”) with the County of San Joaquin (“County”). The  
4 Coalition for a Sustainable Delta (the “Coalition”), Belridge Water Storage District, Berrenda  
5 Mesa Water District, Cawelo Water District, North of the River Municipal Water District,  
6 Wheeler Ridge-Maricopa Water Storage District and Dee Dillon (collectively, the “Movants”)  
7 filed a complaint in the United States District Court for the Eastern District of California against  
8 the City and the County of San Joaquin asserting claims for declaratory relief, injunctive relief,  
9 and civil penalties for violations of the federal Clean Water Act (“CWA”) and Endangered  
10 Species Act (“ESA”). The gravamen of the Complaint is that the City and the County have been  
11 discharging storm water in violation of the City and County’s joint MS4 Permit, and that these  
12 activities have negatively impacted the quality and aesthetics of the Sacramento-San Joaquin  
13 Delta (“Delta”), resulting in the “take” of certain species protected by the ESA native to the  
14 Delta, and has caused economic harm to Coalition members and the water districts. A copy of  
15 the complaint is filed concurrently as Exhibit A to the Declaration of Joshua A. Bloom.

16 Based upon discovery that has been conducted in the action, the Movants believe they  
17 have an evidentiary foundation to seek partial summary judgment on components of their CWA  
18 claim that address continuing violations of the MS4 permit, and which violations have caused,  
19 and are continuing to cause, impacts to the detriment of the Delta, native species, and the users  
20 that rely on the Delta.

21 In February 2011, the parties agreed to a stay of the action and to refrain from further  
22 discovery while they engaged in substantive settlement discussions in an effort to resolve the  
23 litigation. Those discussions and settlement efforts continued through April of 2012. In the  
24 course of those settlement efforts, the parties made some progress, including entering into an  
25 Interim Agreement in May 2011 that provided for an assessment of the City’s and the County’s  
26 stormwater programs by an independent third party confidential expert, who then developed  
27 recommendations that provided a basis of subsequent settlement negotiations. Settlement  
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1 discussions continued subsequent to the independent report without resolution of certain  
2 significant issues.

3 The District Court entered an order on April 3, 2012, stating that no further stay would  
4 be granted and setting a status conference for August 22, 2012. Prior to the August 22, 2012  
5 status conference, the City filed for protection under Chapter 9 of the Bankruptcy Code (11  
6 U.S.C. § 101, et seq.) on June 28, 2012. A Notice of Automatic Stay was filed by the City on  
7 July 10, 2012, and the District Court vacated the August 22, 2012 status conference on July 24,  
8 2012. Although the County is not a debtor in bankruptcy, the District Court's docket reflects the  
9 entire action as "Stayed."

10 At the beginning of August 2, 2012, the Coalition requested that the City stipulate to  
11 limited relief from the stay to bring the District Court case to final judgment, but not  
12 enforcement of any monetary judgment. Additionally, the Coalition has continued to confirm to  
13 the City its willingness to participate in a good faith mediation as a predicate to continued  
14 discovery and litigation, but did not receive any definitive response from the City. The Coalition  
15 again pressed the City for a response by letter dated November 14, 2012, giving the City a  
16 deadline of November 30, 2012 to respond before the Coalition sought relief from the automatic  
17 stay to pursue the District Court case. The City's counsel engaged in written correspondence  
18 with the Coalition's counsel on and after November 30, 2012, confirming that although the City  
19 is unwilling to stipulate to relief from the automatic stay at the outset, the City is willing to  
20 participate in a mediation as soon as reasonably practicable. Then, if the mediation is  
21 unsuccessful, the City would stipulate for relief from the automatic stay. To that end, the  
22 Coalition proposed a three month timeline to select a mediator and complete the mediation by  
23 March 31, 2013.

24 The mediation, however, never took place as a result of the City's decision not to share  
25 in the costs of a private mediator, and due to the restrictive schedule of the Magistrate Judge of  
26 the Northern District's Sacramento Division that prevented the opportunity to have the  
27 Magistrate serve as a mediator. The parties' discussions transitioned to trying to schedule a  
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1 meeting with the parties' principals in an attempt to resolve the matter. A meeting was  
2 scheduled for December 2, 2013. However, meaningful progress was not made in resolving the  
3 issues between the parties.

4 As more fully set forth in the Declaration of Joshua Bloom filed with this Motion,  
5 further discussions took place between the Coalition and the City between December 2, 2013  
6 and now. However, progress toward a global resolution was minimal notwithstanding the  
7 efforts of the Coalition towards progress. Therefore, Movants are moving forward with this  
8 Motion so that the issues involved in the lawsuit—issues that include the City's continued  
9 pollution of the Delta—can be efficiently resolved without further delay.

## 10 **II. DISCUSSION**

### 11 **A. Cause Exists for Limited Relief From the Automatic Stay.**

12 It should be noted that the allegations in the Coalition's complaint relate to the City's  
13 ongoing violations and continued pollution of the Delta. Thus, the pending action concerns  
14 both pre-petition and post-petition violations. Nonetheless, since the lawsuit was commenced  
15 pre-petition and seeks monetary relief as well as injunctive as well as other relief, the lawsuit is  
16 subject to the automatic stay, necessitating this Motion. Since cause exists for relief from the  
17 stay, the Coalition requests that the Motion be granted.

18 Pursuant to Section 362, subdivision (d) of the Bankruptcy Code, "[O]n request of a  
19 party in interest and after notice and hearing, the court shall grant relief from the stay provided  
20 under subsection (a) of this section, such as by terminating, annulling, modifying or  
21 conditioning such stay-(1) for cause." Cause is not defined by the Bankruptcy Code, but  
22 utilization of the so-called "Curtis Factors" is helpful in determining whether relief from the  
23 automatic stay should be granted to allow pending litigation to continue in a forum outside of  
24 the bankruptcy court. See, *In re Plumberex Specialities Products, Inc.*, 311 B.R. 551, 559  
25 (Bankr. C.D. Cal. 2004) (citing *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984)). The following  
26 are the factors from *In re Curtis*, which have been adopted by a number of circuits:  
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- 1 1. Whether the relief will result in a partial or complete resolution
- 2 of the issues;
- 3 2. The lack of any connection with or interference with the
- 4 bankruptcy case;
- 5 3. Whether the foreign proceeding involves the debtor as a
- 6 fiduciary;
- 7 4. Whether a specialized tribunal has been established to hear the
- 8 particular cause of action and whether that tribunal has the
- 9 expertise to hear such cases;
- 10 5. Whether the debtor's insurance carrier has assumed full
- 11 financial responsibility for defending the litigation;
- 12 6. Whether the action essentially involves third parties, and the
- 13 debtor functions only as a bailee or conduit for the goods or
- 14 proceeds in question;
- 15 7. Whether the litigation in another forum would prejudice the
- 16 interests of other creditors, the creditors' committee and other
- 17 interested parties;
- 18 8. Whether the judgment claim arising from the foreign action is
- 19 subject to equitable subordination under Section 510(c);
- 20 9. Whether movant's success in the foreign proceeding would
- 21 result in a judicial lien avoidable by the debtor under Section
- 22 522(f);
- 23 10. The interests of judicial economy and the expeditious and
- 24 economical determination of litigation for the parties;
- 25 11. Whether the foreign proceedings have progressed to the point
- 26 where the parties are prepared for trial, and
- 27 12. The impact of the stay on the parties and the "balance of hurt."
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*In re Plumberex Specialities Products, Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)). Not all of the Curtis Factors are relevant in this case and the Court is not required to give each factor equal weight in determining cause. *Id.* Here, the factors enumerated as 1, 2, 4, 7, 10, 11 and 12 are applicable. The consideration of these factors to this matter as discussed below overwhelmingly support cause for relief from stay.

**1. Granting Relief From the Automatic Stay Allowing the District Court Case to Continue Will Result in Complete Resolution of the Serious Issues.**

The historical and the continued violations of the MS4 Permit by the City and the County are of grave concern to the Movants. As discussed above, the City's and the County's continued practice of discharging storm water into the Delta is impacting water quality, water

1 supply, and the Delta's wildlife. Thus, the District Court case should proceed against all parties  
2 to bring this matter to judgment so that the Movants may obtain appropriate injunctive  
3 measures. Not granting relief will leave one defendant (the County) subject to the proceedings,  
4 and the other defendant (the City) continuing its violations of federal law.

5 **2. There Is No Connection Between the District Court Case And the Bankruptcy**  
6 **Case, And Allowing the District Court Case Will Have Little Impact on the**  
7 **Bankruptcy Case.**

8 The claims and issues of the District Court case are not connected to this bankruptcy  
9 case, and, other than the cost of the City defending the lawsuit and the potential costs of coming  
10 into compliance with the City's regulatory and statutory obligations, there will be no impact on  
11 the City. Conversely, the City's failure to comply with its continuing obligations will have a  
12 negative impact on the estate. If the District Court ultimately orders injunctive measures, the  
13 District Court can take the City's financial situation into account if appropriate and tailor those  
14 measures accordingly.

15 **3. The District Court Is The Appropriate Forum.**

16 The District Court is the appropriate forum to determine issues involving the CWA and  
17 the ESA, not the bankruptcy court. The bankruptcy court lacks constitutional authority to hear  
18 this matter as it is not a core proceeding. See, *Stern v. Marshall*, 131 S. Ct. 2594, 2616 (2011).  
19 Further, although the action does not completely involve third parties, non-debtor third parties  
20 are present, and, without the involvement of the City, complete and effective relief cannot be  
21 afforded to the plaintiffs.

22 **4. The District Court Case Progressed Substantially From 2009 Until This**  
23 **Bankruptcy Case Was Filed In 2012.**

24 The District Court case has been pending for over four years and certain discovery has  
25 been conducted on the claims. Also, substantial settlement discussions took place prior to the  
26 filing of this bankruptcy case. As noted above, the Movants believe that one of their primary  
27 CWA claims is ripe for partial summary judgment. The progress in the case, therefore, also  
28 weighs in favor of relief.

1           **5. In the Interest of Judicial Economy And Due to the Nature of the Claims and**  
2           **Issues, the District Court Case Should Not Proceed Piecemeal, Against the**  
3           **County Now and the City Later.**

4           Most importantly, the factors of judicial economy and balance of hardships tip sharply in  
5 favor of relief from the automatic stay. The nature of the claims and issues involved in the  
6 Complaint must be resolved in the District Court, and given the nature of many of the activities  
7 undertaken by the City and the County in furtherance of permit obligations, the District Court  
8 case should be litigated against both defendants jointly. The violations are ongoing and,  
9 therefore, the stay does not even apply to post-petition violations.

10           The ongoing nature of the violations, and the resulting environmental harm also go to the  
11 balance of hardships. Contaminants associated with urban runoff in the Delta impair wildlife  
12 and aquatic life, agricultural beneficial uses, and drinking water. The City's permit violations  
13 are, among other things, impacting the water quality of the Delta, including impacts to federally  
14 endangered and threatened species (e.g., the delta smelt, Sacramento River winter-run Chinook  
15 salmon, Central Valley spring-run Chinook Salmon, and the Central Valley steelhead), and  
16 agricultural and recreational water use. The costs of litigation that the City will have to incur are  
17 far less significant than the environmental impacts that are continuing to accrue during this case.

18           **B. The Movants Request Limited Relief From the Automatic Stay to Bring the**  
19           **District Court Action to Judgment to Allow Liquidation of These Claims, But**  
20           **Allow Payment of Any Penalties and Fees Through the Bankruptcy Process.**

21           On balance, the facts weigh heavily in favor of relief from the automatic stay. As they  
22 have done throughout the litigation, the Movants intend to work toward narrowing the issues  
23 and exploring options to resolve the litigation with as little expense and delay as possible. To  
24 that end, the Movants seek an order modifying the automatic stay in a limited fashion. Thus, the  
25 Movants seek an order as follows:

26           1.       That relief be granted to the Movants to pursue the matter to judgment, but not  
27 enforcement of any pre-petition monetary penalties or attorney's fees. This would allow the  
28 liquidation of these claims in the appropriate forum, but allow the payment of these elements of  
their claims through the bankruptcy process.

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2. As noted, the Movants believe they have an evidentiary foundation to seek partial summary judgment on a key component of their CWA claim. The Movants will file a partial summary judgment motion before engaging in other discovery with respect to the remainder of the CWA and ESA claims. The Movants believe that the ruling on its partial summary judgment motion will advance negotiations for a complete resolution.

3. Except for the above partial summary judgment motion, the Movants will agree to a reasonable period for mediation following the partial summary judgment ruling before engaging in extensive additional discovery. This, of course, would be subject to the approval of the District Court Judge.

**C. Conclusion.**

In light of the foregoing, and for cause having been shown, the Movants respectfully request that the Court grant the Movants' motion for an order modifying the automatic stay as set forth above.

Date: June 12, 2014

BELDEN BLAINE, LLP

By: 

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