

SETTLEMENT AGREEMENT

WHEREAS, on April 29, 2010, the Center for Biological Diversity filed a Complaint in Center for Biological Diversity v. Jackson, No. cv-10-1846-MMC (N.D. Cal.), against Lisa Jackson, in her official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”).

WHEREAS, the Center for Biological Diversity therein alleged that EPA failed to perform mandatory duties regarding a number of areas designated as nonattainment for the National Ambient Air Quality Standards (“NAAQS”) for particulate matter less than 10 microns in diameter (“PM-10”) within the States of Alaska, Arizona, Idaho, Montana, and Nevada as required by the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7401-7671q. Specifically, the Center for Biological Diversity alleged that the Act required that EPA (1) make determinations whether certain PM-10 nonattainment areas attained the PM-10 NAAQS by the applicable attainment date; (2) impose sanctions on two areas in Arizona for which EPA has made findings of failure by the State of Arizona to submit complete PM-10 state implementation plan (“SIP”) revisions, and promulgate Federal Implementation Plans (“FIPs”) for these same two Arizona areas; and (3) issue a determination that Montana has failed to submit complete SIPs for certain PM-10 areas within the State.

WHEREAS, EPA has applied its “Clean Data Policy” interpretation of the CAA in a number of attainment determination rulemakings for PM-10 nonattainment areas, thereby suspending for each area certain attainment-related requirements set forth in the Act, including EPA’s obligation to promulgate a FIP for such areas. The rationale for EPA’s interpretation is set forth in the proposed and final determinations of attainment for the San Joaquin Valley PM-10 nonattainment area, 71 Fed. Reg. 40952 (July 19, 2006), 71 Fed. Reg. 63642 (Oct. 30, 2006),

and 73 Fed. Reg. 14687 (Mar. 19, 2008), and in the proposed and final determinations of attainment for the Coso Junction PM-10 nonattainment area. 75 Fed. Reg. 13710 (Mar. 23, 2010) and 75 Fed. Reg. 27944 (May 19, 2010). The Ninth Circuit and the Northern District of California have recently addressed these issues. See *Latino Issues Forum, et al. v. EPA*, Case No. 06-75831 (9th Cir.) at Docket No. 63-1 (order denying petition for review); *Medical Advocates for Healthy Air, et al. v. Johnson*, No. C 06-00093 (N.D. Cal.) at Docket No. 77 (order on summary judgment).

WHEREAS, on October 17, 2006, EPA published in the Federal Register a final rule retaining the 24-hour-average PM-10 NAAQS but revoking the annual PM-10 NAAQS, 71 Fed. Reg. 61144.

WHEREAS, on June 22, 2010, EPA published in the Federal Register a direct final rule stating its determination that the Sandpoint area in Idaho attained the PM-10 NAAQS, 75 Fed. Reg. 35302. EPA received no comments on this rule, which became effective August 23, 2010.

WHEREAS, on July 16, 2010, EPA published in the Federal Register a direct final rule stating its determination that Mendenhall Valley, Alaska attained the PM-10 NAAQS, 75 Fed. Reg. 41379. EPA received no comments on this action, which became effective without further notice on September 14, 2010.

WHEREAS, on July 28, 2010, EPA published in the Federal Register its final determination that the Fort Hall PM-10 area in Idaho, attained the PM-10 NAAQS, 75 Fed. Reg. 44142.

WHEREAS, on August 3, 2010, EPA published in the Federal Register a direct final rule stating its final determination that the Las Vegas planning area (Nevada) attained the PM-10 NAAQS, 75 Fed. Reg. 45485.

WHEREAS, EPA asserts that the Lame Deer area and Ronan and Polson area in Montana are located on tribal lands and, therefore, the State is not required to submit a SIP for these areas.

WHEREAS, the Center for Biological Diversity and EPA have agreed to a settlement of all claims raised in the Center for Biological Diversity's Complaint without admission of any issue of fact or law in order to avoid protracted and costly litigation and to preserve judicial resources.

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. EPA shall sign for publication in the Federal Register no later than January 31, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether Eagle River, Alaska attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

2. EPA shall sign for publication in the Federal Register no later than July 29, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Paul Spur/Douglas planning area in Arizona attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

3. EPA shall sign for publication in the Federal Register no later than January 29, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Nogales planning area in Arizona attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

4. EPA shall sign for publication in the Federal Register no later than January 4, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Hayden planning area in Arizona attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

5. EPA shall sign for publication in the Federal Register no later than March 21, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Columbia Falls area in Flathead County, Montana attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

6. EPA shall sign for publication in the Federal Register no later than March 21, 2011, a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Libby and vicinity areas of Lincoln County, Montana attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 1994, based on the area's air quality as of that attainment date.

7. Except as otherwise provided in Paragraph 11, EPA shall no later than March 29, 2011, sign for publication in the Federal Register a notice of the Agency's final determination under 42 U.S.C §§ 7509(c)(1) and 7513(b)(2) as to whether the Reno (Nevada) planning area, which is classified as a "serious" PM-10 nonattainment area, attained the 24-hour PM-10 NAAQS by the applicable attainment date, December 31, 2001, based on the area's air quality as of that attainment date.

8. Except as otherwise provided in Paragraph 12, and subject to the qualifications in Paragraph 20, EPA shall no later than July 27, 2012, sign for publication in the Federal Register

a notice of the Agency's final rule promulgating a FIP under 42 U.S.C. § 7410(c)(1) addressing the requirements under CAA section §§ 7513a(a)(1)(B) [attainment demonstration] and (a)(1)(C) [reasonably available control measures] or 7509a(a) [demonstration of attainment but for emissions emanating from outside the United States] as they relate to the 24-hour PM-10 NAAQS for the Douglas portion of the Paul Spur/Douglas planning area.

9. Except as otherwise provided in Paragraph 13, EPA shall no later than July 27, 2012, sign for publication in the Federal Register a notice of the Agency's final rule promulgating a FIP under 42 U.S.C. § 7410(c)(1) addressing the requirements under CAA section §§ 7513a(a)(1)(B) [attainment demonstration] and (a)(1)(C) [reasonably available control measures] or 7509a(a) [demonstration of attainment but for emissions emanating from outside the United States] as they relate to the 24-hour PM-10 NAAQS for the Nogales planning area.

10. The Parties may agree to extend any deadlines contained in this Settlement Agreement by mutual written consent.

11. If EPA signs a notice taking final action to approve the State of Nevada's submitted Redesignation Request and Maintenance Plan for the Reno Planning Area under 42 U.S.C. § 7407(d)(3)(D) and (d)(3)(E) before the deadline in Paragraph 7 of this Settlement Agreement, then EPA's obligation under Paragraph 7 shall be voided.

12. If, before the deadline in Paragraph 8 of this Settlement Agreement, EPA signs a notice taking final action to (1) reclassify the Paul Spur/Douglas planning area (or the Douglas planning area if EPA acts to split the Paul Spur/Douglas nonattainment area into two areas) as a "serious" nonattainment area; (2) approve a submittal from the State of Arizona of a SIP revision addressing the requirements under CAA section 42 U.S.C §§ 7513a(a)(1)(B) [attainment demonstration] and (a)(1)(C) [reasonably available control measures] or 7509a(a) [demonstration

of attainment but for emissions emanating from outside the United States]; or (3) approve a redesignation request and maintenance plan under 42 U.S.C. § 7407(d)(3)(D) and (d)(3)(E); then EPA's obligation under Paragraph 8 shall be voided.

13. If EPA signs a notice taking final action to reclassify the Nogales planning area as a "serious" nonattainment area or to approve a submittal from the State of Arizona of a SIP revision addressing the requirements under CAA section 42 U.S.C. §§ 7513a(a)(1)(B) [attainment demonstration] and (a)(1)(C) [reasonably available control measures] or 7509a(a) [demonstration of attainment but for emissions emanating from outside the United States] before the deadline in Paragraph 9 of this Settlement Agreement, then EPA's obligation under Paragraph 9 shall be voided.

14. Within 15 business days following signature of such action required by Paragraphs 1-13, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

15. Nothing in this Settlement Agreement shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law.

16. The Parties agree and acknowledge that EPA's final approval of this Settlement Agreement is subject to the requirements of CAA § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this Settlement Agreement be given to the public, that the public shall have a reasonable opportunity to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Settlement Agreement.

17. Except as set forth in this Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have.

18. EPA's obligations under this Settlement Agreement are subject to the availability of funds appropriated and legally available for such purpose. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of law.

19. Within 10 days of signing this Settlement Agreement, the parties agree to file a joint motion in the district court to administratively close this case. The Center for Biological Diversity shall file a motion for voluntary dismissal, with prejudice, in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure of Center for Biological Diversity v. Jackson, No. cv-10-1846-MMC (N.D. Cal.), with respect to all claims in the Complaint within 30 days after notice appears in the Federal Register of EPA taking the last rulemaking action required under Paragraphs 1-9 of this Settlement Agreement. The Center for Biological Diversity agrees and acknowledges that, if EPA fails to meet its obligations under this Settlement Agreement, its sole remedy is to reinstate this action.

20. The Parties agree that if EPA signs a final attainment determination in lieu of promulgating a FIP prior to the deadline for promulgation of a FIP in Paragraph 8, then such action will not constitute a breach of the Settlement Agreement. Nevertheless, should EPA invoke its Clean Data Policy and sign a final attainment determination in lieu of promulgating a FIP, the Center for Biological Diversity reserves its right to reinstate this action for the limited purpose of litigating the question whether EPA is in violation of an alleged mandatory duty to promulgate a FIP as required by CAA section 110(c)(1)(A), 42 U.S.C. § 7410(c)(1)(A), for the Douglas area of Cochise County. EPA in turn reserves each of its defenses including, but not

limited to, arguing that the Center for Biological Diversity's challenge is time-barred and that such claim is reviewable exclusively in the court of appeals.

21. EPA agrees to settle the Center for Biological Diversity's claim for costs and attorneys' fees by paying \$28,500 as soon as reasonably practicable after the Court enters an order on the parties' joint motion to administratively terminate this case. This amount shall be paid by Fed Wire Electronic Funds Transfer to the Center for Biological Diversity's counsel Robert Ukeiley, P.S.C., pursuant to payment instructions provided by Robert Ukeiley. The Center for Biological Diversity agrees to provide counsel for EPA all necessary information for processing the electronic funds transfer within five (5) business days of receipt of the Court's order on the joint motion. The Center for Biological Diversity agrees to accept payment of \$28,500 in full satisfaction of any and all claims for costs and attorneys' fees with respect to this case incurred up until the time the Court enters an order on the joint motion. EPA does not concede that the Center for Biological Diversity will be entitled to fees for any efforts on this case after the Court enters an order on the joint motion, and EPA reserves all defenses with respect to any such efforts and any related fee claim. The fees paid under this Paragraph shall have no precedential value in any future fee claim.

22. The undersigned representative of each Party certifies that he or she is fully authorized by the Party he represents to bind that Party to the terms of this Settlement Agreement.

23. Any written notices or other written communications between the Parties contemplated under this Settlement Agreement shall be sent to the undersigned counsel at the addresses listed in the signature blocks below unless written notice of a change in counsel and/or address is provided.

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Dated: 2/3/2011