

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made by and between: (1) the Center for Biological Diversity (“CBD”); and (2) the United States Environmental Protection Agency, Lisa Jackson (Administrator of the United States Environmental Protection Agency), and Michelle Pirzadeh (Acting Regional Administrator of Region 10 of the United States Environmental Protection Agency) (collectively, “EPA”). CBD and EPA collectively are referred to herein as “the Parties.”

WHEREAS, CBD filed and served the Complaint in action No. 2:09-cv-00670-JCC (W.D. Wash.) (“the litigation”), seeking declaratory and injunctive relief based on allegations that EPA failed to comply with the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 701, *et seq.*, by arbitrarily and unlawfully approving Washington’s list of impaired waters under 33 U.S.C. § 1313(d) because the list failed to identify certain ocean waters as impaired for marine pH;

WHEREAS, CBD and EPA have participated in settlement negotiations in order to avoid unnecessary judicial proceedings, and have obtained stays of the litigation to allow them to do so;

WHEREAS, on December 1, 2009, EPA sent a letter to the Washington Department of Environmental Quality^{1/} that urged Washington to submit its 2010 Integrated Report by April 1, 2010, and emphasized the importance of Washington’s consideration of all existing and readily available data and information for marine waters, including pH, in developing Washington’s

^{1/} The letter was addressed to the Washington Department of Environmental Quality but was received by the intended recipient at the Department of Ecology.

2010 list of impaired waters under 33 U.S.C. § 1313(d); and

WHEREAS, CBD and EPA agree that it is desirable to settle these matters, without any admission of fact or law, under the terms and conditions set forth below.

NOW THEREFORE, the parties, by and through their undersigned counsel, hereby agree upon the following settlement terms and conditions:

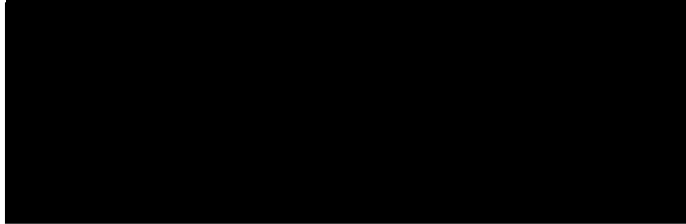
1. By March 15, 2010, EPA will sign a Federal Register notice that will seek comments addressing ocean acidification under the CWA section 303(d) program, including whether EPA should issue guidance regarding the listing of waters as threatened or impaired for ocean acidification, and what that potential guidance might entail. The Federal Register notice will include a request for comment on, *inter alia*: (a) approaches for states to determine if waters are threatened or impaired by ocean acidification, including whether or how states might incorporate into their analysis information other than site-specific measurements; (b) how states might aid in monitoring ocean acidification and its impacts on marine life and ecosystems; and (c) recommendations for TMDL development for waters impaired by ocean acidification. EPA will retain discretion regarding how to describe the issues in the Federal Register notice.

2. By November 15, 2010, EPA will complete a memorandum that describes how EPA intends to proceed with its section 303(d) program in light of the responses to the Federal Register notice described in Paragraph 1 above. EPA promptly will provide that memorandum to CBD. The Parties agree that completion of the memorandum will not constitute final agency action. However, in a subsequent challenge to a final agency action that relies on the memorandum, CBD reserves its rights to take issue with the conclusions, rationales, or positions taken in the memorandum.

3. EPA shall pay [REDACTED] to CBD as a fair, reasonable and complete settlement of all claims for litigation costs, including attorneys' fees, incurred by CBD in this lawsuit.

Payment shall be made to the "Center for Biological Diversity," and sent by Electronic Funds

Transfer to:



The payment shall be made within 120 days from the court's dismissal in accordance with paragraphs 4 and 5 below.

4. In return for the promises and covenants contained herein, CBD agrees to dismiss the litigation without prejudice, with the exception of CBD's claims for attorneys' fees and costs, upon execution of this Agreement.

5. CBD agrees, upon execution of this Agreement, to dismiss with prejudice CBD's claims for attorneys' fees, costs and/or expenses asserted in connection with the litigation.

6. Upon fulfillment of EPA's obligations under this Agreement, EPA's obligations under this Agreement shall be terminated.

7. Contempt of court is not an available remedy under this Agreement. In the event that EPA fails to comply with any of the deadlines in this Agreement, CBD's sole remedy is to reactivate the claims asserted in the litigation. EPA does not waive or limit, and expressly reserves, any and all defenses to such claims.

8. CBD and EPA recognize that the performance of this Agreement is subject to fiscal and procurement laws and regulations of the United States. The possibility exists that

circumstances outside the reasonable control of EPA could delay compliance with the timetables set forth in this Agreement. Such situations include, but are not limited to, sufficient funds not being appropriated as requested, the unavailability of appropriated funds for expenditure, and catastrophic environmental events requiring an immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth in this Agreement shall not constitute a failure to comply with the deadlines or terms of this Agreement, and any deadlines so affected shall be extended by one day for each day of the delay. EPA will provide CBD with reasonable notice in the event that EPA invokes this term of the Agreement.

9. Nothing in this Agreement shall constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of EPA or of the United States, including their officers or any person affiliated with them. The provisions, terms and conditions of this Settlement Agreement shall not be admissible in any action, except in an action seeking to enforce this Agreement, as an adjudication, finding or admission of any issue of fact or law.

10. No provision of this 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 take any actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the CWA, or any other substantive or procedural law or regulation.

11. If a subsequent change in law alters or relieves EPA of its obligations concerning matters addressed in this Agreement, then the Agreement shall be deemed amended to conform to such changes.

12. Except as expressly provided herein, nothing in this Agreement shall be construed

to limit or modify the discretion accorded to EPA by the CWA or by general principles of administrative law, and nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend or revise from time to time any actions that EPA may perform pursuant to this Agreement, or to promulgate superseding regulations.

13. Except as set forth in this Agreement, all parties reserve and do not waive any and all other legal rights and remedies.

14. This Agreement constitutes the final, complete and exclusive agreement and understanding between CBD and EPA with respect to the matters addressed in this Agreement. There are no representations, agreements or understandings relating to this settlement other than those expressly contained in this Agreement.

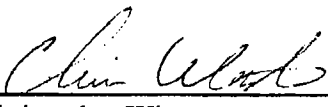
15. This Agreement may be executed in one or more counterparts, each of which will be an original, and such counterparts shall together constitute one and the same Agreement.

16. Each of the undersigned representatives hereby certifies that he or she is fully authorized to enter into this Agreement, and to legally bind each respective party to this Agreement.

17. Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

WHEREFORE, after having reviewed the terms and conditions of this Agreement, the United States, on behalf of EPA, and CBD hereby consent and agree to the terms and conditions of this Agreement.

DATED: March 10, 2010



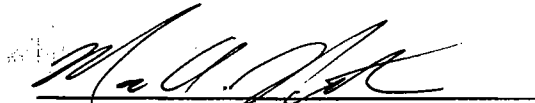
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ATTORNEY FOR CBD

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DATED: 3/10/10



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