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17 *Attorneys for Plaintiff*

18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 CENTER FOR BIOLOGICAL
22 DIVERSITY,

23 Plaintiff,

24 v.

25 BUREAU OF OCEAN ENERGY
26 MANAGEMENT, *et al.*,

27 Defendants.

No. 2:15-cv-01189-PSG (FFMx)

SETTLEMENT AGREEMENT

Date: N/A

Time: N/A

Courtroom No. 880, Roybal Courthouse

Hon. Philip S. Gutierrez

1 Plaintiff Center for Biological Diversity (“Center”) and Federal Defendants
2 Bureau of Ocean Energy Management (“BOEM”); Bureau of Safety and
3 Environmental Enforcement (“BSEE”); U.S. Department of the Interior; Sally
4 Jewell, Secretary of the Interior; Abigail Hopper, Director of BOEM; Joan
5 Barminski, Pacific Regional Director of BOEM; Brian Salerno, Director of BSEE;
6 and John Keith, Acting Pacific Regional Director of BSEE, stipulate to settlement
7 of this action on the terms set forth below for purposes of settling the claims filed
8 by Plaintiff in the above-captioned litigation without further litigation and for no
9 other purpose. Plaintiff and Federal Defendants (“Parties”) by and through their
10 undersigned counsel, state as follows:

11 WHEREAS, the Center filed the above-captioned case on February 19,
12 2015, alleging Federal Defendants are in violation of the Administrative Procedure
13 Act, 5 U.S.C. §§ 551 *et seq.*, the National Environmental Policy Act, 42 U.S.C. §§
14 4321, *et seq.*, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331, *et seq.*,
15 and the Coastal Zone Management Act, 16 U.S.C. §§ 1451, *et seq.*, in connection
16 with Federal Defendants’ decisions to authorize the use of certain well-stimulation
17 practices at offshore oil and gas operations on the Pacific Outer Continental Shelf
18 (“OCS”).

19 WHEREAS, Plaintiff and Federal Defendants, through their authorized
20 representatives, without any admission of legal fault or error, and without final
21 adjudication of the issues of fact or law with respect to Plaintiff’s claims, have
22 reached a settlement resolving this action;

23 WHEREAS, Plaintiff and Federal Defendants agree that settlement of this
24 action in this manner is in the public interest and is an appropriate way to resolve
25 the dispute between them;

26 NOW THEREFORE, Plaintiff and Federal Defendants hereby stipulate as
27 follows:

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1 I. Undertakings by Federal Defendants

2 A. BOEM and BSEE will undertake a programmatic Environmental
3 Assessment (“EA”) pursuant to the National Environmental Policy Act (“NEPA”)
4 to analyze the potential environmental impacts of well-stimulation practices on the
5 Pacific OCS, including hydraulic fracturing and acid well stimulation. The focus
6 of the EA will be on foreseeable future well-stimulation activities requiring federal
7 approval, not past completed or expired activities for which no further federal
8 actions remain, except to the degree that analysis of such past actions may be
9 relevant to assessing the environmental baseline and/or an analysis of cumulative
10 or other effects. This assessment will result in a determination that either an
11 Environmental Impact Statement (“EIS”) and Record of Decision (“ROD”) is
12 required or a Finding of No Significant Impact (“FONSI”) is appropriate. BOEM
13 and BSEE shall complete and issue the final programmatic EA by May 28, 2016,
14 and will also issue a FONSI by that date if BOEM and BSEE determine that a
15 FONSI is the appropriate outcome of the EA.

16 Defendants will not pre-determine the outcome of this assessment to require
17 one product or the other before the analysis in the programmatic EA is complete.
18 Plaintiff reserves the right to challenge the EA/FONSI or EIS/ROD as a separate
19 action. Intervenor-Defendant American Petroleum Institute does not agree that an
20 EA or an EIS is necessary or appropriate, and reserves the right to challenge any
21 aspect of the EA or an EIS as a separate action.

22 B. BOEM and BSEE will release a draft of the EA with a notice of
23 availability and a request for comments, with a minimum of a thirty-day comment
24 period.

25 C. Pending completion of the final programmatic EA and FONSI, if a
26 FONSI is appropriate, BSEE will withhold approvals of future Applications for
27 Permits to Drill (“APDs”) and Applications for Permits to Modify (“APMs”)

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1 involving hydraulic-fracturing operations or acid well stimulation on the Pacific
2 OCS. For purposes of this Settlement Agreement subpart I.C., the terms “well
3 stimulation treatment,” “hydraulic fracturing,” “acid well stimulation,” and “acid
4 volume threshold” shall be defined as follows:

5 1. *Well Stimulation Treatment* – means any treatment of a well
6 designed to enhance oil and gas production or recovery by increasing
7 the permeability of the formation. Well stimulation treatments
8 include, but are not limited to, hydraulic fracturing treatments
9 and acid well stimulations. Well stimulation treatment does not
10 include routine well cleanout work; routine well maintenance; routine
11 removal of formation damage due to drilling; bottom hole pressure
12 surveys; routine activities that do not affect the integrity of the well or
13 the formation; removal of scale or precipitate from the perforations,
14 casing, or tubing; a gravel pack treatment that does not exceed the
15 formation fracture gradient; or a treatment that involves
16 emplacing acid in a well and that uses a volume of fluid that is less
17 than the Acid Volume Threshold and is below the formation fracture
18 gradient.

19 a. *Hydraulic Fracturing* – is a well stimulation treatment
20 that, in whole or in part, includes the pressurized injection of
21 hydraulic fracturing fluid or fluids into an underground
22 geologic formation in order to fracture or with the intent to
23 fracture the formation, thereby causing or enhancing the
24 production of oil or gas from a well;

25 b. *Acid Well Stimulation* – means a well stimulation
26 treatment that uses, in whole or in part, the application of one or
27 more acids to the well or underground geologic formation.

1 The acid well stimulation treatment may be at any applied
2 pressure and may be used in combination with hydraulic
3 fracturing treatments or other well stimulation
4 treatments. Acid well stimulation treatments
5 include acid matrix stimulation treatments and acid fracturing
6 treatments. Acid matrix stimulation treatments
7 are acid treatments conducted at pressures lower than the
8 applied pressure necessary to fracture the underground geologic
9 formation;

10 c. *Acid Volume Threshold* – means a volume, in US gallons,
11 per treated foot of well stimulation treatment calculated as
12 follows: $((\text{Size of the drill bit diameter in inches that was used}$
13 $\text{in the treated zone} / 2 + 36 \text{ inches})^2 - (\text{bit diameter in inches} /$
14 $2)^2) \times 3.14159 \times 12 \text{ inches} \times \text{treated formation porosity} / 231$
15 $(\text{inches}^3 / \text{gallon})$. The lowest calculated or measured porosity
16 in the zone of treated formation shall be the treated formation
17 porosity used for calculating the Acid Volume Threshold.

18 BSEE will, however, include an analysis of other acid use within the scope of the
19 proposed NEPA analysis.

20 D. The BSEE Pacific Region has recently implemented the use of an
21 electronic filing system for permits, called eWell. In the interest of pursuing
22 avenues for increasing transparency of the permit review and approval process, the
23 BSEE Pacific Region plans to receive future permit applications through the eWell
24 system (or through another publicly-available website with comparable
25 functionalities) and can commit to building a web-based search engine similar to
26 that used in the Gulf of Mexico Region (*see* “Well Data Query” at
27 https://www.data.bsee.gov/homepg/data_center/other/WebStore/master.asp), or to

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1 expanding that search engine to include permit applications received in the Pacific
2 Region.

3 E. The BSEE Pacific OCS Region will provide timely notice of newly
4 submitted complete applications for hydraulic fracturing or acid well stimulation to
5 the Center for an interim period of time until the eWell system mentioned in
6 Paragraph I.D, above (or an alternative system with comparable functionalities) is
7 operational and the BSEE Pacific OCS Region has developed systems (through
8 eWell or another publicly-accessible website) sufficient to provide timely access
9 by the public, including the Center, to publicly releasable information associated
10 with newly submitted complete applications for hydraulic fracturing or acid well
11 stimulation.

12 F. Plaintiff shall be paid a lump sum of \$8,826.65 in attorneys' fees and
13 costs (the "Payment"). The Payment will be made by BOEM and/or BSEE by an
14 electronic funds transfer to the Center pursuant to instructions from Plaintiff's
15 counsel. Plaintiff agrees to furnish BOEM and/or BSEE with the information nec-
16 essary to effectuate this payment. BOEM and/or BSEE agree to submit all neces-
17 sary paperwork for the processing of the attorneys' fees and cost award within
18 fourteen (14) days of the receipt of the necessary information from Plaintiff or the
19 approval of this Settlement Agreement by the Court, whichever is later. Plaintiff
20 agrees to accept payment of \$8,826.65 in full satisfaction of any and all claims for
21 attorneys' fees and costs of litigation to which Plaintiff may be entitled with re-
22 spect to this action.

1 II. Undertakings by Plaintiff and Effect of Settlement

2 A. This Settlement Agreement shall constitute a complete and final
3 settlement of Plaintiff's Complaint in *Center for Biological Diversity v. Bureau of*
4 *Ocean Energy Management*, No. 2:15-cv-01189-PSG (FFMx) (C.D. Cal.) (the
5 "Action").

6 B. Subject to Paragraph III.H of this Settlement Agreement, Plaintiff
7 releases all claims in the Action. However, nothing in this Settlement Agreement
8 precludes Plaintiff from instituting independent actions challenging Federal
9 Defendants' FONSI or ROD described in Paragraph I.A of this Settlement
10 Agreement, or Federal Defendants' future approvals of well-stimulation activities
11 at offshore oil and gas operations on the Pacific OCS.

12 C. The terms of this Settlement Agreement shall become effective upon
13 entry of an Order by the Court ratifying the Settlement Agreement.

14 III. General Terms

15 A. This Settlement Agreement in no way affects the rights of the United
16 States as against any person not a party hereto. Nothing in this Settlement
17 Agreement will be interpreted as imposing obligations on any federal or state
18 agency that is not a party to the Settlement Agreement. This Settlement
19 Agreement relates solely and exclusively to operations located in the Pacific OCS
20 Region and in no way governs activities in other OCS Regions.

21 B. Nothing in this Settlement Agreement constitutes an admission of fact
22 or law by any party. This Settlement Agreement shall not be used or admitted in
23 any proceeding against a party over the objection of that party. This Settlement
24 Agreement has no precedential value and shall not be admissible in any proceeding
25 other than a proceeding to enforce the terms of the Settlement Agreement.

26 C. This Settlement Agreement constitutes the final, complete, and
27 exclusive agreement and understanding between the Parties and supersedes all
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1 prior agreements and understandings, whether oral or written, concerning the
2 subject matter hereof. No other document, nor any representation, inducement,
3 agreement, understanding, or promise, constitutes any part of this Settlement
4 Agreement, nor shall it be used in construing this Settlement Agreement.

5 D. This Settlement Agreement shall be governed by and construed under
6 federal law.

7 E. Nothing in this Settlement Agreement constitutes, or may be
8 construed to constitute, a waiver of sovereign immunity by the United States.
9 Nothing in the terms of this Settlement Agreement shall be construed to limit or
10 modify the discretion accorded Federal Defendants by the Administrative
11 Procedure Act, the Outer Continental Shelf Lands Act, or the National
12 Environmental Policy Act, or by general principles of administrative law, except as
13 explicitly provided in this Settlement Agreement.

14 F. The Parties agree that Federal Defendants' obligations under this
15 Settlement Agreement are contingent upon the availability of appropriated funds
16 and that nothing contained in this Settlement Agreement shall be construed as a
17 commitment or requirement that Federal Defendants obligate or pay funds in
18 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable
19 law.

20 G. Any term set forth in this Settlement Agreement may be modified
21 only by written agreement of the Parties.

22 H. In the event of a disagreement among the Parties concerning the
23 performance of any aspect of this Settlement Agreement, the dissatisfied party
24 shall provide the other party with written notice of the dispute and a request for
25 negotiations. The Parties shall meet and confer in order to attempt to resolve the
26 dispute within 30 days of the date of the written notice, or such time thereafter as is
27 mutually agreed on. If the Parties are unable to resolve their differences, the

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1 dissatisfied Party may seek relief from the Court through a motion to enforce the
2 terms of the Settlement Agreement. This Settlement Agreement shall not be
3 enforceable through a proceeding for contempt of court.

4 I. Any notices required by or under this Settlement Agreement shall be
5 addressed to the undersigned counsel, unless other provision for notice is made and
6 agreed to in writing.

7 J. Approval of this Settlement Agreement by the Court will result in the
8 voluntary dismissal of Plaintiff's Complaint pursuant to Federal Rule of Civil
9 Procedure 41(a). Notwithstanding the dismissal of this action, however, Plaintiff
10 and Federal Defendants hereby stipulate and respectfully request that the Court
11 retain jurisdiction to oversee compliance with the terms of this Settlement
12 Agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

13 K. The undersigned representatives of each Party certify that they are
14 fully authorized by the Parties they represent to bind the respective Parties to the
15 terms of this Settlement Agreement.

16
17 / / /

1 Dated: January 29, 2016

2 SO STIPULATED:

3 FOR THE PLAINTIFFS

4 /s/ 

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13 FOR THE FEDERAL DEFENDANTS

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17 /s/ 

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