

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

)	
CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
Petitioner,)	
)	No. 22-1164
v.)	
)	
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i>)	
)	
Respondents.)	
)	

**UNOPPOSED JOINT MOTION OF CENTER FOR BIOLOGICAL
DIVERSITY AND UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY TO EXTEND ABEYANCE UNTIL
AUGUST 14, 2023**

Petitioner Center for Biological Diversity (Center) and Respondent the U.S. Environmental Protection Agency (EPA) respectfully request the Court extend the current abeyance in the above-captioned matter and reset the motions to govern deadline to August 14, 2023. This matter has been in abeyance since November 29, 2022, and the parties are presently obligated to file motions to govern future proceedings by April 17, 2023, under the Clerk's Order granting EPA's latest unopposed motion for extension of time to file motions to govern. Doc.

Id. Nos. 1975429, 1989776. Because the Center and EPA have reached a proposed settlement agreement to resolve the above-captioned matter, subject to EPA's and/or DOJ's consideration of any substantive comments received after the agreement has been published in the Federal Register pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the parties jointly request that the Court extend the abeyance of this matter until August 14, 2023, to allow the time to complete the section 113(g) process. Intervenors for Respondent Growth Energy, Renewable Fuels Association, and American Petroleum Institute consent to this motion, while Clean Fuels Alliance America does not oppose the motion. In support of this request, the Center and EPA state as follows.

1. The Center challenges the EPA action entitled "Renewable Fuel Standard (RFS) Program: RFS Annual Rules," published in the Federal Register on July 1, 2022, 87 Fed. Reg. 39600 (July 1, 2022).

2. On November 29, 2022, the Court granted the Joint Motion of the Center and EPA to sever this case from other related cases and hold the matter in abeyance pending further order of the Court. Doc. Id. No. 1975429. The Court also directed the parties to file motions to

govern future proceedings by February 14, 2023. *Id.* The Court has twice extended the abeyance of the above-captioned matter to enable settlement negotiations, first to March 15, 2023, and then to the current deadline of April 17, 2023. Doc. Id. Nos. 1984870, 1989776.

3. The Center and EPA now request that the Court extend the abeyance of the above-captioned matter and deadline for the parties to file motions to govern future proceedings to August 14, 2023. There is good cause for this extension of time. Since the Court last extended this deadline, EPA and the Center have negotiated a proposed settlement agreement that would resolve all claims in this case. Pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g), EPA must provide a reasonable opportunity for public comment by publishing notice of the proposed settlement agreement in the Federal Register at least thirty days before any agreement can be finalized. After the close of the public comment period, the EPA Administrator and/or the Attorney General, as appropriate, will promptly consider any public comments and determine whether to proceed with the agreement, in accordance with Clean Air Act section 113(g). An extension of the current abeyance would allow EPA and the Department of Justice to follow this statutory

process in addition to promoting judicial efficiency and preserving both the Court's and parties' limited resources.

4. EPA has requested the positions of the Intervenor for Respondent in accordance with D.C. Circuit Rule 27(h)(2). Intervenor for Respondent Growth Energy, Renewable Fuels Association, and American Petroleum Institute consent to this motion, while Clean Fuels Alliance America does not oppose the motion.

5. In accordance with D.C. Circuit Rule 27(h)(1), this motion is filed at least five (5) days before the parties' April 17, 2023, deadline to file their motion to govern future proceedings.

For these reasons, the Center and EPA respectfully request that the Court grant this motion and extend the deadline to file motions to govern as requested herein.

Dated: April 12, 2023

Respectfully submitted,

/s/ Jason Rylander (by consent)

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing filing complies with the word limit of Fed. R. App. P. 27(d)(2) because it contains 612 words, excluding the parts of the filing exempted by Fed. R. App. P. 32(f). The filing complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it was prepared in a proportionately spaced typeface using Microsoft Word in Century Schoolbook fourteen-point font.

/s/ John H. Martin

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ John H. Martin