

SETTLEMENT AGREEMENT

WHEREAS, WildEarth Guardians and Elizabeth Crowe (“Plaintiffs”) filed a complaint on October 12, 2010, in WildEarth Guardians et al. v. Jackson, No. 3:10-cv-04603-WHA (N.D. Cal.) (“Complaint”), against Lisa Jackson, in her official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”);

WHEREAS, Plaintiffs therein alleged that EPA failed to issue findings of failure to submit state implementation plans regarding specified areas designated as nonattainment for the 1997 8-hour National Ambient Air Quality Standards (“NAAQS”) for ozone within the States of Arizona, Nevada, Pennsylvania and Tennessee pursuant to the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7401-7671q;

WHEREAS, EPA designated the Clark County, Nevada area as nonattainment for the 1997 8-hour ozone NAAQS, 69 Fed. Reg. 23858 (April 30, 2004), and later adjusted the designation to only include the Las Vegas, Nevada area, 69 Fed. Reg. 55956 (Sept. 17, 2004);

WHEREAS, EPA designated the Pittsburgh-Beaver Valley area in Pennsylvania as nonattainment for the 1997 8-hour ozone NAAQS, 69 Fed. Reg. 23858 (April 30, 2004);

WHEREAS, Arizona submitted a state implementation plan for the Phoenix-Mesa area regarding the 1997 8-hour ozone NAAQS on June 13, 2007;

WHEREAS, on March 1, 2011, the Regional Administrator for EPA Region IV signed a final rule redesignating the Knoxville area to attainment for the 1997 8-hour ozone standard;

WHEREAS, Plaintiffs and EPA (collectively, the “Parties”) have agreed to a settlement of all claims raised in Plaintiffs’ 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. Except as otherwise provided in Paragraphs 4, 5 and 7 below, EPA shall sign for publication in the Federal Register a finding of failure to submit for the Las Vegas nonattainment area no later than May 31, 2011.

2. Except as otherwise provided in Paragraphs 4, 6 and 8 below, EPA shall sign for publication in the Federal Register a finding of failure to submit for the Pittsburgh-Beaver Valley nonattainment area no later than May 31, 2011.

3. Within 15 business days following signature of such actions required by Paragraphs 1-2, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

4. If EPA takes final action on its proposed rule to classify the Las Vegas, Nevada and Pittsburgh-Beaver Valley, Pennsylvania nonattainment areas under Title I, part D, subpart 2 of the Act, 42 U.S.C. §§ 7511-7511f, before May 31, 2011, then EPA's obligation under Paragraphs 1, 2, and 3 shall be voided.

5. If EPA takes final action redesignating the Las Vegas, Nevada nonattainment area to attainment or unclassifiable before May 31, 2011, then EPA's obligation under Paragraphs 1 and 3 shall be voided.

6. If EPA takes final action redesignating the Pittsburgh-Beaver Valley nonattainment area to attainment or unclassifiable before May 31, 2011, then EPA's obligation under Paragraphs 2 and 3 shall be voided.

7. If before May 31, 2011, EPA signs a final rule pursuant to 40 C.F.R. 51.918 making a determination that the Las Vegas, Nevada area has attained the 1997 8-hour ozone

NAAQS then EPA's obligation under Paragraphs 1 and 3 shall be voided. Within 15 business days following signature, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

8. If before May 31, 2011 EPA signs a final rule pursuant to 40 C.F.R. 51.918 making a determination that the Pittsburgh-Beaver Valley, Pennsylvania area has attained the 1997 8-hour ozone NAAQS, then EPA's obligation under Paragraphs 2 and 3 shall be voided. Within 15 business days following signature, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

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

10. 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.

11. The Parties agree and acknowledge that EPA's final approval of this Settlement Agreement is subject to the requirements of section 113(g) of the CAA, 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. After this Settlement Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold consent to this Settlement Agreement in accordance with section 113(g) of the CAA.

12. Except as set forth in this Settlement Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have. This Settlement Agreement shall not

constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

13. 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.

14. Within 15 days of signing this Settlement Agreement, the parties agree to file a joint motion in the district court to administratively close WildEarth Guardians v. Jackson, No. 3:10-cv-4603-WHA (N.D. Cal.). Plaintiffs shall file a motion for voluntary dismissal of that action, with prejudice, in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure of WildEarth Guardians v. Jackson, No. 3:10-cv-4603-WHA (N.D. Cal.), with respect to all claims in the Complaint within 15 days after notice appears in the Federal Register of EPA taking the last rulemaking action required under Paragraphs 1-2 of this Settlement Agreement.

15. If EPA fails to take action as set forth in Paragraphs 1, 2, or 3, the Plaintiffs' sole remedy under this Agreement shall be the right to reinstate WildEarth Guardians v. Jackson, No. 3:10-cv-4603-WHA (N.D. Cal.). EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Agreement.

16. EPA agrees to settle Plaintiffs' claim for costs and attorneys' fees by paying \$20,000 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 WildEarth Guardians' and Elizabeth Crowe's counsel Robert Ukeiley, P.S.C.,

pursuant to payment instructions provided by Robert Ukeiley. Plaintiffs agree 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. Plaintiffs agree to accept payment of \$20,000 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 Plaintiffs 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.

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

18. 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.

IGNACIA S. MORENO
Assistant Attorney General

Dated: _____

Michelle R. Lambert
United States Department of Justice
Environment & Natural Resources Division
Environment Defense Section
P.O. Box 23986
Washington, D.C. 20026
(202) 616-7501
michelle.lambert@usdoj.gov

COUNSEL FOR EPA

Dated: _____

Robert Ukeiley
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, Kentucky 40403
(859) 986-5402
rukeiley@igc.org

COUNSEL FOR WILDEARTH
GUARDIANS AND ELIZABETH CROWE