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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

WildEarth Guardians,)	No. CV-11-1661-PHX-ROS
)	
Plaintiff,)	CONSENT DECREE
)	
vs.)	
)	
Lisa Jackson, Administrator of the U.S.))	
Environmental Protection Agency, sued in))	
her official capacity,)	
)	
Defendant.)	

IT IS ORDERED the unopposed motion for consent decree (**Doc. 21**) is **GRANTED**
as follows:

WHEREAS, on August 24, 2011, Plaintiff WildEarth Guardians filed the complaint (“Complaint”) in the above-captioned matter against Defendant Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”) alleging that EPA has failed to undertake a certain nondiscretionary duty under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

WHEREAS, within one year after promulgation of the revised National Ambient Air

1 Quality Standards (“NAAQS”), section 107(d)(1)(A) of the CAA, 42 U.S.C. § 7407(d)(1)(A)
2 requires States to submit a list of initial designations of all areas, or portions thereof, as
3 attainment, nonattainment, or unclassifiable for the revised NAAQS;
4

5 WHEREAS, EPA is required to promulgate the designation for all of the country
6 within two years of the date of the promulgation of the revised NAAQS, or within three years
7 if EPA has insufficient information to promulgate the designation within two years, pursuant
8 to section 107(d)(1)(B) of the CAA, 42 U.S.C. § 7407(d)(1)(B);
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10 WHEREAS, EPA revised the NAAQS for ground-level ozone on March 12, 2008;

11 WHEREAS, the States were required to submit their area designations for the 2008
12 ground-level ozone NAAQS by March 12, 2009;
13

14 WHEREAS, on January 19, 2010, EPA determined that it had insufficient information
15 to promulgate the designations and invoked the additional year to issue designations, see 75
16 Fed. Reg. 2,936 (Jan. 19, 2010);
17

18 WHEREAS, the Complaint alleges that EPA has a nondiscretionary duty to
19 promulgate the area designations for the 2008 ground-level ozone NAAQS within the time
20 lines set forth in section 107(d)(1)(B) of the CAA, 42 U.S.C. § 7407(d)(1)(B);
21

22 WHEREAS, the Complaint seeks an order from this Court directing EPA to
23 promulgate area designations for the 2008 ground-level ozone NAAQS pursuant to section
24 107(d)(1)(B) of the CAA;

25 WHEREAS, the parties have agreed to a settlement of this action without admission
26 of any issue of fact or law;
27

28 WHEREAS, the parties, by entering into this Consent Decree, do not waive or limit

1 any claim or defense, on any grounds, related to any final EPA action;

2 WHEREAS, the parties consider this Consent Decree to be an adequate and equitable
3 resolution of all the claims in this matter;
4

5 WHEREAS, it is in the interest of the public, the parties, and judicial economy to
6 resolve this matter without protracted litigation;

7 WHEREAS, the parties agree that this Court has jurisdiction over this matter pursuant
8 to the citizen suit provision in section 304(a)(2) of the CAA;
9

10 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
11 Decree is fair, reasonable, in the public interest, and consistent with the CAA;

12 NOW THEREFORE, before the taking of testimony, without trial or determination
13 of any issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged,
14 and decreed that:
15

16 1. EPA shall sign for publication in the Federal Register no later than May 31,
17 2012 a notice of the Agency's promulgation of area designations for the 2008 ground-level
18 ozone NAAQS pursuant to section 107(d) of the CAA, and within 10 business days
19 following signature of the notice, EPA will send the notice to the Federal Register for review
20 and publication.
21

22 2. When EPA's obligations under Paragraph 1 have been completed, the parties
23 will file a joint request to the Court to terminate the Consent Decree.
24

25 3. The parties may extend the deadline established in Paragraph 1 by written
26 stipulation executed by counsel for the parties and filed with the Court. In addition, the
27 deadline established in Paragraph 1 may be extended by the Court upon motion by any party
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1 to this Consent Decree for good cause shown, after consideration of any response by the non-
2 moving party.

3
4 4. Nothing in this Consent Decree shall be construed to limit or modify the
5 discretion accorded EPA by the CAA and by general principles of administrative law,
6 including the discretion to alter, amend or revise any response and/or final action
7 contemplated by this Consent Decree. EPA's obligation to take the action set forth in
8 Paragraph 1 by the time specified does not constitute a limitation or modification of EPA's
9 discretion within the meaning of this paragraph.
10

11 5. Nothing in this Consent Decree shall be construed to confer upon the district
12 court jurisdiction to review any final decision made by EPA pursuant to this Consent Decree.
13 Nothing in this Consent Decree shall be construed to confer upon the district court
14 jurisdiction to review any issues that are within the exclusive jurisdiction of the United States
15 Courts of Appeals pursuant to section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).
16 Nothing in the terms of this Consent Decree shall be construed to waive any remedies or
17 defenses the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).
18
19

20 6. This Court shall retain jurisdiction to enforce the terms of this Consent Decree
21 and to consider any requests for costs of litigation, including attorneys' fees.
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23 7. In the event of a dispute between the parties concerning the interpretation or
24 implementation of any aspect of this Consent Decree, the disputing party shall provide the
25 other party with a written notice outlining the nature of the dispute and requesting informal
26 negotiations. If the parties cannot reach an agreed-upon resolution within ten (10) business
27 days after receipt of notice, any party may move the Court to resolve the dispute.
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1 8. No motion or other proceeding seeking to enforce this Consent Decree shall
2 be considered properly filed, unless Plaintiff has followed the procedure set forth in
3 Paragraph 7 and provided EPA with written notice received at least ten (10) business days
4 before the filing of such motion or proceeding.
5

6 9. The United States, on behalf of EPA, agrees to pay Plaintiff in full settlement
7 of all claims for attorneys' fees, costs, and expenses incurred as of the date of entry of this
8 Consent Decree the sum of \$3,600, as soon as reasonably practicable, by electronic funds
9 transfer in accordance with instructions provided to the undersigned defense counsel by
10 counsel for Plaintiff. Nothing in this paragraph shall be construed as an admission or
11 concession by EPA that Plaintiff is entitled to or eligible for recovery of any costs or
12 attorneys' fees.
13
14

15 10. The obligations imposed upon EPA under this Consent Decree may only be
16 undertaken using appropriated funds. No provisions of this Consent Decree shall be
17 interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in
18 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal
19 law.
20

21 11. Plaintiff and EPA shall not challenge the terms of this Consent Decree or this
22 Court's jurisdiction to enter this Consent Decree.
23

24 12. The parties agree and acknowledge that before this Consent Decree is entered
25 by the Court, EPA must provide notice of this Consent Decree in the Federal Register and
26 an opportunity for public comment pursuant to section 113(g) of the CAA, 42 U.S.C. §
27 7413(g). After this Consent Decree has undergone notice and comment, the Administrator
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1 and/or the Attorney General, as appropriate, shall promptly consider any such written
2 comments in determining whether to withdraw or withhold their consent to the Consent
3 Decree, in accordance with section 113(g) of the CAA. If the Administrator and/or the
4 Attorney general do not elect to withdraw and withhold their consent, EPA shall promptly
5 file a motion that requests the Court to enter this Consent Decree.
6

7 14. Any notices required or provided for by this Consent Decree shall be made in
8 writing, via facsimile, e-mail or other means, and sent to the following:
9

10 For Plaintiff:

11 Samantha Ruscavage-Barz
12 NM State Bar No. 23276
13 WildEarth Guardians
14 516 Alto Street
15 Santa Fe, NM 87501
16 Tel: (505) 988-9126 ext. 1158
17 Fax: (505) 213-1895
18 sruscavagebarz@wildearthguardians.org

16 For Defendant:

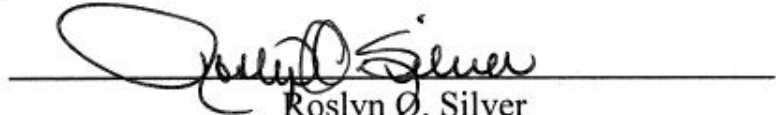
17 Eileen T. McDonough
18 United States Department of Justice
19 Environmental Defense Section
20 P.O. Box 23986
21 Washington, D.C. 20026-3986
22 Tel: (202) 514-3126
23 Fax: (202) 514-8865
24 eileen.mcdonough@usdoj.gov

21 Jan Tierney
22 Office of the General Counsel
23 U.S. Environmental Protection Agency
24 Ariel Rios Bldg. MC 2344A
25 1200 Pennsylvania Ave., NW
26 Washington, D.C. 20460
27 Phone: (202) 564-5598
28 Fax: (202) 564-5603
tierney.jan@epa.gov

15. The undersigned representatives of each party certify that they are fully

1 authorized by the party that they represent to bind that party to the terms of this Consent
2 Decree.

3
4 DATED this 26th day of March, 2012.

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7 Roslyn O. Silver
8 Chief United States District Judge
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