

2. Venue lies in the Northern District of California.

3. Plaintiff and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Upon entry, no party shall challenge the terms of this Consent Decree. This Consent Decree constitutes a final resolution of all claims raised in the complaint.

4. No later than May 10, 2010, the Administrator shall sign a notice or notices:

(a) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for (i) New Mexico and North Dakota to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding contributing significantly to nonattainment in other states for the 1997 NAAQS for 8-hour ozone and PM_{2.5}, and (ii) Colorado to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding contributing significantly to nonattainment in other states for the 1997 NAAQS for 8-hour ozone; and

(b) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP for North Dakota to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(II) regarding interfering with measures in other states related to prevention of significant deterioration of air quality.

5. No later than November 10, 2010, the Administrator shall sign a notice or notices:

(a) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for Idaho to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding contributing significantly to nonattainment in other states for the 1997 NAAQS for 8-hour ozone and PM_{2.5};

(b) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for (i) Idaho, New Mexico, and North Dakota to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding interfering with maintenance of attainment in other states for the 1997 NAAQS for 8-hour ozone and PM_{2.5}, and (ii) Colorado to

meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding interfering with maintenance of attainment in other states for the 1997 NAAQS for 8-hour ozone; and

(c) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for Idaho, New Mexico, and Oklahoma to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(II) regarding interfering with measures in other states related to prevention of significant deterioration of air quality.

6. No later than May 10, 2011, the Administrator shall sign a notice or notices:

(a) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for (i) California, Oklahoma, and Oregon to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding contributing significantly to nonattainment in other states for the 1997 NAAQS for 8-hour ozone and PM_{2.5}, and (ii) Colorado to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding contributing significantly to nonattainment in other states for the 1997 NAAQS for PM_{2.5};

(b) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for (i) California, Oklahoma, and Oregon to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding interfering with maintenance of attainment in other states for the 1997 NAAQS for 8-hour ozone and PM_{2.5}, and (ii) Colorado to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(I) regarding interfering with maintenance of attainment in other states for the 1997 NAAQS for PM_{2.5}; and

(c) either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for California, Colorado, and Oregon to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(II) regarding interfering with measures in other states related to prevention of significant deterioration of air quality.

7. (a) No later than May 10, 2011, the Administrator shall sign a notice or notices either approving a SIP, promulgating a FIP, or approving a SIP in part with promulgation of a partial FIP, for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon

to meet the requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(II) regarding interfering with measures in other states related to protection of visibility;

(b) If any of the States identified in paragraph 7(a) has not submitted an administratively complete proposed SIP to address the visibility requirement of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by May 10, 2010, then by November 10, 2010, the Administrator shall sign a notice or notices proposing for each such State either promulgation of a FIP, approval of a SIP (if one has been submitted in the interim), or partial promulgation of a FIP and partial approval of a SIP, to address the visibility requirement.

8. Within 15 business days following signature of such action required by paragraphs 4 - 7, EPA shall deliver notice of such action to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

9. The deadlines in paragraphs 4 through 7 may be extended for a period of 60 days or less by written stipulation executed by counsel for WildEarth Guardians and EPA and filed with the Court. Any other extension to the decree deadlines may be approved by the Court upon motion by any party to this Consent Decree and upon consideration of any response by the non-moving party.

10. Plaintiff alleges that it is the “prevailing party” in this action and that, as such, it is entitled to reasonable attorney’s fees and costs pursuant to section 304 of the CAA, 42 U.S.C. § 7604. The parties hereby agree to settle all of Plaintiff’s claims for attorney’s fees and costs in this action, without further litigation or any final determination regarding entitlement to or reasonableness of attorney’s fees and costs, for a total of \$ 22,420.00. Payment shall be made by electronic funds transfer to the account specified by Plaintiff’s counsel Robert Ukeiley. Plaintiff agrees to provide counsel for Defendant all necessary

information for processing the electronic funds transfer within five (5) business days of receipt of the Court's order entering this Consent Decree. In the event that the payment required by this Paragraph is not made within 90 days of entry of this Order, interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Order and accruing through the date of the payment.

11. Plaintiff agrees that receipt from Defendant of the payment described in Paragraph 10 shall operate as a release of Plaintiff's claims for attorneys' fees and costs in this matter through and including the date of this agreement. The parties agree that Plaintiff reserves the right to seek additional fees and costs incurred subsequent to this agreement arising from a need to enforce or defend against efforts to modify the schedule outlined herein, or for any other unforeseen continuation of this action.

12. By this agreement, Defendant does not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including the hourly rate, in any future litigation, or in any continuation of the present action. Further, this stipulation as to attorney's fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

13. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. Upon EPA's demonstration that it has satisfied all of the obligations of this Consent Decree it may move to have this decree terminated. Plaintiff shall have twenty days in which to respond to such motion.

14. Except as provided herein, nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the Clean Air Act or by general principles of administrative law in taking the actions which are the subject of this Consent Decree.

15. The parties agree and acknowledge that final approval and entry of this proposed Consent Decree are subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Decree be given to the public, that the public shall have a reasonable opportunity to make any comments, and that the Administrator or

the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Consent Decree.

16. Nothing in the terms of this Consent Decree shall be construed to waive any remedies plaintiff may have under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

17. In the event of a dispute between the parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing party shall contact the other party to confer and attempt to reach an agreement on the disputed issue. If the parties cannot reach an agreed-upon resolution, then either party may move the Court to resolve the dispute.

18. EPA's commitments in this Decree are subject to the availability of appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341 or any other applicable law or regulation.

19. The undersigned representatives of each party certify that he is fully authorized to consent to the Court's entry of the terms and conditions of this Consent Decree.

Dated: February 18, 2010

/S/ James J. Tughton (by permission)
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Dated: February 18, 2010

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Counsel for Defendant

IT IS SO ORDERED.

2/23/10

Dated: _____



The Honorable Claudia Wilken
United States District Judge