

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01680-MSK-KLM

WILDEARTH GUARDIANS,

Plaintiff,

v.

LISA P. JACKSON, in her official capacity as
Administrator, United States Environmental
Protection Agency,

Defendant, and

STATE OF COLORADO, Department of Public
Health and Environment, Air Pollution Control
Division,

Defendant-Intervenor.

UNOPPOSED MOTION TO STAY ALL PROCEEDINGS

Plaintiff, WildEarth Guardian (“WEG”) hereby moves this Court to stay the litigation in the above-captioned case as set forth below to allow additional administrative proceedings to occur. In support of this motion, WEG states as follows:

1. On July 26, 2010, WEG served Lisa P. Jackson, in her official capacity as Administrator, United States Environmental Protection Agency (“EPA”) with its Complaint in the above-captioned matter alleging that EPA failed to fulfill a nondiscretionary duty imposed by the Clean Air Act section 505(c), 42 U.S.C. § 7661d(c), to issue or deny an air pollution operating permit pursuant to Title V of the Clean Air Act for the Kerr-McGee/Anadarko

Gathering LLC Frederick Natural Gas Compressor station (“Anadarko facility”) and seeks, *inter alia*, declaratory and injunctive relief and costs and attorneys’ fees.

2. On September 14, 2010, EPA filed an unopposed motion for a 30-day extension of time to October 25, 2010, to file an answer or to otherwise respond to the Complaint. On September 16, 2010, the Court granted EPA’s motion.

3. On September 17, 2010, WEG filed its First Amended Complaint, adding an alternative claim alleging that EPA has violated CAA § 505(c), 42 U.S.C. §§ 7661d(c) by its unreasonable delay in acting on the Title V permit for the Anadarko facility.

4. On October 18, 2010, EPA notified WEG that it had an opportunity to petition on Colorado’s Response to EPA’s October 8, 2009, Anadarko Frederick Administrative Order. See Exhibit A hereto.

5. On October 18, 2010, EPA filed an unopposed motion for a 30-day extension of time to November 24, 2010, to file an answer or to otherwise respond to the Complaint, to afford the parties an opportunity to negotiate the filing of a motion for a stay of the instant action so as to provide the parties time to attempt to resolve this matter without further litigation. On October 20, 2010, the Court granted EPA’s motion.

6. On November 3, 2010, WEG submitted a petition to EPA (without waiver of its rights in this case) requesting that the Administrator object to Colorado’s Response to EPA’s October 8, 2009, Anadarko Frederick Administrative Order. The ultimate resolution of WEG’s administrative petition may reduce or eliminate some or all of the issues in this case.

7. Therefore, WEG requests that this Court stay all proceedings in this litigation until February 2, 2011. If EPA responds to WEG’s petition on or before February 2, 2011, EPA has informed WEG that it intends to promptly notify WEG’s counsel and the State of Colorado’s

counsel in this case and the parties intend to file motions to govern future proceedings within ten (10) business days of EPA's notice to WEG's counsel and counsel for the State of Colorado.

8. If EPA does not respond to WEG's administrative petition by February 2, 2011, WEG or EPA may move the Court for an extension of the stay. However, if neither party moves the Court to extend the stay, WEG proposes that EPA be required to answer or otherwise respond to the Complaint on or before February 16, 2011.

8. By submitting an administrative petition to EPA and moving for a stay, WEG is not agreeing or conceding that the petition process is appropriate as a matter of law, that EPA is not obligated to issue or deny the permit for the Anadarko facility, or that WEG is compromising, waiving, or foregoing any rights or arguments it may have in the instant litigation.

9. WEG therefore respectfully suggests that in light of these circumstances, the interests of judicial and administrative economy will be served by staying all proceedings in this litigation as set forth herein.

10. Pursuant to D.C.COLO.LCivR 7.1A, counsel for WEG has conferred with counsel to EPA and the State of Colorado. EPA does not oppose the relief requested in this motion and the State of Colorado has authorized Plaintiff to represent that the State takes no position.

WHEREFORE, WEG requests that the Court: (1) grant this motion; and (2) stay this litigation including all submittals, case management conferences and other proceedings in this case, including all matters addressed in the Court's September 16, 2010 Order, until February 2, 2011, and direct that EPA's response to the Complaint be due on or before February 16, 2011, unless the parties move the Court otherwise.

Dated: November 13, 2010

MCGILLIVRAY WESTERBERG & BENDER LLC

s/ David C. Bender

David C. Bender

305 S. Paterson Street

Madison, WI 53703

Tel. 608.310.3560

Fax 608.310.3561

bender@mwbattorneys.com

Attorneys for Plaintiff WildEarth Guardians

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2010, I electronically filed the foregoing motion with the Clerk of Court using the ECF system which will send notification of such filing to the following email address:

Laurel Anne Bedig laurel.bedig@usdoj.gov

Stephen Marshall Brown steve.brown@state.co.us, linda.miller@state.co.us

s/ David C. Bender

David C. Bender

305 S. Paterson Street
Madison, WI 53703
Tel. 608.310.3560
Fax 608.310.3561
bender@mwbattorneys.com

Attorney for Plaintiff WildEarth Guardians

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01680-MSK-KLM

WILDEARTH GUARDIANS,

Plaintiff,

v.

LISA P. JACKSON, in her official capacity as
Administrator, United States Environmental
Protection Agency,

Defendant, and

STATE OF COLORADO, Department of Public
Health and Environment, Air Pollution Control
Division,

Defendant-Intervenor.

(PROPOSED) ORDER

Upon consideration of the unopposed motion to stay all proceedings, and finding good cause to grant same, it is hereby

ORDERED that this action is stayed including all submittals, case management conferences and other proceedings, including all matters addressed in the Court's September 16, Order until February 2, 2011.

It is further **ORDERED** that unless the parties file a motion to extend the stay or otherwise move the Court, Defendant EPA's response to the Complaint will be due on February 16, 2011.

November __, 2010

United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Action No. 09-cv-02148-REB-MJW

WILDEARTH GUARDIANS,

Plaintiff,

v.

LISA JACKSON, in her official capacity as Administrator of the Environmental
Protection
Agency,

Defendant.

AMENDED CONSENT DECREE

WHEREAS, on October 22, 2009, Plaintiff WildEarth Guardians filed its Amended Complaint in this action against Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency ("Defendant" or "EPA");

WHEREAS, Plaintiff alleges that EPA has failed to take action to approve or disapprove a number of State Implementation Plan ("SIP") submissions from the States of Colorado, Montana, Utah and New Mexico within the time frame required by section 110(k)(2), of the Clean Air Act ("CAA"), 42 U.S.C. § 7410(k)(2);

WHEREAS, if the Parties were to litigate Plaintiff's claims, EPA would raise jurisdictional defenses to some of the claims in the Amended Complaint, and the Parties have therefore decided to settle those claims through a separate settlement agreement

Appeal no. CAA 10-04

Ex. 3

Exhibits A or B unless that deadline is extended under Paragraphs 9 or 17.

7. If this Consent Decree is not entered until after any specific deadline for EPA action set forth in Exhibit A or Exhibit B, then the deadline for EPA action shall be 20 days after entry of this Consent Decree with respect to such specific past deadline.

8. Within 15 business days following signature on each notice required by Paragraphs 5, 6 and 7, and as set forth in Exhibits A and B, EPA shall deliver the notice to the Office of the Federal Register for publication.

9. The deadlines in Paragraphs 5, 6 and 7 may be extended for a period of 60 days or less by written stipulation executed by counsel for Plaintiff and Defendant and filed with the Court. Any other extension to the deadlines in Paragraph 5, 6 and 7, or any other modification to this Consent Decree, may be approved by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by either Party to this Consent Decree and upon consideration of any response by the non-moving Party and reply by the moving Party.

10. EPA's obligation to take any action required in Paragraphs 5 and 6 by the deadlines set forth in Exhibits A and B to this Consent Decree (or Paragraph 7, if applicable) shall become null and void if the underlying SIP submission to which the deadline corresponds is withdrawn in writing by the relevant State prior to the relevant deadline. EPA shall provide WildEarth Guardians with a copy of any written notice of withdrawal prior to the relevant deadline. In addition, the Parties recognize that EPA may receive additional SIP submissions that may relate to the SIP submissions covered by this Consent Decree. It is possible that EPA may need to consider the relevance of a particular additional SIP submission to a SIP submission covered by this Decree prior

to the time that EPA takes action on the SIP submission covered by this Decree. If EPA believes it will need to delay action on any SIP submission covered by this Decree beyond the deadline provided in Exhibit A or B due to an additional SIP submission by the relevant State, then EPA shall confer with Plaintiff, and any such deadline extension shall be handled under Paragraphs 9 and 17 to this Consent Decree. Proposed deadline extensions for any other reason shall likewise be handled under Paragraphs 9 and 17 to this Consent Decree.

11. EPA agrees to settle Plaintiff's claim for attorneys' fees and costs by paying \$16,000.00 as soon as reasonably practicable after entry of this Consent Decree. This amount shall be paid by Fed Wire Electronic Funds Transfer to WildEarth Guardians' Counsel Robert Ukeiley, P.S.C. pursuant to payment instructions provided by 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. Plaintiff agrees to accept payment of \$16,000.00 in full satisfaction of any and all claims for attorneys' fees and costs with respect to this case incurred up until the time of entry of this Consent decree by the Court. EPA does not concede that Plaintiff will be entitled to fees for any efforts after the time of entry of this Consent Decree, 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.

12. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree, to rule upon any motions filed in accordance with Paragraph 9 of this Consent Decree, and to resolve any disputes in accordance with

Paragraph 17 of this Consent Decree. Once EPA has taken all of the actions called for in Paragraphs 5, 8 and 11 of this Consent Decree, this Decree shall be terminated and the claims resolved in this Consent Decree, which are all claims asserted in the Amended Complaint other than those resolved by the separate Settlement Agreement between the Parties, shall be dismissed with prejudice. The Parties may either jointly notify the Court that the Decree should be terminated and the claims dismissed, or EPA may so notify the Court by motion. If EPA notifies the Court by motion, then Plaintiff shall have twenty days in which to respond to such motion.

13. 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.

14. 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. EPA shall submit public notice of this Consent Decree to the Federal Register for publication and public comment within 15 days of execution of this Agreement by the Parties. After this Consent Decree 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

Consent Decree, in accordance with section 113(g) of the CAA. If the federal government elects not to withdraw or withhold consent to this Consent Decree, the Parties shall promptly file a motion that requests the Court to enter this Consent Decree.

15. 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), with respect to any future challenges to the final actions called for in Paragraph 5.

16. Nothing in this Consent Decree shall be construed to provide this Court with jurisdiction over any future challenges by Plaintiff or any other person or entity not a party to this litigation with respect to the final actions called for in Paragraph 5.

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. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiff and Defendant and that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree. This Consent Decree shall be governed and construed under the laws of the United States.

19. The obligations imposed upon EPA under this Consent Decree may only be undertaken using 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.

20. The undersigned representative of each Party certifies that he is fully authorized to consent to the Court's entry of the terms and conditions of this Consent Decree.

21. Any written notices or other written communications between the Parties contemplated under this Consent Decree 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.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General

Dated: 4/27/2010

s/David A. Carson
DAVID A. CARSON
United States Department of Justice
Environment and Natural Resources
Division
1961 Stout Street - 8th Floor
Denver, Colorado 80294
(303) 844-1349
david.a.carson@usdoj.gov

COUNSEL FOR DEFENDANT

Dated: 4/27/2010

s/James J. Tuthton
JAMES J. TUTCHTON
WildEarth Guardians
1536 Wynkoop St., Suite 301
Denver, Colorado 80202
(720) 301-3843

jtutchton@wildearthguardians.org

s/Robert Ukeiley

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

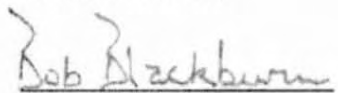
COUNSEL FOR PLAINTIFF

Upon consideration of the foregoing, the Court hereby finds that this Consent Decree is fair, reasonable, consistent with the Clean Air Act and in the public interest, and the Court hereby enters this Consent Decree.

IT IS SO ORDERED.

Date: May 26, 2010

BY THE COURT:


Robert E. Blackburn
United States District Judge

Colorado SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
1.	04/12/2004	Reg. 3 Definition of attainment/maintenance area and reporting requirement on condensate tanks	None	12/31/2010
2.	07/11/2005	Reg. 3 To incorporate NSR reforms including related APEN revisions a. NSR reform component b. APEN components	 06/30/2011 None	 12/30/2011 02/28/2011
3.	08/08/2006	Reg. 11 Deletes final emission limits.	12/30/2011	6/29/2012
4.	08/01/2007	Reg. 1, incinerators Revises Reg. 1 to update state testing requirements.	06/30/2011	12/30/2011
5.	08/01/2007	Reg. 3 VOC definition, list of HAPs, APEN revisions a. VOC def. and list of HAPs b. APEN components	 None None	 03/31/2011 02/28/2011

Colorado SIPs, continued				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
6.	06/20/2003; 08/08/2006	Part A, Section II of Reg. 3 APEN Requirements and Exemptions	None	02/28/2011
7.	06/20/2003	Reg 3 and Common Provisions Revisions to definitions, etc.	None	12/31/2010
8.	07/31/2002	Reg. 1 Clarifications to remove obsolete provisions and make it conform to credible evidence provisions	None	09/30/2010
9.	08/08/2006	Reg. 1 Revisions to opacity provisions	06/30/2011	12/30/2011
10.	08/08/2006	Reg. 3 NSR reform. Corrections to 2005 Reg. 3 revisions	06/30/2011	12/30/2011

Montana SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
11.	05/28/2003	Subchapter 7 Permit, Construction and Operation of Air Contaminant Sources	None	03/31/2011
12.	03/09/2004	Subchapter 7 Permit, Construction and Operation of Air Contaminant Sources	None	03/31/2011
13.	10/25/2005	ARM 17.8.767 Minor NSR	None	03/31/2011
14.	03/29/2006	NSR equivalency demo For NSR reform	06/30/2011	12/30/2011
15.	06/26/2006	Lincoln County PM2.5 control program woodstove and other control measures	None	12/31/2010
16.	10/16/2006	ARM 17.8.743 Oil and gas permitting rule revisions	None	02/28/2011
17.	10/16/2006	ARM 17.8.759 Minor NSR	None	03/31/2011
18.	11/01/2006	ARM 17.8.1701 – 1705, 1710 – 1713, 744 Oil and gas permitting rule revisions	None	02/28/2011
19.	10/28/2002; 08/20/2003; 08/25/2004	Stack Height Rules – 17.8.401-403 Stack Height Rule revisions	06/30/2011	12/30/2011
20.	04/18/2003	Open Burning Rules Revisions to Open Burning Rules	06/30/2011	12/30/2011

Utah SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
21.	09/15/2006	R307-401, 410, 413 NSR rules	06/30/2011	12/30/2011

<u>New Mexico SIPs</u>				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
1.	12/10/2007	NM St 110(a)(1,2) Infrastructure SIP	None	07/01/2011
2.	07/27/2007	NM Pt99 Transportation conformity	None	12/31/2010
3.	05/02/2007	NM Sunland Park	None	07/01/2011
4.	11/02/2006	Transportation Conformity	None	12/31/2010
5.	11/02/2006	NM Pt03; National ambient Air Quality Standards	None	07/01/2011
6.	04/25/2005	NM Mexico Pt73 Emissions Inventory	None	01/02/2011
7.	04/25/2005	NM St Air Quality Control Act	None	07/01/2011
8.	12/01/2003	NM State Pt73 Emissions Inventory	None	01/02/2011
9.	05/02/2007	NM St Pt 84 Acid Rain	04/01/2012	10/01/2012
10.	11/02/2006	NM St Pt 72 Construction Permits	04/01/2012	10/01/2012
11.	04/25/2005	NM Pt 75 Construction Permit Fees	04/01/2012	10/01/2012
12.	04/25/2005	NM St Pt 72 Construction Permit	04/01/2012	10/01/2012

Bernalillo County SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
13.	12/11/2007	Nm Ber Cty Infrastructure SIP	04/01/2012	10/1/2012
14.	05/24/2006	Pts 102 Oxy Fuels	None	1/2/2011
15.	07/08/2005	Transportation Conformity	None	12/31/2010
16.	05/02/2003	Transportation Conformity	None	12/31/2010
17.	02/02/2007	Pt 2 Fees	06/30/2011	12/30/2011
18.	09/07/2004	Pt 2 Fees	06/30/2011	12/30/2011

SETTLEMENT AGREEMENT

WHEREAS, on October 22, 2009, WildEarth Guardians filed an Amended Complaint in WildEarth Guardians v. Jackson, No. 09-cv-02148-REB-MJW (D. Colo.), against Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA");

WHEREAS, WildEarth Guardians therein alleges that EPA has failed to take action to approve or disapprove a number of State Implementation Plan ("SIP") submissions from the States of Colorado, Montana, Utah and New Mexico within the time frame required by section 110(k)(2), of the Clean Air Act ("CAA"), 42 U.S.C. § 7410(k)(2);

WHEREAS, the Parties are entering into a separate Consent Decree to settle the majority of the claims raised in the Amended Complaint;

WHEREAS, if the Parties were to litigate WildEarth Guardians' claims, EPA would raise jurisdictional defenses to some of the claims in the Amended Complaint, and the Parties have therefore decided to settle those claims through this Settlement Agreement, as opposed to the separate Consent Decree; and

WHEREAS, WildEarth Guardians and EPA have agreed to a settlement of the claims resolved in this Settlement Agreement 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. Exhibits 1 and 2 to this Settlement Agreement consist of tables identifying the SIP submissions subject to this Settlement Agreement and the specific deadline for EPA action

on each such SIP submission. This Settlement Agreement resolves WildEarth Guardians' claims in the Amended Complaint that EPA has failed to take action to approve or disapprove the SIP submissions identified in Exhibits 1 and 2 to this Settlement Agreement within the time frame required by section 110(k)(2) of the CAA, 42 U.S.C. § 7410(k)(2). EPA shall sign a notice of final action approving in whole, partially approving and partially disapproving, or disapproving in whole each SIP submission by the respective deadline set forth in Exhibit 1 or Exhibit 2 for each specific SIP submission.

2. Exhibits 1 and 2 to this Settlement Agreement also contain dates by which EPA will sign a notice of proposed action with respect to some, but not all, of the SIP submissions subject to this Settlement Agreement. Solely with respect to those SIP submissions for which Exhibit 1 or Exhibit 2 contain a deadline for EPA to sign a notice of proposed action, EPA shall sign a notice of proposed action for the specific SIP submission by the specific deadline provided in Exhibit 1 or Exhibit 2. If no deadline is provided in Exhibit 1 or Exhibit 2 for EPA to sign a notice of proposed action for any specific SIP submission, then EPA is not obligated under this Settlement Agreement to sign a notice of proposed action by any particular date. However, regardless of the date by which EPA signs a notice of proposed action for any specific SIP submission, EPA remains obligated to sign a notice of final action for each SIP submission by the respective deadline provided in Exhibits 1 or 2 to this Settlement Agreement unless that deadline is extended by future agreement of the Parties.

3. Within 15 business days following signature on each notice required by Paragraphs 1 and 2, and as set forth in Exhibits 1 and 2 to this Settlement Agreement, EPA shall deliver the notice to the Office of the Federal Register for publication.

4. The Parties may agree to extend one or more of the deadlines contained in Exhibits 1 and 2 by mutual written consent.

5. If this Settlement Agreement becomes final following the notice-and-comment process discussed in Paragraph 8 below, the Parties shall file a joint motion under Rule 41.2 of the Local Rules for the United States District Court for the District of Colorado to close WildEarth Guardians v. Jackson, No. 09-cv-02148-REB-MJW (D. Colo.), administratively with respect to the claims that are resolved in this Settlement Agreement. If EPA fails to take action on any SIP submission by the deadline provided under Exhibits 1 or 2 to this Settlement Agreement, then WildEarth Guardians' sole remedy under this Agreement shall be the right to ask the court to reopen the case and establish a schedule for further proceedings. EPA reserves all of its defenses to the claims addressed by this Settlement Agreement.

6. EPA's obligation to take any action required in Paragraphs 1 and 2 by the deadlines set forth in Exhibits 1 and 2 to this Settlement Agreement shall become null and void if the underlying SIP submission to which the deadline corresponds is withdrawn in writing by the relevant State prior to the relevant deadline. EPA shall provide WildEarth Guardians with a copy of any written notice of withdrawal prior to the relevant deadline. In addition, the Parties recognize that EPA may receive additional SIP submissions that may relate to the SIP submissions covered by this Settlement Agreement. It is possible that EPA may need to consider the relevance of a particular additional SIP submission to a SIP submission covered by this Settlement Agreement prior to the time that EPA takes action on the SIP submission covered by this Settlement Agreement. If EPA believes it will need to delay action on any SIP submission covered by this Settlement Agreement beyond the deadline provided in Exhibit 1 or 2 to this

Settlement Agreement due to an additional SIP submission by the relevant State, then EPA shall confer with WildEarth Guardians and request that the Parties agree to an extension of the relevant deadline. There may be other reasons that are not specifically mentioned in this Settlement Agreement which would potentially warrant an extension of a deadline.

7. Nothing in this Settlement Agreement shall be construed to limit or modify any discretion accorded EPA by the Clean Air Act or by general principles of administrative law.

8. The Parties agree and acknowledge that final approval of this Settlement Agreement is subject to the requirements of Clean Air Act § 113(g), 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, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Agreement. EPA shall submit public notice of this Settlement Agreement to the Federal Register for publication and public comment within 15 days of execution of this Agreement by the Parties. 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 Consent Decree, in accordance with section 113(g) of the CAA.

9. Except as set forth in this Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have.

10. The obligations imposed upon EPA under this Settlement Agreement may only be undertaken using appropriated funds. No provision of this Agreement 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.

11. WildEarth Guardians shall file a motion for voluntary dismissal, with prejudice, in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure of WildEarth Guardians v. Jackson, No. 09-cv-02148-REB-MJW (D. Colo.), with respect to the claims resolved by this Settlement Agreement within 30 days after notice appears in the Federal Register of EPA taking the last rulemaking action required under Paragraph 1 of this Settlement Agreement.

12. WildEarth Guardians agrees that the amount of attorneys' fees and costs paid by the United States to WildEarth Guardians under the related Consent Decree in WildEarth Guardians v. Jackson, No. 09-cv-02148-REB-MJW (D. Colo.), shall constitute full payment of the fees and costs up until the time of signing this settlement agreement which WildEarth Guardians could have sought for the claims addressed by this Settlement Agreement. However, WildEarth Guardians reserves the right to seek fees and costs incurred in the future with respect to the claims addressed by this Settlement Agreement if WildEarth Guardians reopens the litigation based upon an alleged failure by EPA to meet its obligations under this Settlement Agreement, or if EPA withdraws its consent to this Settlement Agreement following the notice-and-comment process discussed in Paragraph 8 above. EPA reserves all of its defenses with respect to such future fees and costs, including WildEarth Guardians' entitlement to such fees and costs.

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

14. 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: 2/2/2010

s/David A. Carson
DAVID A. CARSON
United States Department of Justice
Environment and Natural Resources
Division
1961 Stout Street - 8th Floor
Denver, Colorado 80294
(303) 844-1349
david.a.carson@usdoj.gov

COUNSEL FOR EPA

Dated: 1/20/2010

s/James J. Tuthton
JAMES J. TUTCHTON
WildEarth Guardians
1536 Wynkoop St., Suite 301
Denver, Colorado 80202
(720) 301-3843
jtuthton@wildearthguardians.org

s/Robert Ukeiley
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

Montana SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
1.	04/14/1999	Stack Height Rules – 17.8.401-403 Stack Height Rule revisions	06/30/2011	12/30/2011
2.	04/19/1999	Kraft Pulp Mill rule Rule recod. and opacity	None	06/30/2011
3.	08/25/1999	Subchapter 7 Permit, Construction and Operation of Air Contaminant Sources	None	03/31/2011
4.	03/06/2008	PM2.5 Attainment Plan for Libby, MT	None	12/31/ 2010

Utah SIPs				
Item No.	Governor's Letter Date	Title/Description	Signature on proposed action	Signature on final action
5.	10/09/1998	R307-401 Renumbering of NSR rules	06/30/2011	12/30/2011
6.	01/08/1999	R307-413 Soil venting and aeration	06/30/2011	12/30/2011
7.	02/22/1999	1-hour ozone maintenance plan	None	06/30/2011
8.	09/20/1999	Rules reorg. Grouping of smaller materials into a coherent structure	06/30/2011	12/30/2011

Utah SIPs, continued				
Item No.	Governor's Letter Date	Title/Description	Signature on proposed action	Signature on final action
9.	12/10/1999	R307-202-5 Open burning	06/30/2011	12/30/2011
10.	03/30/2000	Ogden PM10 SIP Clean Air Determina-tion	12/31/2011	06/30/2012
11.	04/17/2008	Utah R307-401-14 Used Oil Fuel Burned for Energy Recovery	06/30/2011	12/30/2011
12.	05/08/2006	Utah Smoke Manage-ment Rules	06/30/2011	12/30/2011
13.	03/07/2008	Utah NSR SIP revision NSR Reform. Proposed rule published 1/7/09.	06/30/2011 if re-proposal is needed. Otherwise, not applicable.	12/30/2011

<u>New Mexico SIPs</u>				
Item No.	Governor's Letter Date	Title/Description	Signature on Proposed Action	Signature on Final Action
1.	04/11/2002	NM State Pt 73 Emissions Inventories	None	01/02/2011
2.	04/11/2002	NM St Pt 72 Construction Permits	04/01/2012	10/01/2012
3.	04/11/2002	NM St Air Quality Control Act	04/01/2012	10/01/2012
4.	05/29/1998	NM Revisions to rules for construction permits	04/01/2012	10/01/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 09-cv-02109-MSK-KLM

WILDEARTH GUARDIANS,

Plaintiff,

v.

LISA JACKSON, in her official capacity as Administrator of the Environmental Protection Agency,

Defendant.

CONSENT DECREE

WHEREAS, on September 3, 2009, Plaintiff WildEarth Guardians filed its Complaint in this action against Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency ("Defendant" or "EPA");

WHEREAS, Plaintiff alleges that EPA has approved a State Implementation Plan ("SIP") for the State of Utah under section 110(k) of the Clean Air Act ("CAA"), 42 U.S.C. § 7410(k);

WHEREAS, Plaintiff alleges that the Utah SIP contains a provision, Utah Regulation 307-107-1 through 307-107-5 ("the Utah breakdown provision"), relating to excess emissions resulting from the breakdown of pollution control equipment;

WHEREAS, Plaintiff alleges that the Utah breakdown provision is inconsistent with sections 107(a) and 110(a)(1) of the CAA, 42 U.S.C. §§ 7407(a), 7410(a)(1);

WHEREAS, on December 31, 2007, Plaintiff submitted to EPA an administrative petition requesting that EPA formally notify the State of Utah under section 110(k)(5) of the CAA, 42 U.S.C. § 7410(k)(5), that the Utah breakdown provision is inadequate to comply with the requirements of the CAA, and further requesting that EPA require Utah to revise the Utah

Appeal no.
CAA 10-04

Ex 6

breakdown provision as necessary to meet the requirements of the CAA;

WHEREAS, EPA has not taken action to grant or deny Plaintiff's administrative petition;

WHEREAS, Plaintiff has alleged that EPA has failed to undertake a mandatory duty under section 110(k)(5) of the CAA, 42 U.S.C. § 7410(k)(5), to require Utah to revise the Utah breakdown rule;

WHEREAS, Plaintiff has further alleged that EPA has unreasonably delayed action on Plaintiff's administrative petition within the meaning of CAA section 304(a), 42 U.S.C. § 7604(a), and 5 U.S.C. §§ 555(b), and 706(1);

WHEREAS, Plaintiff and Defendant have agreed to a settlement of this case without any admission of any issue of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in this action; and

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has subject matter jurisdiction over the claims set forth in the Complaint and to order the relief contained in this Consent Decree.
2. Venue lies in the District of Colorado.
3. Plaintiff and Defendant 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 complete and final resolution of all claims which have been asserted or which could have been asserted in the Complaint.

4. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court does not enter this Consent Decree, the obligations set forth in this Decree are null and void.

5. By February 28, 2011, or within 20 days after the Court's entry of this Consent Decree, whichever is later, EPA shall sign a notice of final rulemaking action determining whether the Utah Breakdown provision (Utah Regulations 307-107-1 through 307-107-5) renders the Utah SIP "substantially inadequate" within the meaning of section 110(k)(5) of the CAA, 42 U.S.C. § 7410(k)(5), and, if EPA determines that the SIP is substantially inadequate, requiring the State to revise the SIP as it relates to the Utah breakdown provision.

6. Within 15 business days following signature of the action required by Paragraph 5, EPA shall deliver notice of the action to the Office of the Federal Register for publication.

7. The deadline in Paragraph 5 may be extended for a period of 60 days or less by written stipulation executed by counsel for Plaintiff and Defendant and filed with the Court. Any other extension to the deadline in Paragraph 5 may be approved by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by either party to this Consent Decree and upon consideration of any response by the non-moving party.

8. EPA agrees to settle Plaintiff's claim for costs and attorneys' fees by paying \$4,588.50 as soon as reasonably practicable after entry of this Consent Decree. This amount shall be paid by Fed Wire Electronic Funds Transfer to WildEarth Guardians. Plaintiff agrees to accept payment of \$4,588.50 in full satisfaction of any and all claims for costs and attorneys' fees with respect to this case, except that Plaintiff reserves the right to seek fees for enforcement of the Consent Decree in the future. EPA does not concede that Plaintiff will be entitled to fees for any efforts by Plaintiff to enforce the Consent Decree in the future, and EPA reserves all defenses with respect to any such enforcement efforts and any related fee claim. The fees paid

under this Paragraph shall have no precedential value in any future fee claim.

9. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree, to rule upon any motions filed in accordance with Paragraph 7 of this Consent Decree, and to resolve any disputes in accordance with Paragraph 14 of this Consent Decree. Once EPA has taken the action called for in Paragraphs 5, 6 and 8 of this Consent Decree, this Decree shall be terminated and the case dismissed with prejudice. The Parties may either jointly notify the Court that the Decree should be terminated and the case dismissed, or EPA may so notify the Court by motion. If EPA notifies the Court by motion, then Plaintiff shall have twenty days in which to respond to such motion.

10. 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.

11. 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.

12. 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), with respect to any future challenges to the final rulemaking action called for in Paragraph 5.

13. Nothing in this Consent Decree shall be construed to provide this Court with jurisdiction over any challenges by Plaintiff or any other person or entity not a party to this

litigation with respect to any future challenges to the final rulemaking action called for in Paragraph 5.

14. 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.

15. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiff and Defendant and that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree. This Consent Decree shall be governed and construed under the laws of the United States.

16. The obligations imposed upon EPA under this Consent Decree may only be undertaken using 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.

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

18. Any written notices or other written communications between the parties contemplated under this Consent Decree 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.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General

Dated: 11/23/2009

s/David A. Carson
DAVID A. CARSON
United States Department of Justice
Environment and Natural Resources
Division
1961 Stout Street - 8th Floor
Denver, Colorado 80294
(303) 844-1349
david.a.carson@usdoj.gov

COUNSEL FOR DEFENDANT

Dated: 11/17/2009

s/James J. Tuthton
JAMES J. TUTCHTON
WildEarth Guardians
1536 Wynkoop St., Suite 301
Denver, Colorado 80202
(720) 301-3843
jtuthton@wildearthguardians.org

COUNSEL FOR PLAINTIFF

Upon consideration of the foregoing, the Court hereby finds that this Consent Decree is fair, reasonable, consistent with the Clean Air Act and in the public interest.

IT IS SO ORDERED.

March 9, 2010

BY THE COURT:



Marcia S. Krieger
United States District Judge