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	Attorneys for Plaintiff		
	UNITED STATES DISTRICT COURT		
	FOR THE CENTRAL DISTRICT OF CALIFORNIA		
	WESTERN DIVISION		
	CENTER FOR BIOLOGICAL	No. 2:15-cv-01189-PSG (FFMx)	
	DIVERSITY,	SETTLEMENT AGREEMENT	
	Disinging		
	Plaintiff,	Date: N/A	
	V.	Time: N/A	
	BUREAU OF OCEAN ENERGY MANAGEMENT, et al.,	Courtroom No. 880, Roybal Courthouse	
	The state of the s	Hon. Philip S. Gutierrez	
	Defendants.		
	Center for Biological Diversity v. Bureau of Ocean Energy Mo Settlement Agreement	anagement, et al., No. 2:15-cv-01189-PSG (FFMx)	
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Plaintiff Center for Biological Diversity ("Center") and Federal Defendants Bureau of Ocean Energy Management ("BOEM"); Bureau of Safety and Environmental Enforcement ("BSEE"); U.S. Department of the Interior; Sally Jewell, Secretary of the Interior; Abigail Hopper, Director of BOEM; Joan Barminski, Pacific Regional Director of BOEM; Brian Salerno, Director of BSEE; and John Keith, Acting Pacific Regional Director of BSEE, stipulate to settlement of this action on the terms set forth below for purposes of settling the claims filed by Plaintiff in the above-captioned litigation without further litigation and for no other purpose. Plaintiff and Federal Defendants ("Parties") by and through their undersigned counsel, state as follows:

WHEREAS, the Center filed the above-captioned case on February 19, 2015, alleging Federal Defendants are in violation of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331, et seq., and the Coastal Zone Management Act, 16 U.S.C. §§ 1451, et seq., in connection with Federal Defendants' decisions to authorize the use of certain well-stimulation practices at offshore oil and gas operations on the Pacific Outer Continental Shelf ("OCS").

WHEREAS, Plaintiff and Federal Defendants, through their authorized representatives, without any admission of legal fault or error, and without final adjudication of the issues of fact or law with respect to Plaintiff's claims, have reached a settlement resolving this action;

WHEREAS, Plaintiff and Federal Defendants agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW THEREFORE, Plaintiff and Federal Defendants hereby stipulate as follows:

Center for Biological Diversity v. Bureau of Ocean Energy Management, et al., No. 2:15-cv-01189-PSG (FFMx) Settlement Agreement

I. <u>Undertakings by Federal Defendants</u>

A. BOEM and BSEE will undertake a programmatic Environmental Assessment ("EA") pursuant to the National Environmental Policy Act ("NEPA") to analyze the potential environmental impacts of well-stimulation practices on the Pacific OCS, including hydraulic fracturing and acid well stimulation. The focus of the EA will be on foreseeable future well-stimulation activities requiring federal approval, not past completed or expired activities for which no further federal actions remain, except to the degree that analysis of such past actions may be relevant to assessing the environmental baseline and/or an analysis of cumulative or other effects. This assessment will result in a determination that either an Environmental Impact Statement ("EIS") and Record of Decision ("ROD") is required or a Finding of No Significant Impact ("FONSI") is appropriate. BOEM and BSEE shall complete and issue the final programmatic EA by May 28, 2016, and will also issue a FONSI by that date if BOEM and BSEE determine that a FONSI is the appropriate outcome of the EA.

Defendants will not pre-determine the outcome of this assessment to require one product or the other before the analysis in the programmatic EA is complete. Plaintiff reserves the right to challenge the EA/FONSI or EIS/ROD as a separate action. Intervenor-Defendant American Petroleum Institute does not agree that an EA or an EIS is necessary or appropriate, and reserves the right to challenge any aspect of the EA or an EIS as a separate action.

- B. BOEM and BSEE will release a draft of the EA with a notice of availability and a request for comments, with a minimum of a thirty-day comment period.
- C. Pending completion of the final programmatic EA and FONSI, if a FONSI is appropriate, BSEE will withhold approvals of future Applications for Permits to Drill ("APDs") and Applications for Permits to Modify ("APMs")

 Center for Biological Diversity v. Bureau of Ocean Energy Management, et al., No. 2:15-cv-01189-PSG (FFMx) Settlement Agreement

involving hydraulic-fracturing operations or acid well stimulation on the Pacific OCS. For purposes of this Settlement Agreement subpart I.C., the terms "well stimulation treatment," "hydraulic fracturing," "acid well stimulation," and "acid volume threshold" shall be defined as follows:

- designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulations. Well stimulation treatment does not include routine well cleanout work; routine well maintenance; routine removal of formation damage due to drilling; bottom hole pressure surveys; routine activities that do not affect the integrity of the well or the formation; removal of scale or precipitate from the perforations, casing, or tubing; a gravel pack treatment that does not exceed the formation fracture gradient; or a treatment that involves emplacing acid in a well and that uses a volume of fluid that is less than the Acid Volume Threshold and is below the formation fracture gradient.
 - a. Hydraulic Fracturing is a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well;
 - b. Acid Well Stimulation means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation.

The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation;

c. Acid Volume Threshold – means a volume, in US gallons, per treated foot of well stimulation treatment calculated as follows: (((Size of the drill bit diameter in inches that was used in the treated zone / 2 + 36 inches)² -(bit diameter in inches / 2)²) x 3.14159 x 12 inches x treated formation porosity) / 231 (inches³ / gallon). The lowest calculated or measured porosity in the zone of treated formation shall be the treated formation porosity used for calculating the Acid Volume Threshold.

BSEE will, however, include an analysis of other acid use within the scope of the proposed NEPA analysis.

D. The BSEE Pacific Region has recently implemented the use of an electronic filing system for permits, called eWell. In the interest of pursuing avenues for increasing transparency of the permit review and approval process, the BSEE Pacific Region plans to receive future permit applications through the eWell system (or through another publicly-available website with comparable functionalities) and can commit to building a web-based search engine similar to that used in the Gulf of Mexico Region (see "Well Data Query" at https://www.data.bsee.gov/homepg/data_center/other/WebStore/master.asp), or to Center for Biological Diversity v. Bureau of Ocean Energy Management, et al., No. 2:15-cv-01189-PSG (FFMx) Settlement Agreement

expanding that search engine to include permit applications received in the Pacific Region.

- E. The BSEE Pacific OCS Region will provide timely notice of newly submitted complete applications for hydraulic fracturing or acid well stimulation to the Center for an interim period of time until the eWell system mentioned in Paragraph I.D, above (or an alternative system with comparable functionalities) is operational and the BSEE Pacific OCS Region has developed systems (through eWell or another publicly-accessible website) sufficient to provide timely access by the public, including the Center, to publicly releasable information associated with newly submitted complete applications for hydraulic fracturing or acid well stimulation.
- F. Plaintiff shall be paid a lump sum of \$8,826.65 in attorneys' fees and costs (the "Payment"). The Payment will be made by BOEM and/or BSEE by an electronic funds transfer to the Center pursuant to instructions from Plaintiff's counsel. Plaintiff agrees to furnish BOEM and/or BSEE with the information necessary to effectuate this payment. BOEM and/or BSEE agree to submit all necessary paperwork for the processing of the attorneys' fees and cost award within fourteen (14) days of the receipt of the necessary information from Plaintiff or the approval of this Settlement Agreement by the Court, whichever is later. Plaintiff agrees to accept payment of \$8,826.65 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiff may be entitled with respect to this action.

II. <u>Undertakings by Plaintiff and Effect of Settlement</u>

- A. This Settlement Agreement shall constitute a complete and final settlement of Plaintiff's Complaint in *Center for Biological Diversity v. Bureau of Ocean Energy Management*, No. 2:15-cv-01189-PSG (FFMx) (C.D. Cal.) (the "Action").
- B. Subject to Paragraph III.H of this Settlement Agreement, Plaintiff releases all claims in the Action. However, nothing in this Settlement Agreement precludes Plaintiff from instituting independent actions challenging Federal Defendants' FONSI or ROD described in Paragraph I.A of this Settlement Agreement, or Federal Defendants' future approvals of well-stimulation activities at offshore oil and gas operations on the Pacific OCS.
- C. The terms of this Settlement Agreement shall become effective upon entry of an Order by the Court ratifying the Settlement Agreement.

III. General Terms

- A. This Settlement Agreement in no way affects the rights of the United States as against any person not a party hereto. Nothing in this Settlement Agreement will be interpreted as imposing obligations on any federal or state agency that is not a party to the Settlement Agreement. This Settlement Agreement relates solely and exclusively to operations located in the Pacific OCS Region and in no way governs activities in other OCS Regions.
- B. Nothing in this Settlement Agreement constitutes an admission of fact or law by any party. This Settlement Agreement shall not be used or admitted in any proceeding against a party over the objection of that party. This Settlement Agreement has no precedential value and shall not be admissible in any proceeding other than a proceeding to enforce the terms of the Settlement Agreement.
- C. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties and supersedes all *Center for Biological Diversity v. Bureau of Ocean Energy Management, et al.*, No. 2:15-cv-01189-PSG (FFMx) Settlement Agreement

prior agreements and understandings, whether oral or written, concerning the subject matter hereof. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Settlement Agreement, nor shall it be used in construing this Settlement Agreement.

- D. This Settlement Agreement shall be governed by and construed under federal law.
- E. Nothing in this Settlement Agreement constitutes, or may be construed to constitute, a waiver of sovereign immunity by the United States. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded Federal Defendants by the Administrative Procedure Act, the Outer Continental Shelf Lands Act, or the National Environmental Policy Act, or by general principles of administrative law, except as explicitly provided in this Settlement Agreement.
- F. The Parties agree that Federal Defendants' obligations under this Settlement Agreement are contingent upon the availability of appropriated funds and that nothing contained in this Settlement Agreement shall be construed as a commitment or requirement that Federal Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.
- G. Any term set forth in this Settlement Agreement may be modified only by written agreement of the Parties.
- H. In the event of a disagreement among the Parties concerning the performance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the date of the written notice, or such time thereafter as is mutually agreed on. If the Parties are unable to resolve their differences, the Center for Biological Diversity v. Bureau of Ocean Energy Management, et al., No. 2:15-cv-01189-PSG (FFMx) Settlement Agreement

dissatisfied Party may seek relief from the Court through a motion to enforce the terms of the Settlement Agreement. This Settlement Agreement shall not be enforceable through a proceeding for contempt of court.

- I. Any notices required by or under this Settlement Agreement shall be addressed to the undersigned counsel, unless other provision for notice is made and agreed to in writing.
- J. Approval of this Settlement Agreement by the Court will result in the voluntary dismissal of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 41(a). Notwithstanding the dismissal of this action, however, Plaintiff and Federal Defendants hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Settlement Agreement. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994).
- K. The undersigned representatives of each Party certify that they are fully authorized by the Parties they represent to bind the respective Parties to the terms of this Settlement Agreement.

1	Dated: January 29, 2016	
2	SO STIPULATED:	FOR THE PLAINTIFFS
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4		/S/
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