



U.S. Department of Justice

Environment and Natural Resources Division

DJ # 90-5-2-3-19135

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February 6, 2012

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Re: WildEarth Guardians v. EPA (10th Cir., No. 11-9527)

Dear Counsel:

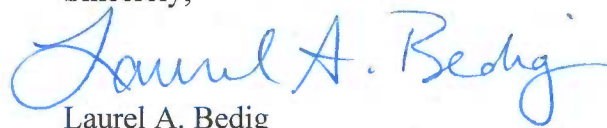
In accordance with Paragraph 3 of the Settlement Agreement ("Agreement") in the above referenced matter, I am writing to inform you that the notice and comment procedures pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g) have been completed, and the Administrator has elected not to withdraw or withhold her consent to the Agreement. Accordingly, the Agreement shall become final as of the date of this written notice.

In addition, the proposed Environmental Appeals Board administrative settlement agreement in Appeal No. CAA 10-04 has also become final on this date. Therefore, in accordance with Paragraph 1 of the Agreement, EPA and WildEarth Guardians shall file within 15 days an appropriate pleading for the dismissal of Guardians' petition for review with prejudice in the above referenced matter, in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure.

I have executed the Agreement on behalf of EPA and attached hereto is a complete copy of the final Agreement executed by both parties.

Thank you for your cooperation in this matter.

Sincerely,



Laurel A. Bedig
Environmental Defense Section

Attachment

cc:

Sheila Igoe, EPA OGC
Sara Laumann, EPA R8 ORC
Steve Odendahl, EPA R8 ORC
Lance Olwell, Tenth Circuit Mediator

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

WILDEARTH GUARDIANS,)	
)	
Petitioner,)	
)	
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	No. 11-9527
AGENCY and LISA JACKSON,)	
Administrator, U.S. EPA,)	
)	
Respondents.)	
_____)	
)	
KERR-MCGEE GATHERING, LLC,)	
)	
Intervenor,)	
)	
COLORADO DEPARTMENT OF)	
PUBLIC HEALTH AND)	
ENVIRONMENT,)	
)	
Intervenor.)	

SETTLEMENT AGREEMENT

WHEREAS on April 25, 2011, WildEarth Guardians (“Guardians”) filed petition for review No. 11-9527 (“petition for review”) in the United States Court of Appeals for the Tenth Circuit;

WHEREAS the petition for review challenges EPA’s final action in which EPA denied Guardians’ administrative petition requesting that EPA object to the issuance of the renewed Title V permit for Kerr-McGee’s Frederick Compressor

Station, notice of which was published at 76 Fed. Reg. 10,361 (February 24, 2011);

WHEREAS on November 17, 2010, Guardians petitioned the Environmental Appeals Board (“EAB”) in connection with EPA’s renewal of a Title V permit issued for the Florida River Compression Facility located on the Southern Ute Indian Reservation in La Plata County, Colorado (Appeal No. CAA 10-04);

WHEREAS EPA and Guardians intend to execute or have executed an administrative settlement agreement settling the matters before the EAB in Appeal No. CAA 10-04 as described in Exhibit A attached to this Agreement (the “proposed EAB administrative settlement agreement”);

WHEREAS the petition for review and EAB Appeal No. CAA 10-04 both involve issues concerning Clean Air Act Title V permitting in the oil and gas industry; and

WHEREAS EPA and Guardians wish to implement this Settlement Agreement (“Agreement”) to avoid protracted and costly litigation and to preserve judicial resources;

NOW, THEREFORE, EPA and Guardians, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Within fifteen days of the proposed EAB administrative settlement agreement becoming final, EPA and Guardians shall file an appropriate pleading in the Tenth Circuit for the dismissal of Guardians' petition for review with prejudice in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure, with each Party to bear its own costs and attorneys' fees.

2. If the proposed EAB administrative agreement does not become final, WildEarth Guardians' sole remedy in this case is to pursue its petition for review in the Tenth Circuit.

3. EPA and Guardians agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). After this Agreement has undergone an opportunity for notice and comment, the Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold his/her consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. If the Administrator or Attorney General elects not to withdraw or withhold his/her consent to the Agreement, EPA shall provide written notice to the Parties as expeditiously as possible, and this Agreement shall become final on the date of such written notice.

4. 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.

5. Each Party shall bear its own costs and attorney fees in this matter.

6. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that respective Party to the terms of this Agreement.

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division

Dated: February 6, 2012

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Attorneys for Respondent EPA

Dated: 10-12-11

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