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13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16 **WESTERN DIVISION**

17 ENVIRONMENTAL DEFENSE  
CENTER,

18 Plaintiff,

19 v.

No. 2:14-cv-09281-PSG-FFMx

20 BUREAU OF SAFETY AND  
ENVIRONMENTAL ENFORCEMENT,  
21 *et al.*,

**SETTLEMENT AGREEMENT**

22 Defendants,

23 EXXON MOBIL CORPORATION and  
24 AMERICAN PETROLEUM  
25 INSTITUTE,

26 Intervenor-Defendants.  
27  
28

1 Plaintiff Environmental Defense Center (“EDC”), and Federal Defendants, Bureau  
2 of Safety and Environmental Enforcement (“BSEE”); Brian Salerno, Director, BSEE;  
3 John Keith, Acting Pacific Region Director, BSEE; Bureau of Ocean Energy  
4 Management (“BOEM”); Abigail Ross Hopper, Director, BOEM; Joan Barminski,  
5 Pacific Region Director, BOEM; and the United States Department of the Interior stipu-  
6 late to settlement of this action on the terms set forth below for purposes of settling the  
7 claims filed by Plaintiff in the above-captioned litigation without further litigation and for  
8 no other purpose. Plaintiff and Federal Defendants (“Parties”), by and through their  
9 undersigned counsel, state as follows:

10 WHEREAS, Plaintiff filed a complaint in the above-captioned case on December  
11 2, 2014, alleging violations of the National Environmental Policy Act (“NEPA”), 42  
12 U.S.C. § 4321 *et seq.*, in relation to Defendant BSEE’s decisions to approve fifty-one  
13 Applications for Permits to Drill (“APDs”) or Applications for Permits to Modify  
14 (“APMs”) allegedly authorizing well stimulation treatments, including acid well  
15 stimulation and hydraulic fracturing, in order to facilitate oil and gas production from  
16 offshore platforms located on the Outer Continental Shelf (“OCS”) off California’s  
17 coastline, within the Pacific OCS Region (ECF No. 1). Plaintiff’s complaint included  
18 six causes of action, alleging that Defendants violated NEPA by: (1) unlawfully failing to  
19 provide for public participation prior to approval of the APDs or APMs; (2) unlawfully  
20 relying on categorical exclusions (“CEs”) for approval of the APDs despite evidence of  
21 significant individual and cumulative environmental effects; (3) unlawfully relying on  
22 CEs for approval of the APDs despite evidence of “extraordinary circumstances”; (4)  
23 unlawfully relying on CEs to approve the APDs despite lack of applicability; (5)  
24 unlawfully failing to conduct any NEPA analysis prior to approval of the APMs; and (6)  
25 in the alternative, unlawfully relying on CEs for approval of the APMs.

26 WHEREAS, Federal Defendants timely filed an answer to Plaintiff’s complaint on  
27 February 2, 2015 (ECF No. 13);

1 WHEREAS, Judge Philip S. Gutierrez issued an Order granting Motions to  
2 Intervene by American Petroleum Institute and Exxon Mobil Corporation (hereafter  
3 referred to collectively as “Intervenor-Defendants”) on April 2, 2015 and accepted  
4 Intervenor-Defendants’ respective answers to Plaintiff’s complaint for filing as of the  
5 date of that Order (ECF No. 34);

6 WHEREAS, Plaintiff and Federal Defendants, through their authorized  
7 representatives, without any admission of legal fault or error, and without final  
8 adjudication of the issues of fact or law with respect to Plaintiff’s claims, have reached a  
9 settlement that they consider to be a just, fair, adequate, and equitable resolution of the  
10 disputes set forth in Plaintiff’s complaint;

11 WHEREAS, Plaintiff and Federal Defendants believe that it is in the interests of  
12 the public, the Parties, and judicial economy to resolve the claims in this case without  
13 additional litigation;

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

15 I. Undertakings by Federal Defendants

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

1 and BSEE determine that a FONSI is the appropriate outcome of the EA.

2 Defendants will not pre-determine the outcome of this assessment to require one  
3 product or the other before the analysis in the programmatic EA is complete. Plaintiff  
4 reserves the right to challenge the EA/FONSI or EIS/ROD as a separate action.

5 Intervenor API does not agree that an EA or an EIS is necessary or appropriate, and  
6 reserves the right to challenge any aspect of the EA or an EIS as a separate action.

7 B. BOEM and BSEE will release a draft of the EA with a notice of availability  
8 and a request for comments, with a minimum of a thirty-day comment period.

9 C. Pending completion of the final programmatic EA and FONSI, if a FONSI is  
10 appropriate, BSEE will withhold approvals of future APDs and APMs involving  
11 hydraulic-fracturing operations or acid well stimulation on the Pacific OCS. For  
12 purposes of this Settlement Agreement subpart I.C., the terms “well stimulation  
13 treatment,” “hydraulic fracturing,” “acid well stimulation,” and “acid volume threshold”  
14 shall be defined as follows:

15 1. *Well Stimulation Treatment* – means any treatment of a well designed  
16 to enhance oil and gas production or recovery by increasing the permeability  
17 of the formation. Well stimulation treatments include, but are not limited to,  
18 hydraulic fracturing treatments and acid well stimulations. Well stimulation  
19 treatment does not include routine well cleanout work; routine well  
20 maintenance; routine removal of formation damage due to drilling; bottom  
21 hole pressure surveys; routine activities that do not affect the integrity of the  
22 well or the formation; removal of scale or precipitate from the perforations,  
23 casing, or tubing; a gravel pack treatment that does not exceed the formation  
24 fracture gradient; or a treatment that involves emplacing acid in a well and  
25 that uses a volume of fluid that is less than the Acid Volume Threshold and  
26 is below the formation fracture gradient.

27 a. *Hydraulic Fracturing* – is a well stimulation treatment that, in

1 whole or in part, includes the pressurized injection of hydraulic  
2 fracturing fluid or fluids into an underground geologic formation in  
3 order to fracture or with the intent to fracture the formation, thereby  
4 causing or enhancing the production of oil or gas from a well;

5 b. *Acid Well Stimulation* – means a well stimulation treatment that  
6 uses, in whole or in part, the application of one or more acids to the  
7 well or underground geologic formation. The acid well stimulation  
8 treatment may be at any applied pressure and may be used in  
9 combination with hydraulic fracturing treatments or other well  
10 stimulation treatments. Acid well stimulation treatments  
11 include acid matrix stimulation treatments and acid fracturing  
12 treatments. Acid matrix stimulation treatments are acid treatments  
13 conducted at pressures lower than the applied pressure necessary to  
14 fracture the underground geologic formation;

15 c. *Acid Volume Threshold* – means a volume, in US gallons, per  
16 treated foot of well stimulation treatment calculated as follows:  
17 (((Size of the drill bit diameter in inches that was used in the treated  
18 zone / 2 + 36 inches)<sup>2</sup> - (bit diameter in inches / 2)<sup>2</sup>) x 3.14159 x 12  
19 inches x treated formation porosity) / 231 (inches<sup>3</sup> / gallon). The  
20 lowest calculated or measured porosity in the zone of treated  
21 formation shall be the treated formation porosity used for calculating  
22 the Acid Volume Threshold.

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

25 D. The BSEE Pacific Region has recently implemented the use of an electronic  
26 filing system for permits, called eWell. In the interest of pursuing avenues for increasing  
27 transparency of the permit review and approval process, the BSEE Pacific Region will

1 receive future permit applications through the eWell system (or through another publicly-  
2 available website with comparable functionalities) and will build a web-based search  
3 engine similar to that used in the Gulf of Mexico Region (*see* “Well Data Query” at  
4 [https://www.data.bsee.gov/homepg/data\\_center/other/WebStore/master.asp](https://www.data.bsee.gov/homepg/data_center/other/WebStore/master.asp)), or expand  
5 that search engine to include permit applications received in the Pacific Region.

6 E. The BSEE Pacific OCS Region will provide notice of newly submitted  
7 complete applications for hydraulic fracturing or acid well stimulation to EDC for an  
8 interim period of time until the eWell system mentioned in Paragraph I.D, above (or an  
9 alternative system with comparable functionalities) is operational and the BSEE Pacific  
10 OCS Region has developed systems (through eWell or another publicly-accessible  
11 website) sufficient to provide timely access by the public, including EDC, to publicly  
12 releasable information associated with newly submitted complete applications for  
13 hydraulic fracturing or acid well stimulation. Such timely access by the public will  
14 include posting of publicly releasable information associated with newly submitted  
15 complete applications within five working days of receipt.

## 16 II. Undertakings by Plaintiff and Effect of Settlement

17 A. This Settlement Agreement shall constitute a complete and final settlement  
18 of Plaintiff’s Complaint in *Environmental Defense Center v. Bureau of Safety and*  
19 *Environmental Enforcement*, No. 2:14-cv-09281-PSG (FFMx) (C.D. Cal.) (the “Action”).

20 B. Subject to Paragraph III.I of this Settlement Agreement, Plaintiff releases all  
21 claims in the Action. However, nothing in this Settlement Agreement precludes Plaintiff  
22 from instituting independent actions challenging Federal Defendants’ FONSI or ROD  
23 described in Paragraph I.A of this Settlement Agreement, or Federal Defendants’ future  
24 approvals of well-stimulation activities at offshore oil and gas operations on the Pacific  
25 OCS.

26 C. The terms of this Settlement Agreement shall become effective upon entry  
27 of an Order by the Court ratifying the Settlement Agreement.

1 III. General Terms

2 A. The parties agree to attempt to resolve Plaintiff's claim for fees and costs  
3 expeditiously and without the need for Court intervention. The Court will retain  
4 jurisdiction over the case for the purpose of resolving any dispute between the parties  
5 regarding Plaintiff's claim for an award of fees and costs. *See Kokkonen v. Guardian*  
6 *Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Plaintiff shall file its application for attorneys'  
7 fees and costs in compliance with the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §  
8 2412(d)(1)(B), within 14 days of the Court entering an order dismissing this case  
9 pursuant to the terms of this Settlement Agreement. Consideration and further briefing of  
10 that application shall then be stayed for 46 days to allow the parties to pursue settlement  
11 discussions. If the parties are unable to resolve Plaintiff's application for attorneys' fees  
12 and costs among themselves within the 46 day stay period, Plaintiff may then submit  
13 further materials in support of its application pursuant to EAJA, including a supporting  
14 memorandum. Federal Defendants shall respond to Plaintiff's application within 21 days  
15 of Plaintiff submitting its memorandum and other materials in support of its application.  
16 The parties may jointly seek an extension of these briefing deadlines if necessary to  
17 accommodate ongoing settlement discussions. In response to Plaintiff's application,  
18 Federal Defendants agree not to contest that Plaintiff is a "prevailing party" in this action  
19 and agree not to raise substantial justification as a defense to the fee request. Federal  
20 Defendants expressly preserve all other defenses to any motion for attorney fees,  
21 including but not limited to the right to contest the reasonableness of the hourly rate and  
22 the amount of hours or costs and expenses claimed.

23 B. This Settlement Agreement in no way affects the rights of the United States  
24 as against any person not a party hereto. Nothing in this Settlement Agreement will be  
25 interpreted as imposing obligations on any federal or state agency that is not a party to the  
26 Settlement Agreement. This Settlement Agreement relates solely and exclusively to  
27 operations located in the Pacific OCS Region and in no way governs activities in other

1 OCS Regions.

2 C. Nothing in this Settlement Agreement constitutes an admission of fact or law  
3 by any party. This Settlement Agreement shall not be used or admitted in any proceeding  
4 against a party over the objection of that party. This Settlement Agreement has no  
5 precedential value and shall not be admissible in any proceeding other than a proceeding  
6 to enforce the terms of the Settlement Agreement.

7 D. This Settlement Agreement constitutes the final, complete, and exclusive  
8 agreement and understanding between the Parties and supersedes all prior agreements  
9 and understandings, whether oral or written, concerning the subject matter hereof. No  
10 other document, nor any representation, inducement, agreement, understanding, or  
11 promise, constitutes any part of this Settlement Agreement, nor shall it be used in  
12 construing this Settlement Agreement.

13 E. This Settlement Agreement shall be governed by and construed under  
14 federal law.

15 F. Nothing in this Settlement Agreement constitutes, or may be construed to  
16 constitute, a waiver of sovereign immunity by the United States. Nothing in the terms of  
17 this Settlement Agreement shall be construed to limit or modify the discretion accorded  
18 Federal Defendants by the Administrative Procedure Act, the Outer Continental Shelf  
19 Lands Act, or the National Environmental Policy Act, or by general principles of  
20 administrative law, except as explicitly provided in this Settlement Agreement.

21 G. The Parties agree that Federal Defendants' obligations under this Settlement  
22 Agreement are contingent upon the availability of appropriated funds and that nothing  
23 contained in this Settlement Agreement shall be construed as a commitment or require-  
24 ment that Federal Defendants obligate or pay funds in contravention of the Anti-  
25 Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

26 H. Any term set forth in this Settlement Agreement may be modified only by  
27 written agreement of the Parties.



1 I. In the event of a disagreement among the Parties concerning the perfor-  
2 mance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the  
3 other party with written notice of the dispute and a request for negotiations. The Parties  
4 shall meet and confer in order to attempt to resolve the dispute within 30 days of the date  
5 of the written notice, or such time thereafter as is mutually agreed on. If the Parties are  
6 unable to resolve their differences, the dissatisfied Party may seek relief from the Court  
7 through a motion to enforce the terms of the Settlement Agreement. This Settlement  
8 Agreement shall not be enforceable through a proceeding for contempt of court.

9 J. Any notices required by or under this Settlement Agreement shall be  
10 addressed to the undersigned counsel, unless other provision for notice is made and  
11 agreed to in writing.

12 K. Approval of this Settlement Agreement by the Court will result in the  
13 voluntary dismissal with prejudice of Plaintiff's Complaint pursuant to Federal Rule of  
14 Civil Procedure 41(a). Notwithstanding the dismissal of this action, however, Plaintiff  
15 and Federal Defendants hereby stipulate and respectfully request that the Court retain  
16 jurisdiction to oversee compliance with the terms of this Settlement Agreement. *See*  
17 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

18 L. The undersigned representatives of each Party certify that they are fully  
19 authorized by the Parties they represent to bind the respective Parties to the terms of this  
20 Settlement Agreement.

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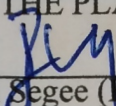
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1 Dated: January 29, 2016

2 SO STIPULATED:

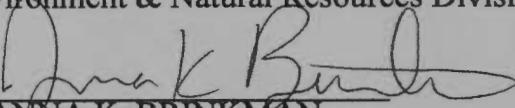
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