

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

WILDEARTH GUARDIANS, MONTANA
ENVIRONMENTAL INFORMATION
CENTER, CENTER FOR BIOLOGICAL
DIVERSITY, SIERRA CLUB, and
WATERKEEPER ALLIANCE, INC.,

Plaintiffs,

vs.

U.S. BUREAU OF LAND MANAGEMENT,
an agency within the U.S. Department of the
Interior; DEBRA HAALAND, in her official
capacity as Secretary of the United States
Department of the Interior; and KIMBERLY
PRILL, in her official capacity as Montana
Bureau of Land Management Deputy State
Director,

Defendants.

Case No. 4:21-cv-00004-
BMM-JTJ

STIPULATED DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Parties hereby stipulate to the dismissal with prejudice of this lawsuit pursuant to the terms of their Stipulated Settlement Agreement (Agreement), which is attached as Exhibit A. The Parties further request that the Court retain jurisdiction solely to resolve any motions to enforce the terms of Paragraphs 3 and 5 of this Agreement, *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), and for the

purpose of resolving any motion for attorneys' fees and costs filed by Plaintiffs in accordance with the Equal Access to Justice Act.

Dated: September 6, 2022

It is so stipulated,

TODD KIM
Assistant Attorney General
Environment and Natural Resources
Division

/s/ Michael S. Sawyer

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Counsel for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: _____

BRIAN MORRIS
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT A

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Defendants.

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STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs WildEarth Guardians, Montana Environmental Information Center, Center for Biological Diversity, Sierra Club, and Waterkeeper Alliance, Inc., and Defendants U.S. Bureau of Land Management (“BLM”), Debra Haaland, in her official capacity as Secretary of the U.S. Department of the Interior, and Kimberly Prill, in her official capacity as BLM Montana Deputy State Director,

who, by and through their undersigned counsel (collectively “the Parties”), state as follows:

WHEREAS, BLM, pursuant to the Mineral Leasing Act of 1920, issued five decisions between July 2019 and September 2020, authorizing the sale of 113 oil and gas leases encompassing 58,617 acres of public land in the states of Montana, North Dakota, and South Dakota;

WHEREAS, Plaintiffs’ members contend that they live, work, and recreate on federal public lands in Montana, North Dakota, and South Dakota and contend that they are harmed by oil and gas development on those lands;

WHEREAS, on January 12, 2021, Plaintiffs filed a Complaint in the above-captioned suit alleging that the five leasing decisions violated the National Environmental Policy Act (“NEPA”);

WHEREAS, on February 7, 2022, Plaintiffs moved for summary judgment and filed a supporting memorandum describing their allegations that Defendants failed to properly analyze how the five leasing decisions impact groundwater and climate change;

WHEREAS, the Parties, through their authorized representatives, and without any final adjudication of the issues of fact or law with respect to Plaintiffs’ legal claims, have negotiated a settlement that they consider to be in the public

interest and a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' Complaint;

WHEREAS, the Parties desire to resolve Plaintiffs' claims according to the terms set forth below, and thus hereby stipulate and agree as follows:

1. BLM will conduct additional NEPA analysis for the five leasing decisions challenged in this litigation, consistent with the Court's prior decision in *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880 (D. Mont. 2020) and all other applicable law.
2. BLM further agrees that the additional NEPA analysis will, to the extent not prohibited by law:
 - a. be conducted in accordance with Secretarial Order 3399 (or appropriate superseding guidance); and
 - b. incorporate consideration of the social cost of greenhouse gases.
3. BLM will publish the additional analysis for public comment, the duration of which will be no less than 30 days.
4. Upon completion of the additional NEPA analysis and related documentation, BLM will issue one or more decisions regarding the challenged leases.
5. During the pendency of additional NEPA analysis conducted pursuant to this Agreement, and until a new decision is rendered pursuant to

Paragraph 4, BLM agrees that it will not approve any new Applications for Permits to Drill (“APDs”) on the challenged leases. Further, BLM agrees that pending completion of its additional NEPA analysis, and until a new decision is rendered pursuant to Paragraph 4, it will not approve new right-of-way grants for lands subject to the challenged leases that appear, based on a reasonable inspection, to be sought for the purpose of developing one or more of the challenged oil and gas leases.

6. Concurrently with this Agreement, the Parties shall file a stipulation of voluntary dismissal with prejudice of this litigation (“Stipulation”). That Stipulation will request that the Court retain jurisdiction solely to resolve any motions to enforce the terms of Paragraphs 3 and 5 of this Agreement, *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), and for the purpose of resolving any motion for attorneys’ fees and costs filed by Plaintiffs in accordance with the Equal Access to Justice Act. In the event there is a dispute over compliance with the terms of Paragraphs 3 or 5 of this agreement, the disputing party will notify the other party in writing of the nature of the dispute, and, within 7 days after such notification (or additional time if the parties agree), the parties will discuss and attempt to resolve the dispute. If the parties do not resolve the dispute within 15 days thereafter, either party may file a motion to enforce the provisions of the Agreement

and Stipulation. However, the parties will not seek the remedy of contempt for any alleged violation of the Agreement or Stipulation.

7. Any future challenge to the adequacy of the NEPA analysis for the leasing decisions challenged in this litigation, following the completion of BLM's additional NEPA analysis required by Paragraphs 1 and 2 of this Agreement, must take the form of an appeal to the Interior Board of Land Appeals or a new civil action under the judicial review provisions of the Administrative Procedure Act, and may not be asserted as a claim for violation of this Agreement or in a motion to enforce the terms of this Agreement. Nothing in this Agreement precludes or limits Plaintiffs from raising any claims against future decisions relating to the leases challenged in this litigation, including any decisions based on the additional NEPA analysis. Defendants reserve the right to raise any applicable claims or defenses to any such challenge.

8. This Agreement is the result of compromise and settlement, and it is based on and limited solely to the facts involved in this case. This Agreement does not represent an admission by any party to any fact, claim, or defense concerning any issue in this case. Further, this Agreement has no precedential value and will not be used as evidence by any party in any other litigation except as necessary to enforce the terms of this Agreement.

9. No provision of this Agreement will be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

10. The undersigned representatives of the Plaintiffs and Defendants certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.

11. This Agreement contains all of the terms of agreement between the Parties concerning the Plaintiffs' Complaint, and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

12. The Agreement is binding on Plaintiffs and Defendants once signed by both parties.

Dated: September 6, 2022

It is so stipulated,

TODD KIM
Assistant Attorney General

Environment and Natural Resources
Division

/s/ Michael S. Sawyer

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