

1 SAMANTHA RUSCAVAGE-BARZ
NM State Bar No. 23276
2 WildEarth Guardians
516 Alto Street
3 Santa Fe, NM 87501
Tel: (505) 988-9126 ext. 1158
4 Fax: (505) 213-1895
sruscavagebarz@wildearthguardians.org
5 *Attorney for Plaintiff*

6 IGNACIA S. MORENO
Assistant Attorney General
7 Environment & Natural Resources Division

8 MICHELLE R. LAMBERT
Trial Attorneys
9 Environmental Defense Section
P.O. Box 23986
10 Washington, D.C. 20026-3986
Tel: (202) 616-7501
11 Fax: (202) 514-8865
michelle.lambert@usdoj.gov
12 *Attorneys for Defendant*

13
14 UNITED STATES DISTRICT COURT
15 DISTRICT OF ARIZONA

16
17 WILDEARTH GUARDIANS,

18 Plaintiff,

19 v.

20 LISA JACKSON, Administrator of the
U.S. Environmental Protection Agency,
21 sued in her official capacity,

22 Defendant.

No. 2:11-cv-01661-ROS

CONSENT DECREE

23
24 WHEREAS, on August 24, 2011, Plaintiff WildEarth Guardians filed the
25 complaint (“Complaint”) in the above-captioned matter against Defendant Lisa Jackson,
26 in her official capacity as Administrator of the United States Environmental Protection
27 Agency (“EPA”) alleging that EPA has failed to undertake a certain nondiscretionary duty
28

1 under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure
2 is actionable under section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

3 WHEREAS, within one year after promulgation of the revised National Ambient
4 Air Quality Standards (“NAAQS”), section 107(d)(1)(A) of the CAA, 42 U.S.C. §
5 7407(d)(1)(A) requires States to submit a list of initial designations of all areas, or
6 portions thereof, as attainment, nonattainment, or unclassifiable for the revised NAAQS;
7

8 WHEREAS, EPA is required to promulgate the designation for all of the country
9 within two years of the date of the promulgation of the revised NAAQS, or within three
10 years if EPA has insufficient information to promulgate the designation within two years,
11 pursuant to section 107(d)(1)(B) of the CAA, 42 U.S.C. § 7407(d)(1)(B);
12

13 WHEREAS, EPA revised the NAAQS for ground-level ozone on March 12, 2008;

14 WHEREAS, the States were required to submit their area designations for the 2008
15 ground-level ozone NAAQS by March 12, 2009;
16

17 WHEREAS, on January 19, 2010, EPA determined that it had insufficient
18 information to promulgate the designations and invoked the additional year to issue
19 designations, *see* 75 Fed. Reg. 2,936 (Jan. 19, 2010);
20

21 WHEREAS, the Complaint alleges that EPA has a nondiscretionary duty to
22 promulgate the area designations for the 2008 ground-level ozone NAAQS within the
23 time lines set forth in section 107(d)(1)(B) of the CAA, 42 U.S.C. § 7407(d)(1)(B);
24

25 WHEREAS, the Complaint seeks an order from this Court directing EPA to
26 promulgate area designations for the 2008 ground-level ozone NAAQS pursuant to
27 section 107(d)(1)(B) of the CAA;
28

1 WHEREAS, the parties have agreed to a settlement of this action without
2 admission of any issue of fact or law;

3 WHEREAS, the parties, by entering into this Consent Decree, do not waive or limit
4 any claim or defense, on any grounds, related to any final EPA action;

5 WHEREAS, the parties consider this Consent Decree to be an adequate and
6 equitable resolution of all the claims in this matter;

7 WHEREAS, it is in the interest of the public, the parties, and judicial economy to
8 resolve this matter without protracted litigation;

9 WHEREAS, the parties agree that this Court has jurisdiction over this matter
10 pursuant to the citizen suit provision in section 304(a)(2) of the CAA;

11 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
12 Decree is fair, reasonable, in the public interest, and consistent with the CAA;

13 NOW THEREFORE, before the taking of testimony, without trial or determination
14 of any issue of fact or law, and upon the consent of the parties, it is hereby ordered,
15 adjudged, and decreed that:

16 1. EPA shall sign for publication in the Federal Register no later than May 31,
17 2012 a notice of the Agency's promulgation of area designations for the 2008 ground-
18 level ozone NAAQS pursuant to section 107(d) of the CAA, and within 10 business days
19 following signature of the notice, EPA will send the notice to the Federal Register for
20 review and publication.

21 2. When EPA's obligations under Paragraph 1 have been completed, the
22 parties will file a joint request to the Court to terminate the Consent Decree.
23
24
25
26
27
28

1 3. The parties may extend the deadline established in Paragraph 1 by written
2 stipulation executed by counsel for the parties and filed with the Court. In addition, the
3 deadline established in Paragraph 1 may be extended by the Court upon motion by any
4 party to this Consent Decree for good cause shown, after consideration of any response by
5 the non-moving party.
6

7 4. Nothing in this Consent Decree shall be construed to limit or modify the
8 discretion accorded EPA by the CAA and by general principles of administrative law,
9 including the discretion to alter, amend or revise any response and/or final action
10 contemplated by this Consent Decree. EPA's obligation to take the action set forth in
11 Paragraph 1 by the time specified does not constitute a limitation or modification of
12 EPA's discretion within the meaning of this paragraph.
13

14 5. Nothing in this Consent Decree shall be construed to confer upon the district
15 court jurisdiction to review any final decision made by EPA pursuant to this Consent
16 Decree. Nothing in this Consent Decree shall be construed to confer upon the district
17 court jurisdiction to review any issues that are within the exclusive jurisdiction of the
18 United States Courts of Appeals pursuant to section 307(b)(1) of the CAA, 42 U.S.C. §
19 7607(b)(1). Nothing in the terms of this Consent Decree shall be construed to waive any
20 remedies or defenses the parties may have under CAA section 307(b)(1), 42 U.S.C. §
21 7607(b)(1).
22
23

24 6. This Court shall retain jurisdiction to enforce the terms of this Consent
25 Decree and to consider any requests for costs of litigation, including attorneys' fees.
26

27 7. In the event of a dispute between the parties concerning the interpretation or
28

1 implementation of any aspect of this Consent Decree, the disputing party shall provide the
2 other party with a written notice outlining the nature of the dispute and requesting
3 informal negotiations. If the parties cannot reach an agreed-upon resolution within ten
4 (10) business days after receipt of notice, any party may move the Court to resolve the
5 dispute.
6

7 8. No motion or other proceeding seeking to enforce this Consent Decree shall
8 be considered properly filed, unless Plaintiff has followed the procedure set forth in
9 Paragraph 7 and provided EPA with written notice received at least ten (10) business days
10 before the filing of such motion or proceeding.
11

12 9. The United States, on behalf of EPA, agrees to pay Plaintiff in full
13 settlement of all claims for attorneys' fees, costs, and expenses incurred as of the date of
14 entry of this Consent Decree the sum of \$3,600, as soon as reasonably practicable, by
15 electronic funds transfer in accordance with instructions provided to the undersigned
16 defense counsel by counsel for Plaintiff. Nothing in this paragraph shall be construed as
17 an admission or concession by EPA that Plaintiff is entitled to or eligible for recovery of
18 any costs or attorneys' fees.
19

20 10. The obligations imposed upon EPA under this Consent Decree may only be
21 undertaken using appropriated funds. No provisions of this Consent Decree shall be
22 interpreted as or constitute a commitment or requirement that EPA obligate or pay funds
23 in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
24 federal law.
25

26 11. Plaintiff and EPA shall not challenge the terms of this Consent Decree or
27
28

1 this Court's jurisdiction to enter this Consent Decree.

2 12. The parties agree and acknowledge that before this Consent Decree is
3 entered by the Court, EPA must provide notice of this Consent Decree in the Federal
4 Register and an opportunity for public comment pursuant to section 113(g) of the CAA,
5 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and comment, the
6 Administrator and/or the Attorney General, as appropriate, shall promptly consider any
7 such written comments in determining whether to withdraw or withhold their consent to
8 the Consent Decree, in accordance with section 113(g) of the CAA. If the Administrator
9 and/or the Attorney general do not elect to withdraw and withhold their consent, EPA
10 shall promptly file a motion that requests the Court to enter this Consent Decree.
11

12 14. Any notices required or provided for by this Consent Decree shall be made
13 in writing, via facsimile, e-mail or other means, and sent to the following:
14

15 For Plaintiff:

16 Samantha Ruscavage-Barz
17 NM State Bar No. 23276
18 WildEarth Guardians
19 516 Alto Street
20 Santa Fe, NM 87501
21 Tel: (505) 988-9126 ext. 1158
22 Fax: (505) 213-1895
23 sruscavagebarz@wildearthguardians.org

24 For Defendant:

25 Michelle R. Lambert
26 United States Department of Justice
27 Environmental Defense Section
28 P.O. Box 23986
Washington, D.C. 20026-3986
Tel: (202) 616-7501
Fax: (202) 514-8865
michelle.lambert@usdoj.gov

Jan Tierney
Office of the General Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

U.S. Environmental Protection Agency
Ariel Rios Bldg. MC 2344A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Phone: (202) 564-5598
Fax: (202) 564-5603
tierney.jan@epa.gov

15. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that party to the terms of this Consent Decree.

IT IS SO ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE

COUNSEL FOR PLAINTIFF:

Dated: December 12, 2011

/s/ Samantha Ruscavage-Barz (with permission)
Samantha Ruscavage-Barz
NM State Bar No. 23276
WildEarth Guardians
516 Alto Street
Santa Fe, NM 87501
Tel: (505) 988-9126 ext. 1158
Fax: (505) 213-1895
sruscavagebarz@wildearthguardians.org

COUNSEL FOR DEFENDANT:

Dated: December 12, 2011

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

/s/ Michelle R. Lambert
Michelle R. Lambert
United States Department of Justice
Environmental Defense Section

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

P.O. Box 23986
Washington, D.C. 20026-3986
Tel: (202) 616-7501
Fax: (202) 514-8865
michelle.lambert@usdoj.gov