

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff,

v.

PENNY PRITZKER, United States
Secretary of Commerce, in her official
capacity; NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,

Defendants.

Civil Case No. 1:15-cv-00723-GK

JOINT MOTION TO DISMISS and
PROPOSED ORDER

JOINT MOTION TO DISMISS

Plaintiff Center for Biological Diversity and Defendants Penny Pritzker and National Oceanic and Atmospheric Administration respectfully move this Court to dismiss this case with prejudice under Federal Rule of Civil Procedure 41(a)(2) and pursuant to the terms of the SETTLEMENT AGREEMENT, which is attached as Exhibit A. A proposed order is below.

Respectfully submitted this 30th day of November, 2016.

/s/ Emily Jeffers

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Attorneys for Federal Defendants

PROPOSED ORDER

This action is hereby dismissed with prejudice under Federal Rule of Civil Procedure 41(a)(2) and pursuant to the terms of the parties' Settlement Agreement. The Clerk of the Court is directed to close the file in this case.

GLADYS KESSLER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil No. 1:15-cv-00723 (GK)
PENNY PRITZKER, United States Secretary)	
of Commerce, in her official capacity;)	SETTLEMENT AGREEMENT
NATIONAL OCEANIC AND)	
ATMOSPHERIC ADMINISTRATION)	
)	
Defendants.)	
)	

For purposes of settling the above-captioned lawsuit without further judicial proceedings, Plaintiff Center for Biological Diversity (“CBD”) and Defendants Penny Pritzker, in her official capacity as United States Secretary of Commerce, and National Oceanic and Atmospheric Administration (“NOAA”) state:

WHEREAS, on May 13, 2015, Plaintiff filed a Complaint for declaratory and injunctive relief against Defendants.

WHEREAS, Plaintiff’s Complaint challenges NOAA’s June 1, 2012, decision to extend two deep seabed mining exploration licenses (USA-1 and USA-4) issued under the Deep Seabed Hard Mineral Resources Act (“DSHMRA”) and alleges that the decisions underlying NOAA’s extension of those licenses violate the National Environmental Policy Act (“NEPA”), the Administrative Procedure Act, and DSHMRA.

WHEREAS, Plaintiff and Defendants (collectively the “Settling Parties”), through their authorized representatives, and without any admission or final adjudication of issues relating to Plaintiff’s claims, have reached a settlement of the above-captioned litigation, as set forth in this Settlement Agreement.

THEREFORE, the Settling Parties hereby stipulate and agree to the following terms in settlement of any and all claims relating in any way to the above-captioned litigation:

1. The Settling Parties agree that all negotiations leading up to this Settlement Agreement are confidential, and, other than between the Settling Parties and their attorneys, will not be disclosed except as may be required by law.

2. This Agreement is not to be construed as an admission or concession by any party as to the validity of any fact or legal position concerning the claims or defenses in the above-captioned case.

3. This Agreement has no precedential value and shall not be used as evidence in any other proceeding.

4. The Settling Parties agree that the above-captioned case should be dismissed with prejudice and that the Settling Parties shall file with the District Court a joint motion for dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a)(2) that attaches this Settlement Agreement. If the District Court does not grant the motion to dismiss the above-captioned case, this Agreement will be void and the Settling Parties will have no further obligations under this Agreement.

5. The Settling Parties agree that the joint motion will request dismissal pursuant to the terms of this Settlement Agreement.

6. NOAA will:

- a. conduct an environmental analysis, consistent with its obligations under NEPA and DSHMRA, if and when NOAA authorizes Lockheed Martin to conduct at-sea, phase II, exploration activities pursuant to DSHMRA Licenses USA-1 and USA-4;

- b. use regulations.gov for the next notice and comment opportunity for extending licenses USA-1 and USA-4; and,
- c. provide CBD with advance notice of Lockheed Martin's next request under DSHMRA for extensions of licenses USA-1 and USA-4 within fourteen days of the date that NOAA receives a formal license extension application from the licensee.
 - i. This advance notice will consist of a letter from NOAA to CBD stating: "On XXXX DATE, Lockheed Martin transmitted its application for DSHMRA license extensions for licenses USA-1 and USA-4. NOAA received this application on XXXX DATE and is presently reviewing it."

7. The Parties agree that Plaintiff's sole remedy for any breach of this Agreement is to seek rescission of the Agreement and reopen its lawsuit.

8. NOAA agrees to pay CBD \$3,800.00 in full settlement of all Plaintiff's claims under any authority for attorneys' fees, costs, and expenses, including expenses for experts, incurred in the above-captioned litigation. All payments will be made by electronic funds transfer to CBD, or on behalf of the CBD, to a client trust account fund maintained by counsel for CBD. CBD shall, within twenty-one days after the filing of this Agreement, designate the account to which the payments are to be made by providing the following information necessary for Defendants to process the disbursements: the account holder's name, address, the bank account number, the account type, the bank routing transit number ("RTN"), and CBD's tax identification number.

9. Nothing in this Settlement Agreement shall be construed to require the Defendants to take any action inconsistent with applicable federal, state, or local law.


10. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

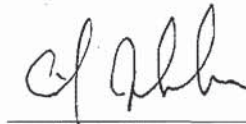
11. Nothing in this Settlement Agreement shall be interpreted as imposing obligations on any federal agency that is not a signatory to the Agreement.

12. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to execute this agreement.

IT IS HEREBY AGREED.

JOHN C. CRUDEN
Assistant Attorney General

 Nov. 22, 2016
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