

SETTLEMENT AGREEMENT

WHEREAS, Idaho Conservation League (“ICL”), by letter dated July 7, 2008, provided notice of intent to sue Stephen L. Johnson, in his official capacity as Administrator, United States Environmental Protection Agency (“EPA”), alleging failure to perform nondiscretionary duties under the Clean Water Act (“CWA”), 33 U.S.C. § 1251, et seq.;

WHEREAS, ICL’s notice alleges that EPA has failed to perform nondiscretionary duties under 33 U.S.C. § 1313(c)(3) to approve or disapprove new or revised water quality standards submitted to EPA by the State of Idaho’s Department of Environmental Quality (“IDEQ”);

WHEREAS, in April of 1999, IDEQ submitted to EPA a revision to the water quality standard for arsenic (for the protection of human health) (“Arsenic Criteria”);

WHEREAS, in July of 2006, IDEQ submitted to EPA water quality standards (for the protection of human health) (“2006 Human Health Criteria”) revised to reflect EPA’s nationally-applicable default recommendations regarding fish consumption rate assumptions,

and IDEQ submitted to EPA a revision to a previously-approved water quality standard for

cadmium (for the protection of aquatic life) (“Cadmium Criteria”);

WHEREAS, EPA has not yet acted on the Arsenic Criteria, the 2006 Human Health Criteria, or the Cadmium Criteria;

WHEREAS, IDEQ published on December 3, 2008, a bulletin notice of negotiated rulemaking in order to revise the Arsenic Criteria downward to 10 ug/l or less, and to revise the Cadmium Criteria to lower the low-end hardness cap from 25 mg/L to 10 mg/L or less (“Bulletin Notice”);

WHEREAS, ICL seeks to avoid potentially unnecessary litigation by affording additional time for Idaho to proceed in developing revised criteria;

WHEREAS, ICL’s notice of intent further states that, in filing any complaint, ICL would seek an award of attorney fees and litigation costs as provided under the CWA;

WHEREAS, the parties now wish to settle ICL’s claims seeking EPA action, including for attorney fees and litigation costs, in order to avoid unnecessary litigation, and without any admission of fact or law, and;

WHEREAS, the parties believe this Settlement Agreement is just and fair, and adequately protects the public interest in accordance with the CWA and all other applicable federal law.

NOW THEREFORE, the parties agree to settlement, with the terms and conditions as follows:

I. SCOPE OF AGREEMENT

1. This Settlement Agreement shall constitute a complete and final settlement of all claims alleged in ICL's notice of intent to sue EPA under the CWA.
2. This Settlement Agreement in no way affects the rights of the United States as against any person not a party thereto.
3. Nothing in this Settlement Agreement shall constitute an admission of fact or law by any party. This Settlement Agreement shall not be used or admitted in any proceeding against a party over the objection of that party.
4. It is hereby expressly understood and agreed that this Settlement

Agreement was jointly drafted by ICL and EPA. Accordingly, ICL and EPA agree that any

and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms or interpretation of this Settlement Agreement.

5. This Settlement Agreement shall be governed by and construed under federal law.

6. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

7. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded to EPA by the CWA or by general principles of administrative law.

II. SPECIFIC PROVISIONS

8. EPA shall take action to approve or disapprove the pending Arsenic Criteria and Cadmium Criteria as follows:

- a. If IDEQ does not submit to the Idaho Board of Environmental Quality (“Board”) a proposed rule revising the Arsenic Criteria and Cadmium Criteria by July 15, 2009, then EPA shall take action no later than 60 days from this date;
- b. If the Board does not adopt revised Arsenic Criteria and Cadmium Criteria before the 2010 session of the Idaho Legislature convenes, then EPA shall take action no later than 60 days from the date the legislature convenes;
- c. If the Board does adopt revised Arsenic Criteria and Cadmium Criteria, but the Idaho Legislature disapproves the revised Arsenic Criteria and Cadmium Criteria before it adjourns its 2010 legislative session, then EPA shall take action no later than 60 days from the adjournment date;
- d. If IDEQ does not submit revised Arsenic Criteria and Cadmium Criteria to EPA for approval within 60 days of the adjournment date of the

Idaho Legislature's 2010 session, then EPA shall take action no later than 60 days from this date;

e. If IDEQ, the Board and/or the Idaho Legislature takes action after any date specified in the subparagraphs above, but before the date specified above in such subparagraph for EPA's corresponding action, then EPA's obligation to take action under that subparagraph is suspended.

f. EPA's commitment to act by the dates specified above applies to both the Arsenic Criteria and the Cadmium Criteria. If IDEQ, the Board and/or the Idaho Legislature takes action on only one of the criteria, then EPA's commitment to act on the other shall proceed according to the dates for EPA action in this Settlement Agreement.

9. EPA agrees not to take action on any site-specific water quality criteria adjusted based on fish consumption rates until EPA has taken action on the 2006 Human

Health Criteria. EPA shall take action on the 2006 Human Health Criteria by no later than 18 months from the date of execution of this Settlement Agreement by all parties.

10. Subject to EPA's compliance with the terms of Paragraph 8 of this Settlement Agreement, ICL covenants not to sue and releases all claims regarding EPA's alleged failure to perform nondiscretionary duties with regard to the Arsenic Criteria and the Cadmium Criteria. Subject to EPA's compliance with the terms of Paragraph 9 of this Settlement Agreement, ICL also covenants not to sue and releases all claims regarding EPA's alleged failure to perform nondiscretionary duties with regard to the 2006 Human Health Criteria.

III. MODIFICATIONS AND EXTENSIONS

11. Any term set forth in this Settlement Agreement (including deadlines and other terms), may be modified by written agreement of ICL and EPA.

IV. TERMINATION OF SETTLEMENT AGREEMENT

12. This Settlement Agreement shall terminate when EPA takes action to approve or disapprove the pending Arsenic Criteria, Cadmium Criteria, and the 2006 Human Health

Criteria. As EPA takes an action to approve or disapprove any such criteria, its obligations under this Settlement Agreement regarding such criteria shall be satisfied and terminated.

EPA's obligations to take action to approve or disapprove the pending Arsenic Criteria and/or Cadmium Criteria under paragraph 8 also shall terminate if and when IDEQ submits revised arsenic criteria and/or cadmium criteria to EPA, respectively. In addition, EPA's obligations relating to any pending criteria under this Settlement Agreement shall terminate if ICL files a complaint alleging EPA failure to perform a nondiscretionary duty regarding such criteria as provided by Paragraph 16 of this Settlement Agreement.

V. ATTORNEY FEES AND COSTS

13. Upon execution of this Settlement Agreement, the United States will pay, as soon as reasonably practicable thereafter, nine thousand dollars (\$9,000.00) to ICL. This payment shall occur by electronic funds transfer in accordance with instructions provided to the undersigned counsel for EPA by ICL's counsel.

14. Any obligations of the United States to expend funds under this Settlement

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Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

15. ICL agrees that payment pursuant to Paragraph 13 will constitute full and final payment of costs of litigation (including reasonable attorney fees) incurred by ICL in connection with the resolution of this matter. Upon payment, ICL releases the United States, including EPA, from any claims regarding such fees and costs in connection with bringing and resolving this matter.

VI. REMEDIES

16. If EPA fails to act in accordance with Section II of this Settlement Agreement, ICL's sole remedy is to file a complaint based on its notice of intent dated July 7, 2008, to sue the Administrator of EPA, in his or her official capacity, alleging failure to perform nondiscretionary duties under the CWA, 33 U.S.C. § 1251, et seq. ICL may file a complaint alleging a failure to perform nondiscretionary duties regarding the Arsenic

Criteria and/or Cadmium Criteria if IDEQ or the Board takes action under Paragraph 8 of this Settlement Agreement to revise the Arsenic Criteria and/or Cadmium Criteria to levels higher than those described in the Bulletin Notice. ICL may file a complaint alleging a failure to perform nondiscretionary duties regarding the 2006 Human Health Criteria if EPA takes action on any site-specific water quality criteria as described in Paragraph 9, before EPA has taken action on the 2006 Human Health Criteria.

17. EPA does not waive or limit any defense relating to any litigation described in Paragraph 16. ICL and EPA agree that contempt of court is not an available remedy under the Settlement Agreement.

18. This Settlement Agreement does not bar or prohibit ICL from challenging any action to approve or disapprove any criteria EPA may take under this Settlement Agreement, to the extent that ICL may otherwise be lawfully entitled to challenge such action.

VII. DISPUTE RESOLUTION

19. In the event of a disagreement between ICL and EPA concerning the

interpretation or performance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. ICL and EPA shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed.

If ICL and EPA are unable to resolve the dispute within 60 days of such meeting, then ICL's sole remedy is to sue as described in Paragraph 16.

VIII. RECIPIENTS OF NOTIFICATIONS

20. Any notices required or provided for under this Settlement Agreement shall be in writing, shall be effective upon receipt, and shall be sent to the following:

For ICL:

Laird J. Lucas
Executive Director
Advocates for the West
P.O. Box 1612
Boise, ID 83701
208-342-7024
llucas@advocateswest.org

For EPA:

Cynthia J. Morris
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
202-616-7554
c.j.morris@usdoj.gov

Stephen J. Sweeney
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460
sweeney.steve@epamail.epa.gov

Ankur Tohan
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Ave.
Seattle, WA 98101
tohan.ankur@epa.gov

VIII. SIGNATURE OF PARTIES

21. The undersigned representatives of the parties certify that they are fully

authorized by the party or parties they represent to enter into and execute the terms and

conditions of the Settlement Agreement. By signature below, all parties consent to this Settlement Agreement.

22. This Settlement Agreement shall become effective upon signature by all parties.

23. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party has signed all other counterparts.

SO AGREED:

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division



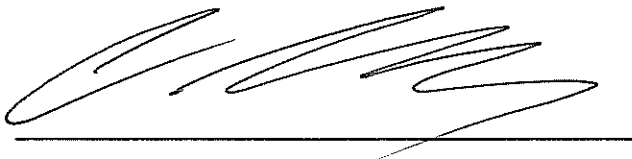
CYNTHIA J. MORRIS
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section

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P.O. Box 23986
Washington, D.C. 20026-3986
(202) 610-7554

For EPA Administrator, Lisa P. Jackson

Dated:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

LAIRD J. LUCAS
Executive Director
Advocates for the West
P.O. Box 1612
Boise, ID 83701
(208) 342-7024

For Idaho Conservation League

Dated: 4/1/09