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16 Attorneys for Federal Defendants

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 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN FRANCISCO DIVISION

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 22 THE SIERRA CLUB and)
 ENVIRONMENTAL INTEGRITY)
 23 PROJECT,)
 24 Plaintiffs,)
 25 v.)
 26 UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY,)
 27 Defendant.)
 28

Case No. C 11-0846 MEJ

SETTLEMENT AGREEMENT AND RELEASE

1 no obligation to process this request any further.

2 3. **Submission of new request.** Plaintiffs will make a new narrowed request under the
3 FOIA for documents. The request may be accompanied by a request for a fee waiver. The
4 universe of documents Plaintiffs would request will be certain documents pertaining to Luminant
5 Generation Company, LLC (“Luminant”) not to extend beyond "those documents which
6 originated from Luminant and were included in the referral package prepared by the EPA to the
7 Department of Justice ("DOJ") related to the July 13, 2012, Luminant Notice and Finding of
8 Violation."

9 4. **Processing of new request.** If Plaintiffs elect to make a new FOIA request, the
10 EPA will process the new narrowed FOIA request consistent with its regulations under 40 C.F.R.
11 part 2, subpart B, by promptly seeking from Luminant substantiation of any claims that
12 documents responsive to the FOIA request are confidential business information and requesting
13 from Luminant substantiation for any claims that the responsive documents are confidential
14 business information within the minimum 15 working days from Luminant’s receipt of EPA's
15 request for substantiation, subject to 40 C.F.R. § 2.205(b)(2). The EPA would issue a final
16 confidentiality determination with respect to Luminant’s substantiation response covering those
17 documents which originated from Luminant and were included in the referral package prepared
18 by the EPA to the DOJ related to the July 13, 2012, Luminant Notice and Finding of Violation
19 within 140 days of receiving Plaintiffs’ FOIA request. This clause of the Settlement Agreement
20 does not establish either of the Parties as a “prevailing party” for purposes of assessing attorney
21 fees and costs, and is not and cannot under any construction be effective in doing so.
22

23 5. **Dismissal of Action.** Plaintiffs shall immediately upon execution of this
24 Agreement also execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit
25 A. The Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in this action,
26 or that could have been asserted in this action. The fully executed Stipulation of Dismissal will
27 be held by Defendant's attorney and will not be filed until after five (5) business days of receipt
28 by Plaintiff's attorney of EPA’s final confidentiality determination as set forth in paragraph 4,

1 above. Plaintiffs understand and agree that the dismissal will be filed whether or not Plaintiffs
2 decide to challenge the final determination.

3 6. **Release.** Upon issuance by the EPA of the final confidentiality determination,
4 Plaintiffs agree to release Defendant from liability for claims that were or could have been made
5 in this litigation (“Released Claims”). The Agreement bars further action on the Released
6 Claims in any judicial or administrative forum.

7 7. **No Admission of Liability.** This stipulation for compromise settlement is not
8 intended to be, and should not be construed as, an admission of liability, fault on the part of the
9 Defendant, or the validity of any claim asserted in this action. It is specifically denied that
10 Defendant is liable to the Plaintiff. This settlement is entered into by all Parties for the purpose
11 of compromising disputed claims and avoiding the expenses and risks of further litigation.

12 8. **Legal Expenses.** The Parties acknowledge that the resolution of this lawsuit does not
13 resolve the current dispute regarding attorneys’ fees. Nothing in this settlement deems either of
14 the Plaintiffs a “prevailing party” for purposes of attorneys’ fees under the FOIA.

15 9. **Authority.** The persons signing this Agreement warrant and represent that they
16 possess full authority to bind the persons on whose behalf they are signing to the terms of the
17 settlement.

18 Dated this 1st day of October, 2013

19
20 DAVID BAHR

MELINDA HAAG
United States Attorney

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23 /s/ David Bahr
David Bahr (Oregon Bar No. 901990)
24 Barh Law Offices, P.C.
Attorneys for Plaintiff

/s/ Abraham A. Simmons
25 ABRAHAM A. SIMMONS
Assistant United States Attorney
Attorneys for Defendants

26 **ORDER**

27 The Parties having resolved all issues in this litigation, IT IS HEREBY ORDERED that this
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1 action will be dismissed in accordance with the agreement and procedures set forth above.

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Dated: October 2, 2013

Honorable _____ Magistrate Judge

