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Attorney for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL ADVOCATES,

Civ. No. 3:09-cv-00017-PK

Plaintiff,

v.

STIPULATED
SCHEDULE

GARY LOCKE, et al.,

Defendants.

Plaintiff and Defendants in this matter hereby submit this Stipulated and Proposed
Schedule.

STIPULATED

SCHEDULE – 1

U.S. Department of Justice
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WHEREAS, the parties previously settled this matter and the case was dismissed without prejudice pursuant to a September 28, 2010, Agreed Order (ECF Nos. 48, 49);

WHEREAS, the U.S. Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) found on January 30, 2015, that Oregon failed to submit an approvable coastal nonpoint pollution control program;

WHEREAS, given the January 30, 2015, finding, Paragraph 2 of the September 28, 2010 Agreed Order provides:

the agencies shall, pursuant to 16 U.S.C. § 1455b(c)(3) and (4), withhold Clean Water Act Section 319 and Coastal Zone Management Act Section 306 grant funds from Oregon beginning in the funding cycles that immediately follow the agencies' finding and in all future years unless and until EPA and NOAA issue a Full Approval Decision Memorandum approving the State's Coastal Nonpoint Pollution Control Program without conditions.

WHEREAS, the grant amounts the agencies are to withhold under Paragraph 2 of the September 28, 2010, Agreed Order and 16 U.S.C. § 1455b(c) are referred to herein as the "Withholding Amount(s)."

WHEREAS, as of July 1, 2015, NOAA has not made a final decision with respect to federal fiscal year 2015 Coastal Zone Management Act (CZMA) Section 306 grant funds for Oregon;

WHEREAS, as of July 1, 2015, EPA has not made a final decision with respect to federal fiscal year 2015 Clean Water Act (CWA) Section 319 grant funds for Oregon;

WHEREAS, Plaintiff seeks to preserve the opportunity to challenge any EPA and NOAA decisions regarding Section 319 and Section 306 grant awards to Oregon, and Defendants do not intend to deny Plaintiff a full and fair opportunity to challenge any such decision(s) and/or to seek any available relief that would prevent EPA and NOAA from making the Withholding Amounts available to the State of Oregon;

WHEREAS, in a June 17, 2015, letter, EPA and NOAA each agreed to provide notice to Plaintiff through counsel when the agency has decided whether to withhold the Withholding Amounts from Oregon;

WHEREAS, NOAA transmits CZMA Section 306 grant funds to the Oregon Department of Land, Conservation, and Development (ODLCD) using the following method: first, NOAA obligates the CZMA Section 306 funds for use by ODLCD, which means NOAA approves a grant application submitted by ODLCD; and second, NOAA activates a federal account from which ODLCD can drawdown the NOAA monitored and controlled CZMA Section 306 funds subject to any conditions on drawdown and use that may be set by NOAA;

WHEREAS, NOAA currently intends to obligate federal fiscal year 2015 appropriations for CZMA Section 306 grant funds to Oregon on or around July 6, 2015, but, through a grant condition or other means, would not make available the Withholding Amount to ODLCD until at least September 15, 2015;

WHEREAS, any Section 306 Withholding Amounts that are the subject of the grant condition or have otherwise not been made available to ODLCD would remain in a federal account, in NOAA control, and, if obligated, subject to deobligation at some later date;

WHEREAS, EPA transmits CWA Section 319 grant funds to Oregon using the following method: first, EPA approves a grant application submitted by the Oregon Department of Environmental Quality (ODEQ) describing its program implementation plan for the coming grant cycle; and second, EPA activates a federal account from which ODEQ can withdraw the EPA monitored and controlled CWA Section 319 funds subject to any conditions on withdrawal and use that may be set by EPA;

WHEREAS, EPA does not anticipate that it will award any federal fiscal year 2015 CWA Section 319 grant funds for Oregon until late-August or September of 2015, subject to appropriations;

WHEREAS, should EPA decide to award full CWA Section 319 grant funds, EPA would, through a grant condition or other means, restrict ODEQ's access to the Withholding Amount until at least September 15, 2015;

WHEREAS, any CWA Section 319 Withholding Amounts that are subject to any grant restriction or have otherwise not been made available to ODEQ would remain in a federal account and in EPA control;

WHEREAS, Defendants intend this Stipulated and Proposed Schedule only to provide for the efficient judicial resolution of any necessary motions practice, and do not intend it to waive any claims or defenses or as an admission of any fact, or as an admission that the Court currently has jurisdiction over this matter, that Plaintiff is entitled to any relief related to the anticipated grants, or that Plaintiff would have any available remedy under the Agreed Order other than the filing of a new complaint challenging EPA and NOAA actions or alleged failures to act; and

WHEREAS, Plaintiff intends this Stipulated and Proposed Schedule only to provide for the orderly scheduling of a challenge by Plaintiff to any decision by EPA and NOAA to transfer full grant funds to Oregon and does not intend it to be construed as agreement that EPA and NOAA may obligate full grant funds, with or without conditions or restrictions, under the September 28, 2010 Agreed Order and 16 U.S.C. § 1455b(c)(3) and (4), nor agreement that such a challenge would be restricted to the filing of a new complaint challenging EPA and NOAA actions or alleged failures to act,

Plaintiff and Defendants hereby agree as follows:

1. This Stipulated and Proposed Schedule does not supersede, invalidate, alter, or in any way diminish the September 28, 2010, Agreed Order entered in this case.
2. EPA and NOAA will each promptly notify Plaintiff in writing when the agency has made a decision on whether to make available to Oregon the Withholding Amounts. Such notice will include a copy of any decision document, should one be created. Promptly after approving a federal fiscal year 2015 CZMA Section 306 or CWA Section 319 grant for Oregon, EPA and NOAA will each provide Plaintiff a copy of their respective grant and any document establishing any grant restrictions or conditions.
3. Should EPA or NOAA approve full grant amounts for fiscal year 2015, the agency will not make the Withholding Amounts available to Oregon or otherwise allow the State access to the Withholding Amounts until at least 63 days after the notice given pursuant to Paragraph 2.
4. If EPA or NOAA decides not to withhold the Withholding Amounts from Oregon for federal fiscal year 2015, then the parties agree to use the following schedule in any Northwest Environmental Advocates' challenge to such decision(s):
 - a. Within twenty-one days of receiving the notice of decision required by Paragraph 2 of this Order, Plaintiff will file any motion seeking to prevent the agencies from making full grant funding available to Oregon;
 - b. Defendants will file a response to any such motion within fourteen days of Plaintiff's filing of such a motion.
 - c. Plaintiff will file any reply brief within fourteen days of the filing of Defendants' response brief.

5. Should circumstances change that impact the above schedule as EPA and NOAA continue their decision-making, counsel for Plaintiff and Defendants shall confer on any necessary changes to the schedule.

IT IS SO ORDERED.

Date: July 1, 2015


The Honorable Paul Papak
U.S. Magistrate Judge

Presented by:

s/ Paul Kampmeier
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