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FILED
SEP 28 2010

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

NORTHWEST ENVIRONMENTAL ADVOCATES,

Plaintiff,

v.

GARY LOCKE, et al.,

Defendants.

Civ. No. CV09-0017-PK

AGREED ORDER DISMISSING APA CLAIMS WITHOUT PREJUDICE

2014-919500014279

AGREED ORDER

Having considered the parties' joint motion for dismissal of the Administrative Procedure Act claims (claims one, two, and three) in the complaint filed in this action on January 6, 2009, as well as the parties' stipulations in support of that motion, the Court hereby GRANTS the parties' joint motion for dismissal without prejudice.

Accordingly, IT IS HEREBY ORDERED:

1. On or before November 15, 2013, NOAA and EPA shall sign for prompt publication in the Federal Register a notice announcing a proposed decision to either: (a) issue a Full Approval Decision Memorandum approving, without conditions, Oregon's Coastal Nonpoint Pollution Control Program, pursuant to 16 U.S.C. § 1455b(c)(1); or (b) make a finding that the State of Oregon has failed to submit an approvable program, pursuant to 16 U.S.C. § 1455b(c)(3) and (4).

2. On or before May 15, 2014, EPA and NOAA shall either: (a) issue a Full Approval Decision Memorandum approving, without conditions, Oregon's Coastal Nonpoint Pollution Control Program, pursuant to 16 U.S.C. § 1455b(c)(1); or (b) make a finding that the State of Oregon has failed to submit an approvable program, pursuant to 16 U.S.C. § 1455b(c)(3) and (4). If EPA and NOAA make a finding that the State of Oregon has failed to submit an approvable program, 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.

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3. Plaintiff's only judicial remedy for any failure by EPA and NOAA to meet the requirements set forth in Paragraph 1 and 2 of this Agreed Order will be re-initiation of litigation.

4. Within ninety days of entry of this order, EPA and NOAA shall pay Plaintiff a total of eighty-three thousand five hundred dollars and no cents ($83,500.00) for costs and attorneys' fees incurred to date in prosecution of claims one, two, and three. The payment required by this Order shall not in any way limit Plaintiff's right or ability to seek or collect costs and attorney fees incurred in any other lawsuit, including any lawsuit that raises claims identical or similar to those raised in Plaintiff's January 6, 2009, complaint.

5. Pursuant to Federal Rule of Civil Procedure 41(a)(2), claims one, two, and three in the complaint filed in this action on January 6, 2009, are dismissed without prejudice.

6. The Court shall retain jurisdiction to enforce and oversee compliance with the terms and conditions of this Order. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).

IT IS SO ORDERED:

Dated: 9-28-10

Paul J. Papak
United States Magistrate Judge

Presented by:

s/ Paul Kampmeier
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