

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,)

v.)

BUREAU OF SAFETY AND)
ENVIRONMENTAL ENFORCEMENT, et al.,)

Case No. 15-0022 (ABJ)

Defendants.)

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiff Center for Biological Diversity (“Center”) and Defendants Bureau of Safety and Environmental Enforcement (“BSEE”) and the Bureau of Ocean Energy Management (“BOEM”), by and through their respective counsel, hereby stipulate and agree as follows:

1. The parties have agreed to narrow the scope of the FOIA request at issue in this action (which is recited in paragraph 28 of the Complaint) as set forth on Exhibit 1 to this stipulation, which is incorporated herein by reference.

2. BOEM and BSEE will begin providing Plaintiff with a rolling production of non-exempt documents subject to FOIA that are responsive to the FOIA request as narrowed beginning on July 1, 2015, and will complete the production by April 30, 2016.

3. Plaintiff shall be paid a lump sum of \$2,507.60 in attorneys’ fees and costs in this matter (the “Payment”). Plaintiff agrees that payment of this sum shall constitute full and final settlement of all claims by Plaintiff for fees, costs, and expenses against BOEM and BSEE in this action.

4. The Payment will be made by BOEM and/or BSEE by an electronic funds transfer to the Center pursuant to instructions from Plaintiff’s counsel. Upon execution of this Stipulation

of Settlement and Dismissal (“Stipulation of Settlement”) by the parties and the filing of the Stipulation with the Court, BOEM and/or BSEE promptly will complete and transmit the documentation necessary to effectuate this payment.

5. This Stipulation of Settlement shall not constitute an admission of liability or fault on the part of BOEM, BSEE or the United States or their agents, servants, or employees, and is entered into by Plaintiff and Defendants for the sole purpose of compromising disputed claims as between them and avoiding the expenses and risks of further litigation.

6. The parties agree that this Stipulation of Settlement will not be used by Plaintiff as evidence or otherwise in any pending or future civil or administrative action against BOEM, BSEE or the United States, or any agency or instrumentality of the United States, except an action to enforce the terms of this Stipulation of Settlement.

7. This Stipulation of Settlement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Execution of this Stipulation of Settlement by counsel for Plaintiff and by counsel for Defendants shall constitute a dismissal with prejudice of all claims asserted against Defendants in this action, as well as the dismissal of this action with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). However, nothing in this Stipulation of Settlement precludes Plaintiff from instituting independent actions challenging BOEM and/or BSEE’s withholding of responsive documents, including its application of FOIA exemptions, in processing documents responsive to the request as set forth in paragraphs 1 and 2 above.

9. The persons signing this Stipulation of Settlement warrant and represent that they possess full authority to bind the party on whose behalf they are signing to the terms of the Stipulation.

10. This Stipulation of Settlement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same document. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

IN WITNESS WHEREOF, the parties hereto, by and through their authorized counsel, intending to be legally bound, have executed this Stipulation on the dates shown below.

FOR PLAINTIFF:

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EXHIBIT 1 TO STIPULATION

Stipulated Narrowed FOIA Request Terms

ORIGINAL REQUEST ITEM (1): All records identifying any wells in the Gulf of Mexico OCS Region where hydraulic fracturing (“fracking”) has been used since January 1, 1990:

NARROWED REQUEST: BSEE and the Center agree to limit the scope to, for active and inactive wells: (1) all documents responsive to Item 1 generated by the agency, or any other entity who is not a lessee, owner or holder of operating rights, or a designated operator or agent of the lessee(s), from 2010 to the date of the FOIA request (i.e., October 10, 2014); and (2) all documents responsive to Item 1 submitted by a lessee, owner or holder of operating rights, or a designated operator or agent of the lessee(s) to BSEE from 2010 to the date of the FOIA request (i.e., October 10, 2014), with the portions of those documents covered by 30 C.F.R. § 250.197 redacted.

ORIGINAL REQUEST ITEM (2): All records relating to decisions to approve fracking in any wells in the Gulf of Mexico OCS Region since January 1, 1990”

NARROWED REQUEST: BSEE and the Center agree to limit the scope to, for active and inactive wells: (1) all documents responsive to Item 2 generated by the agency, or any other entity who is not a lessee, owner or holder of operating rights, or a designated operator or agent of the lessee(s), from 2010 to the date of the FOIA request (i.e., October 10, 2014); and (2) all documents responsive to Item 2 submitted by a lessee, owner or holder of operating rights, or a designated operator or agent of the lessee(s) to BSEE from 2010 to the date of the FOIA request (i.e., October 10, 2014), with the portions of those documents covered by 30 C.F.R. § 250.197 redacted.

ORIGINAL REQUEST ITEM (3): All records relating to any analysis or conclusions under the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., in connection with any proposal to engage in fracking in the Gulf of Mexico OCS Region, including but not limited to, analysis and conclusions in connection with any Applications for Permits to Drill (“APDs”) and/or Applications for Permits to Modify (“APMs”) involving fracking:

NARROWED REQUEST (For BOEM): BOEM and the Center agree to limit the timeframe of the responsive records to the period that goes from January 1, 2012 to the date of the FOIA request (i.e., October 10, 2014), and to reduce the scope of the search to final Environmental Assessments (“EAs”) and supplemental EAs prepared by BOEM in connection with proposals to engage in fracking in the Gulf of Mexico OCS Region. In addition, the scope of this request is limited to responsive records that BOEM has not posted online.

NARROWED REQUEST (For BSEE): BSEE and the Center agree that BSEE will conduct a search for responsive documents with NEPA conclusions or analysis pertaining to its approval of APDs and APMs involving hydraulic fracturing from 2010 to the date of the FOIA request (i.e., October 10, 2014).

ORIGINAL REQUEST ITEM (4): All records relating to any analysis or consultations – both informal and formal – under the Endangered Species Act, 16 U.S.C. § 1531, et seq., in connection with any proposal to engage in fracking in the Gulf of Mexico OCS Region, including but not limited to, analysis and consultations in connection with any APDs and/or APMs involving fracking”

NARROWED REQUEST (For BOEM): BOEM and the Center agree to limit the timeframe of the responsive records to the period that goes from January 1, 2012 to the date of the FOIA request (i.e., October 10, 2014). In addition, the scope of this request is limited to responsive records that BOEM has not posted online.

NARROWED REQUEST (For BSEE): BSEE and the Center agree that BSEE will conduct a search for responsive documents with ESA conclusions or analysis pertaining to its approval of APDs and APMs involving hydraulic fracturing from 2010 to the date of the FOIA request (i.e., October 10, 2014).

ORIGINAL REQUEST ITEM (5): All records of communications between the Bureau of Ocean Energy Management and/or the Bureau of Safety and Environmental Enforcement and other federal and/or state agencies and/or regulated entities regarding fracking in the Gulf of Mexico OCS Region:

NARROWED REQUEST (For BOEM): BOEM and the Center agree to limit the scope of this request to external communications from BOEM to other federal, state, and regulated entities regarding fracking from January 1, 2013 to the date of the FOIA request (i.e., October 10, 2014).

NARROWED REQUEST (For BSEE): BSEE and the Center agree to limit the scope of this request to external communications from BSEE to other federal, state, and regulated entities regarding fracking from two years prior to the date of the FOIA request (i.e., October 10, 2014).

ORIGINAL REQUEST ITEM (6): All Development Operations Coordination Documents for oil and gas drilling operations in the Gulf of Mexico OCS Region where fracking has been used or proposed for use.

NARROWED REQUEST: BOEM and the Center agree to limit the scope of this request to all revisions to DOCs not posted online for oil and gas drilling operations in the Gulf of Mexico OCS region where fracking has been used or proposed. The scope, therefore, excludes DOCs posted online and proprietary versions of DOCs not posted online. The timeframe for this search extends to one year prior to the date of the FOIA request (i.e., from October 11, 2013 to October 10, 2014).