

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**NATURAL RESOURCES DEFENSE COUNCIL, INC., )  
CENTER FOR BIOLOGICAL DIVERSITY, GULF )  
RESTORATION NETWORK, AND SIERRA CLUB, )**

**Plaintiffs, )**

**v. )**

**DAVID BERNHARDT, SECRETARY OF THE )  
DEPARTMENT OF THE INTERIOR, BUREAU OF )  
OCEAN ENERGY MANAGEMENT, DR. WALTER )  
CRUICKSHANK, ACTING DIRECTOR, OF BUREAU )  
OF OCEAN ENERGY MANAGEMENT, AND )  
NATIONAL MARINE FISHERIES SERVICE, )**

**Defendants, )**

**and )**

**AMERICAN PETROLEUM INSTITUTE, )  
INTERNATIONAL ASSOCIATION OF )  
GEOPHYSICAL CONTRACTORS, INDEPENDENT )  
PETROLEUM ASSOCIATION OF AMERICAN, U.S. )  
OIL AND GAS ASSOCIATION, AND CHEVRON )  
U.S.A., INC., )**

**Intervenor-Defendants. )**

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**NO. 2:10-cv-01882**

**SECTION "A"**

**JUDGE JAY C. ZAINEY**

**MAGISTRATE JUDGE**

**JOSEPH C. WILKINSON**

**CONSENT MOTION FOR APPROVAL OF FOURTH STIPULATED  
AMENDMENT OF SETTLEMENT AGREEMENT**

Pursuant to LR 7.1 and LR 7.3 and paragraph XI.B of the Settlement Agreement (“Agreement”) (ECF No. 118-2) approved by the Court on June 25, 2013 (ECF No. 119), the Parties, by and through undersigned counsel, respectfully request that the Court enter an order approving the attached Fourth Stipulated Amendment of Settlement Agreement (hereinafter “Fourth Stipulation”). The Fourth Stipulation, which has been executed on behalf of all of the

Parties, would amend the Agreement, as previously amended by stipulation on February 10, 2016 (ECF Nos. 127-2 & 128), September 27, 2017 (ECF Nos. 143-2 & 144), March 7, 2019 (ECF Nos. 154-156), and November 26, 2019 (ECF Nos. 161-162) by extending the current Stay of all proceedings subject to the previously-stipulated conditions on deep penetration seismic surveys in the Gulf of Mexico permitted by the Bureau of Ocean Energy Management (“BOEM”). Specifically, under the Fourth Stipulation the Stay will be extended until: (1) May 5, 2020 if Final Action (as that term is defined in the Agreement) has not occurred by that date; or (2) if Final Action has occurred by that date, 90 days after publication of the Marine Mammal Protection Act final rule in the Federal Register.

The extension is warranted due to the highly complex nature of the proposed Marine Mammal Protection Act (“MMPA”) rule and the length of time that is expected to be required for the rule to undergo interagency review pursuant to E.O. 12866 and become legally effective. The National Marine Fisheries Service (“NMFS”) does not anticipate that these events will occur prior to January 9, 2020, the current date for expiration of the Stay in the Settlement Agreement. By way of example, interagency review of the proposed rule required some eight months (from October 2, 2017 to June 11, 2018). During the period of the continued Stay, the Fourth Stipulation retains the key components of the Settlement Agreement, as amended, which have been successfully implemented to date. *See* ECF No. 118-1 at 7-10. The modifications to the Settlement Agreement made by the Fourth Stipulation are fair and reasonable and are the product of good-faith negotiations conducted by all of the Parties. Approving the Fourth Stipulation is intended to lead to the voluntary dismissal of this action, thereby conserving judicial resources. Accordingly, the Parties submit that approval of the Fourth Stipulation would be an appropriate exercise of the Court’s discretion and they respectfully request that their consent motion for approval of the Fourth Stipulation be granted.

Respectfully submitted this 8th day of January, 2020.

*For Plaintiffs Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club:*

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*For Federal Defendants David Bernhardt, Secretary of the Department of the Interior; the Bureau of Ocean Energy Management (“BOEM”); Dr. Walter Cruickshank, Acting Director, BOEM, and National Marine Fisheries Service:*

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/s/ Robert P. Williams

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2020, the foregoing document was filed with the United States District Court for the Eastern District of Louisiana's electronic filing system for service on all parties:

/s/ Robert P. Williams

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**NATURAL RESOURCES DEFENSE COUNCIL )  
INC., *et. al*, )**

**Plaintiffs, )**

**v. )**

**DAVID BERNHARDT, SECRETARY OF THE )  
DEPARTMENT OF THE INTERIOR, BUREAU )  
OF OCEAN ENERGY MANAGEMENT, DR. )  
WALTER CRUICKSHANK, ACTING )  
DIRECTOR, OF BUREAU OF OCEAN )  
ENERGY MANAGEMENT, AND NATIONAL )  
MARINE FISHERIES SERVICE, )**

**Defendants, )**

**and )**

**AMERICAN PETROLEUM INSTITUTE, *et al*, )**

**Intervenor-Defendants. )**

**CIVIL ACTION NO. 2:10-cv-01882**

**SECTION "A"**

**JUDGE JAY C. ZAINEY**

**MAGISTRATE JUDGE  
JOSEPH C. WILKINSON**

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**FOURTH STIPULATED AMENDMENT OF SETTLEMENT AGREEMENT**

Pursuant to paragraph XI.B of the Settlement Agreement ("Agreement") (ECF No. 118-2), approved by Order of the Court dated June 25, 2013 (ECF No. 119), Plaintiffs (Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club), Federal Defendants (David Bernhardt, Secretary of the Department of the Interior; the Bureau of Ocean Energy Management ("BOEM"); Dr. Walter Cruickshank, Acting Director, BOEM; and the National Marine Fisheries Service ("NMFS")), and Intervenor-Defendants (American Petroleum Institute, International Association of Geophysical Contractors, Independent Petroleum Association of America, U.S. Oil and Gas Association, and Chevron

U.S.A., Inc.), collectively the “Parties,” by and through undersigned counsel, hereby stipulate to amend the Agreement as follows:

1. This Fourth Stipulated Amendment (hereinafter “Fourth Stipulation”) shall take effect when: (a) it is executed by an authorized representative of each Party; and (b) the Court enters an Order, substantively identical to the proposed order attached as Exhibit 1 hereto, approving the Fourth Stipulation and extending the Stay of proceedings in this matter in accordance with the Fourth Stipulation’s terms.

2. Except to the extent expressly modified by this Fourth Stipulation, all terms and definitions contained in the Agreement, as modified by the First, Second, and Third Amendments thereto (ECF No. 127-1 (“First Stipulation”), ECF No. 143-2 (“Second Stipulation”), and ECF No. 154-1 (“Third Stipulation”)), continue to apply in full force and effect during the extended Stay period. To the extent the terms and/or definitions of the Agreement differ from the terms of this Fourth Stipulation, this Fourth Stipulation controls.

3. Paragraphs II.A and II.I of the Agreement, as amended, are further amended such that the Stay described therein shall terminate (except as provided in paragraphs II.D, II.E, and II.H of the Agreement) on: (1) May 5, 2020 if Final Action (as that term is defined in the Agreement) has not occurred by that date; or (2) if Final Action has occurred by that date, 90 days after publication of the Marine Mammal Protection Act final rule in the Federal Register.

4. Paragraph III.A of the Agreement is amended such that Plaintiffs shall file the notice of dismissal referenced therein within seven days of the Stay having terminated as a result of 90 days having passed after publication of the Marine Mammal Protection Act final rule in the Federal Register (preceded or accompanied by: (a) a biological opinion or “not likely to adversely affect” concurrence letter from NMFS concluding consultation pursuant to ESA

Section 7(a)(2); and (b) the completion of an EIS/ROD or EA/FONSI pursuant to NEPA; and pursuant to paragraphs II.A and II.I of the Agreement, as amended).

5. The terms of this Fourth Stipulation have been agreed to for purposes of compromise. No party concedes by entering into this Fourth Stipulation that any permit requirements heretofore agreed to are warranted by scientific evidence or should be imposed after the Stay expires, or that these requirements are sufficient to achieve legal compliance or reduce biological risk over the long term.

Respectfully submitted this 8th day of January, 2020.

*For Plaintiffs Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club:*

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*For Federal Defendants David Bernhardt, Secretary of the Department of the Interior; the Bureau of Ocean Energy Management (“BOEM”); and Dr. Walter Cruickshank, Acting Director, BOEM, and National Marine Fisheries Service:*

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*For Intervenor-Defendants American Petroleum Institute, International Association of Geophysical Contractors, Independent Petroleum Association of America, and US Oil & Gas Association:*

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**Exhibit 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**NATURAL RESOURCES DEFENSE COUNCIL** )  
**INC., et al.,** )

**Plaintiffs,** )

**v.** )

**DAVID BERNHARDT, SECRETARY OF THE** )  
**DEPARTMENT OF THE INTERIOR, BUREAU** )  
**OF OCEAN ENERGY MANAGEMENT, DR.** )  
**WALTER CRUICKSHANK, ACTING** )  
**DIRECTOR, OF BUREAU OF OCEAN ENERGY** )  
**MANAGEMENT, AND NATIONAL MARINE** )  
**FISHERIES SERVICE,** )

**Defendants.** )

**and** )

**AMERICAN PETROLEUM INSTITUTE, et al.,** )

**Intervenor-Defendants.** )

**CIVIL ACTION NO. 2:10-cv-01882**

**SECTION "A"**

**JUDGE JAY C. ZAINEY**

**MAGISTRATE JUDGE  
JOSEPH C. WILKINSON**

**ORDER APPROVING FOURTH STIPULATED  
AMENDMENT TO SETTLEMENT AGREEMENT**

This matter is before the Court on the parties' Consent Motion for Approval of Fourth Stipulated Amendment of Settlement Agreement ("Fourth Stipulation").

For good cause shown, it is hereby ORDERED that the parties' Consent Motion is GRANTED. It is further ORDERED that the Fourth Stipulation is APPROVED and ADOPTED. The stay of all proceedings in this matter is hereby extended in accordance with the terms of the Stipulation.

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Judge of the United States District Court

