

**SETTLEMENT AGREEMENT
CONCERNING COUNT II OF PLAINTIFFS' COMPLAINT**

The Parties, Center for Biological Diversity (CBD) and Friends of the Earth (FOE), (“Plaintiffs”) and the Department of Energy, the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Department of Veterans Affairs, the Central Intelligence Agency, the Department of Homeland Security, the Executive Office of the President, the Federal Communications Commission, and the General Services Administration (“Defendants”) hereby agree to resolve Plaintiffs’ second claim for relief in Center for Biological Diversity and Friends of the Earth v. U.S. Department of Energy, et al., (N.D. Cal. No. 2005 cv. 1526 WHA) as follows:

Whereas the Energy Policy Act of 1992, (the “Act”) requires that for fiscal years 1999 and later, at least 75% of new light duty vehicles (as defined in the Act) acquired by components of the federal government that are covered by the Act, which includes the Department of Commerce (“DOC”), the Department of Labor (“DOL”), the Department of Transportation (“DOT”) and the Department of Veterans Affairs (“VA”) shall be alternative fuel vehicles (“AFVs”), 42 U.S.C. § 13212(b)(1)(D); and

Whereas for fiscal years 1999, 2000, 2001, 2002, and 2003, DOC, DOL, DOT and VA failed to comply with the Act’s requirement that at least 75% of new light duty vehicles be AFVs; and

Whereas in fiscal year 2004, only 46% of DOC’s newly acquired light duty vehicles were AFVs as opposed to the 75% required by law; and

Whereas in fiscal year 2004, only 3% of DOL’s newly acquired light duty vehicles were AFVs as opposed to the 75% required by law; and

Whereas in fiscal year 2004, only 29% of DOT’s newly acquired light duty vehicles were

AFVs as opposed to the 75% required by law; and

Whereas in fiscal year 2004, only 24% of VA's newly acquired light duty vehicles were AFVs as opposed to the 75% required by law;

Now, therefore the Parties agree to settle and resolve Plaintiffs' second claim for relief as follows:

The Parties agree that:

1. (a) In fiscal year 2006, 75% of the newly acquired light duty vehicles covered by the Act acquired by DOC shall be AFVs.

(b) In fiscal year 2007, 75% of the newly acquired light duty vehicles covered by the Act acquired by DOC shall be AFVs.

(c) In fiscal year 2008, 75% of the newly acquired light duty vehicles covered by the Act acquired by DOC shall be AFVs.

2. (a) In fiscal year 2006, 50% of the newly acquired light duty vehicles covered by the Act acquired by DOL shall be AFVs.

(b) In fiscal year 2007, 60% of the newly acquired light duty vehicles covered by the Act acquired by DOL shall be AFVs.

(c) In fiscal year 2008, 75% of the newly acquired light duty vehicles covered by the Act acquired by DOL shall be AFVs.

3. (a) In fiscal year 2006, 50% of the newly acquired light duty vehicles covered by the Act acquired by DOT shall be AFVs.

(b) In fiscal year 2007, 65% of the newly acquired light duty vehicles covered by the Act acquired by DOT shall be AFVs.

(c) In fiscal year 2008, 75% of the newly acquired light duty vehicles covered by the Act acquired by DOT shall be AFVs.

4. (a) In fiscal year 2006, 50% of the newly acquired light duty vehicles covered by the Act acquired by VA shall be AFVs.

(b) In fiscal year 2007, 65% of the newly acquired light duty vehicles covered by the Act acquired by VA shall be AFVs.

(c) In fiscal year 2008, 75% of the newly acquired light duty vehicles covered by the Act acquired by VA shall be AFVs.

5. On or before March 15, 2007, March 15, 2008, and March 15, 2009, respectively, DOC, DOL, DOT, and VA shall each deliver to Plaintiffs a copy of the report that they are required to submit to Congress and post on an Agency website by 42 U.S.C. § 13218(b) for the prior fiscal year. The reports shall be delivered to Plaintiffs' counsel, James J. Tutchton at the Environmental Law Clinical Partnership, University of Denver, Sturm College of Law, 2255 E. Evans Ave., Room 365h, Denver, Colorado 80208. Plaintiffs shall be responsible for notifying Defendants of any change in address or legal counsel.

6. Defendants agree that Plaintiffs are the prevailing party on their second claim for relief and that Defendants DOC, DOL, DOT, and VA agree jointly to pay Plaintiffs the sum of \$5,000 under the Equal Access to Justice Act. In consideration for this payment, Plaintiffs agree to release all Defendants from any and all claims for attorney fees and costs arising out of their Second Claim for Relief, as of the date of the dismissal of this claim pursuant to paragraph 7.

7. Within five days of the execution of this Agreement, Plaintiffs will dismiss their Second Claim for Relief (Complaint ¶¶ 135-37), against defendants DOC, DOL, DOT, and VA with prejudice, subject to Plaintiffs' rights herein. If DOC, DOL, DOT, or VA, shall fail to: (1) meet the minimum AFV purchase requirements agreed to in paragraphs 1-4 of this Agreement; (2) provide Plaintiffs with a copy of their annual reports on the dates set forth in paragraph 5 of this Agreement; or (3) pay attorneys' fees as forth in paragraph 6 of this Agreement, Plaintiffs may request this Court to re-open their Second Claim for Relief and proceed to litigate the merits of this claim. For this purpose, the Parties request that this Court retain jurisdiction over this claim until April 15, 2009. Plaintiffs' right to reinstitute suit under this paragraph shall be their exclusive remedy for any violation of this agreement by DOC, DOL, DOT or VA. Within five

days of the execution of this agreement, Plaintiffs will dismiss their Second Claim for relief (Complaint ¶¶ 135-37), against all other Defendants with prejudice.

8. Plaintiffs agree to withdraw all outstanding discovery requests against the nine Defendants on which Plaintiffs have served Interrogatories, Requests for Production of Documents and Requests for Admission between August 8 and August 15, 2005.

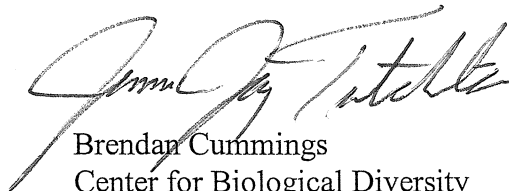
9. The Parties through their counsel have negotiated the terms of this Agreement. Any rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. This Agreement shall be construed as if drafted by both Parties.

10. No provisions hereof can be waived unless done so expressly and in writing. Express waiver of any one provision shall not be deemed a waiver of any other provision.

11. This Agreement contains the entire agreement between the Parties to this Agreement, and all previous understandings, agreements, and communications prior to the date hereof, whether express or implied, oral or written, relating to the subject matter of this Agreement, are fully and completely extinguished and superseded by this Agreement. This Agreement shall not be altered, amended, modified, or otherwise changed except by a writing duly signed by the Parties hereto.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

DATED: November 30, 2005



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Dated: November 28, 2005

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