

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is made and entered into by and between, on the one hand, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency, Region 1 of the United States Environmental Protection Agency, Gina McCarthy in her official capacity as Administrator, and H. Curtis Spalding in his official capacity as Regional Administrator (collectively, "EPA"), and on the other hand, Conservation Law Foundation ("CLF" or "Plaintiff").

WHEREAS, on August 24, 2010, CLF filed a complaint in the United States District Court for the District of Massachusetts (the "Court"), captioned *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:10-cv-11455 (the "First TMDL Action"), challenging EPA's approval of thirteen (13) Total Maximum Daily Load ("TMDL") determinations submitted to EPA by the Commonwealth of Massachusetts ("Commonwealth") under section 303(d), 33 U.S.C. § 1313(d), of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1251-1387, as arbitrary and capricious, an abuse of discretion, and in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2);

WHEREAS, on September 19, 2011, CLF filed a complaint, captioned *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:11-cv-11657 (the "Section 208 Action"), alleging, *inter alia*, that EPA (i) failed to perform non-discretionary duties under section 208 of the CWA, 33 U.S.C. § 1288 ("Areawide waste treatment management") and (ii) issued determinations under sections 601-606 of the CWA, 33 U.S.C. §§ 1381-1386 ("State Water Pollution Control Revolving Funds"), that were arbitrary, capricious, contrary to law or otherwise in violation of the Administrative Procedure Act;

WHEREAS, on or about August 23, 2013, the Court, after hearing oral argument, issued orders dismissing the First TMDL Action for lack of jurisdiction and further dismissing three of the four Counts contained in the Section 208 Action.

WHEREAS, on October 24, 2013, CLF filed a complaint in the United States District Court for the District of Massachusetts (the "Court"), captioned *Conservation Law Foundation v. United States Environmental Protection Agency, et al.*, Action No. 1:13-12704 (the "Second TMDL Action"), challenging EPA's approval of the same thirteen (13) TMDL determinations that were the subject of CLF's challenge in the First TMDL Action;

WHEREAS, the dismissal of the First TMDL Action was not timely appealed and WHEREAS on January 28, 2014, the Court issued an order staying the remaining Count in the Section 208 Action until June 1, 2015;

WHEREAS, the Parties now desire to settle, compromise and finally resolve all aspects of the Active Litigation (defined below), without any admission of fact or law, on the terms hereinafter set forth, which they consider to be a just, fair, adequate, and equitable resolution of the claims raised in the Active Litigation; and

WHEREAS, the Parties agree that it is in the interest of the public, the Parties, and judicial economy to resolve the Active Litigation, including Plaintiff's claims for attorneys' fees

and costs, without the burden, distraction, expense and uncertainty of further and protracted litigation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, **THE PARTIES HEREBY AGREE** as follows:

I. DEFINITIONS

In addition to those terms defined in parentheses elsewhere in this Settlement Agreement, the following definitions shall apply in this Settlement Agreement:

- A. "Active Litigation" means the Section 208 Action and the Second TMDL Action and all claims raised in either such Action.
- B. "Barnstable County" means Barnstable County, Massachusetts.
- C. "Cape Cod" means the Cape Cod Basin Planning Area as set forth in the 1976 Cape Cod Water Quality Management Plan at 12 (Figure 1-2).
- D. The "Cape Cod Islands" means the islands of Nantucket, Martha's Vineyard, and the Elizabeth Islands.
- E. The "Cape Cod Towns" means the Massachusetts towns of Falmouth, Sandwich Bourne, Mashpee, Barnstable, Brewster, Harwich, Chatham, Orleans, Eastham, Wellfleet, Truro, Dennis, Yarmouth and Provincetown.
- F. "Commission" or "CCC" means the Cape Cod Commission.
- G. "Commonwealth" means the Commonwealth of Massachusetts and all instrumentalities thereof, including but not limited to MassDEP.
- H. "Effective Date" means the date on which the Court issues the Final Order.
- I. "EPA Preliminary Actions" means those actions described at paragraphs III,A-D below.
- J. "EPA Additional Actions" means those actions described at paragraph V below.
- K. "Final Order" means the Order set forth at Ex. A hereto, or a similar form of Order to which all Parties agree in consultation with the Court.
- L. "Management Agency or Agencies" means those one or more agencies, authorities or entities designated by the Commonwealth or the Commission and accepted by EPA, in accordance with section 208(c) of the CWA, 33 U.S.C. § 1288(c).
- M. "MassDEP" means the Massachusetts Department of Environmental Protection.

N. "Parties" means CLF and the United States.

O. "Section 208 Plan Update" for Cape Cod means the update relative to nutrients in the waters in and around Cape Cod of the existing, prior-approved Section 208 Water Quality Management Plan for Cape Cod (1978), prepared by the Commission pursuant to 40 C.F.R. § 130.6(e), which the Commonwealth submits to EPA for approval.

P. "Signature Date" shall be the date on which all required signatures are affixed to this Settlement Agreement.

II. INITIAL ACTIONS: SUBMISSION TO THE COURT OF JOINT MOTION TO STAY THE ACTIVE LITIGATION PENDING SPECIFIED ACTIONS AND TO DISMISS THE ACTIVE LITIGATION UPON COMPLETION OF DESIGNATED EVENTS

A. Within ten (10) days of the Signature Date of this Settlement Agreement, the United States shall file with the Court the Joint Motion for Stay of Proceedings and eventual Dismissal of the Active Litigation ("Joint Motion") attached hereto at Ex. B. The Joint Motion shall:

1. Request an extension of the stay of the Section 208 Action from June 1, 2015 to September 15, 2015, and shall further request a stay of the Second TMDL Action until September 15, 2015, to allow time for the parties to complete the actions enumerated herein; and
2. Request Dismissal with prejudice of all Active Litigation upon the completion of certain specified actions enumerated herein, including all claims in the Active Litigation as well as any and all claims raised in the First TMDL Action to the extent they can be reinstated or reasserted in any forum.

B. The Joint Motion shall attach the proposed Final Order, which calls for the Court to order each of the actions requested in Paragraph II,A,1-2 above.

C. This Settlement Agreement shall not become effective unless and until the Court issues the Final Order.

III. EPA PRELIMINARY ACTIONS

A. Within 15 days of the Court's entry of the Final Order, EPA will transmit a letter to MassDEP, CCC, Barnstable County and the Cape Cod Towns describing the Court's supervisory role during the stay of proceedings in the 208 Action. EPA's letter will emphasize the importance of MassDEP/CCC honoring the representations made to the Court by EPA, the Commonwealth, and CCC on September 27, 2013, regarding the schedule for completing the Section 208 Update.

B. Within 15 days of the Court's entry of the Final Order, EPA will transmit a letter to MassDEP and CCC outlining EPA's expectation that, at the time of submission of the Section 208 Update to EPA for approval, MassDEP and/or CCC will designate a waste treatment Management Agency or Agencies pursuant to CWA § 208(c)(1) and will demonstrate that any such designated Agency(ies) possesses adequate authority to carry out the provisions of the Section 208 plan, as updated and approved, as set forth in CWA § 208(c)(2).

C. Within 45 days of the Court's entry of the Final Order, EPA will transmit a letter to MassDEP and the Massachusetts Water Pollution Abatement Trust ("Trust") outlining to the Commonwealth its statutory responsibility under CWA § 603(f) (Consistency With Planning Requirements) to ensure that projects funded through the Massachusetts Clean Water State Revolving Fund are consistent with relevant plans, "if any, developed under sections 1285(j), 1288, 1313(e), 1329, and 1330 of this title [Title 33 of the U.S. Code]," in accordance with CWA § 603(f). Such letter will further remind the Commonwealth that it is to make available to EPA such records that EPA reasonably requires of that consistency review, in accordance with CWA § 606(e) (Annual Federal Oversight Review).

D. Within 75 days of the Court's entry of the Final Order, EPA will encourage MassDEP in writing with regard to all future nitrogen TMDLs submitted by MassDEP to EPA for approval related to waters and embayments in Cape Cod, to consider, based on then currently available information and data, impacts that climate change may have on nitrogen loading and transport in the embayments and waters that are the subject of the TMDL; and, to the extent sufficient information and data are available to assess that impact, consider whether such effects should be incorporated in setting the loads in the TMDL, in setting the margin of safety, and/or in adjusting the implementation plan and its activities.

E. For each of the EPA Preliminary Actions set forth in III. A-D of this Settlement Agreement, EPA shall send copies of the letters referenced in these provisions to CLF and CLF shall have thirty (30) days from the specific due date for each action to inform EPA in writing that it believes that EPA has failed to carry out the specified action in accordance with the terms of this Settlement Agreement. If no such notice is sent within thirty (30) days, the action shall be deemed to have been completed. If such written notice is sent by CLF, the parties shall have sixty (60) additional days to attempt to resolve any dispute as to whether EPA has completed the specified action in accordance with the terms of the Settlement Agreement and EPA shall have such sixty-day time period to cure any defect in its performance of the specified action. In the event CLF continues after the 60-day cure period to take the position that EPA has failed to perform the specified action in accordance with the terms of the Settlement Agreement, the parties shall jointly request that the Court resolve the issue of whether EPA has complied with the condition.

IV. EPA REVIEW AND APPROVAL OF 208 PLAN UPDATE AND DESIGNATED MANAGEMENT AGENCIES

A. Upon Receipt of the Section 208 Plan Update certified by the State, EPA shall review it and, if appropriate, approve the Section 208 Plan Update and the designation by the Commonwealth of the Management Agency or Agencies, said approvals to be conducted in accordance with 33 U.S.C. § 1288 and applicable implementing regulations.

B. In order to facilitate the process of EPA's review and potential approval of the Section 208 Plan Update and acceptance of the designation of the Management Agency or Agencies, the Parties shall, as set forth in paragraph II.,A above, seek a stay of the Active Litigation until September 15, 2015.

C. Nothing in this Settlement Agreement shall be construed to require EPA to take any action to approve any Section 208 Plan or Section 208 Plan Update submitted by the Commonwealth, the Commission or any other entity, or otherwise to require the Commonwealth, the Commission or any other entity to submit a final Section 208 Plan Update for EPA approval. EPA will exercise its independent discretion and judgment in reviewing and, if appropriate, approving any Section 208 Plan Update and/or accepting any Management Agency designation(s) submitted to EPA for those purposes. Nothing in this Settlement Agreement shall be construed to limit or restrict CLF's ability to challenge in a separate action filed in accordance with law EPA's approval of the Section 208 Plan Update.

D. In the event EPA does not carry out all of the EPA Preliminary Actions set forth in Section III. A-D within the time periods set forth therein and/or does not approve, by September 15, 2015, any certified Section 208 Plan Update for Cape Cod that the Commonwealth may submit to EPA, the sole remedy for CLF shall be to move to have the stays in the Active Litigation lifted, with the right to pursue its claims in the Active Litigation in accordance with applicable law. The Parties may agree in writing to extend the time for EPA's performance of the EPA Preliminary Actions and/or the approval required under Section IV.B above by September 15, 2015. In no event shall either this Settlement Agreement or any filing with the Court made in conjunction with this Settlement Agreement be construed as providing a basis for the Court to affirmatively enjoin, require specific performance of, or otherwise order EPA to complete any of the specified actions set forth herein.

V. ADDITIONAL EPA ACTIONS

A. If EPA approves the Section 208 Plan Update, then in connection with EPA's subsequent Annual Oversight Reviews pursuant to CWA § 606(e), EPA commits to consider whether the Commonwealth has complied with its responsibilities under CWA § 603(f) (Consistency with Planning Requirements) to: (i) provide financial assistance from the State Revolving Fund (SRF) governed by Title VI of the CWA only for those projects on Cape Cod that are consistent with any updated and approved Section 208 plan developed for Cape Cod and; (ii) make available a record of that consistency review to EPA in accordance with CWA § 606(e) (Annual Federal Oversight Review).

B. Contingent upon funding availability, EPA will prepare an analysis to identify steps that could be taken to improve knowledge and understanding of potential impacts from climate change on nitrogen in Cape Cod waters. The analysis will compile a list of existing studies, modeling, monitoring, and other currently available data pertinent to Cape Cod waters; identify information and data gaps; and identify future studies that would be helpful.

C. For a period of six years beyond the date of EPA's acceptance of one or more Management Agencies designated under CWA § 208(c)(2), EPA will assess at reasonable intervals but at least twice (in two separate years including the fourth year of such six-year period), the actions being taken by the Commonwealth and any approved Management Agency or Agencies to implement the procedures and actions called for in any approved Section 208 plan for Cape Cod (including any approved subsequent plan update) to reduce nitrogen loads. Based on such assessments, and in EPA's sole discretion, EPA may notify the Commonwealth of the need for such Management Agency or Agencies to take additional actions to implement the approved Section 208 plan/update, or that a new update of the Section 208 Plan (and resubmission to EPA of one or more designated Management Agencies for EPA acceptance) is needed.

D. In the event CLF or any member or affiliate thereof files in a court a challenge to EPA's approval of the Section 208 Plan Update, EPA's responsibility to take any of the actions set forth in Paragraph V,A-C above shall be extinguished, although EPA may on its own nevertheless choose to take such actions.

VI. ACTIONS TO BE TAKEN BY CLF

A. CLF covenants that it will not bring suit against EPA or the United States (or any component, officer or employee thereof) during the pendency of the stay of the Active Litigation to contest or otherwise challenge EPA's approval of any nitrogen TMDLs submitted by MassDEP for waters of Cape Cod or the Cape Cod Islands, nor will CLF or its employees or representatives, during the pendency of the stay of the Active Litigation, provide assistance to any person who does or seeks to challenge a TMDL approval or process related to the waters of Cape Cod or the Cape Cod Islands. However, CLF expressly retains the right to (i) provide public comment on any draft TMDLs prior to their submission to EPA for approval, (ii) make public statements (including without limitation press releases and responses to inquiries from the press) concerning EPA's approval of any Cape Cod or the Cape Cod Islands TMDL, (iii) confer with its membership and others regarding EPA's approval of any Cape Cod or the Cape Cod Islands TMDL, and (iv) move to intervene in a court action filed by a third party challenging EPA's approval of such TMDL(s) for the sole purpose of raising arguments in opposition to such third party challenge to the TMDL(s).

B. In the event a certified Section 208 Plan Update for Cape Cod, including a designated Management Agency or Agencies, is approved by EPA, CLF covenants that it will not bring suit against EPA (or any component, officer or employee thereof) to contest or otherwise challenge EPA's approval of TMDLs to control nitrogen impairments to waters of Cape Cod or the Cape Cod Islands for a period of four (4) years beyond the date of such approvals, nor will CLF or its employees or representatives, during the four-year period referenced above, provide assistance of any kind to any person who does or seeks to challenge any TMDL approval or process. However, CLF expressly retains the right to (i) provide public comment on any draft TMDLs prior to their submission to EPA for approval, (ii) make public statements (including without limitation press releases and responses to inquiries from the press) concerning EPA's approval of any Cape Cod TMDL, (iii) confer with its membership and others regarding EPA's approval of any Cape Cod TMDL, and (iv) move to intervene in a court action

filed by a third party challenging EPA's approval of such TMDL(s) for the sole purpose of raising arguments in opposition to such third party challenge to the TMDL(s). The Parties agree that this four-year time interval is necessary in order to allow adequate time to reasonably assess post-plan update implementation activities (including alternative waste treatment pilot programs) on Cape Cod.

C. The covenants made by CLF in paragraphs VI,A-B above shall be enforceable by specific performance, injunction, or other affirmative order of this Court or another Court of competent jurisdiction.

VII. FINAL DISMISSAL AND ATTORNEYS' FEES

A. Within ten (10) days of approval by EPA of a certified Section 208 Plan Update for Cape Cod and acceptance of the designation of a duly authorized Management Agency or Agencies, and upon completion of the EPA Preliminary Actions set forth in Section III,A-D above, EPA shall file with the Court notice that all conditions specified for dismissal of both the Section 208 Action and the Second TMDL Action with prejudice have been completed and that, pursuant to the terms of the Court's Final Order attached at Ex. A hereto, both actions are finally dismissed with prejudice.

B. Within ninety (90) days of the Court's Dismissal of both the Section 208 Action and the Second TMDL Action with prejudice, EPA will promptly pay attorneys' fees and costs to CLF in the amount of \$40,064.00. Payment shall be made via Electronic Funds Transfer, and upon execution of this Settlement Agreement CLF agrees to provide EPA with the following payment instructions:

Bank
Bank Address
ABA/Routing #
Account #
Name of Account
Type of Account
Federal Taxpayer Identification Number and Name of Company

C. CLF agrees that EPA's payment of \$40,064.00 pursuant to Paragraph VII,B above constitutes full and final settlement of any and all claims for attorneys' fees and/or costs of litigation incurred by CLF and its attorneys that CLF has asserted or could hereafter assert through the date that final Dismissal becomes effective against the United States in connection with the Active Litigation and/or the First TMDL Action. CLF releases the United States, including EPA, from any claims regarding such fees and costs upon receipt of payment.

VIII. NOTICES

All notices required or made with respect to this Agreement shall be in writing and shall be effective upon receipt and shall be sent to:

FOR CLF:

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IX. GENERAL PROVISIONS

- A. This Settlement Agreement constitutes full and final settlement of any and all claims raised in the Active Litigation, including any and all claims for attorneys' fees and costs.
- B. This Settlement Agreement shall not constitute or be construed as an admission or adjudication by the United States or EPA of any question of fact or law with respect to any of the claims raised in the Active Litigation nor to waive or limit any claim or defense (including any or all jurisdictional defenses), on any grounds, related to any allegation set forth in the Active Litigation. Nothing in this Agreement shall be construed as an admission of violation of any law, rule, regulation, or policy by the United States or EPA.
- C. This Settlement Agreement is without prejudice to, and the United States and EPA specifically reserve, any and all rights, claims, and defenses with respect to any other parties, claims, and actions not a party to or otherwise a part of the Active Litigation.
- D. This Settlement Agreement shall not be admitted for any purpose in any proceeding without prior notice to and the express consent of the United States and EPA, except that it shall be admitted in the Active Litigation as set forth in Paragraph II,C above.
- E. This Settlement Agreement was negotiated between the United States and CLF in good faith and jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall

be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

F. Nothing in this Settlement Agreement, including but not limited to the actions to be taken by EPA in Sections III, IV, and V of this Agreement, shall be deemed to create or reflect any mandatory duty on the part of EPA or otherwise be construed as creating a final agency action subject to challenge, nor shall CLF have any right to seek injunctive relief or otherwise seek a Court Order requiring EPA to take or complete any of the actions enumerated herein, nor shall Plaintiff be entitled to specific performance of, or damages for breach of, any term of this Agreement.

G. Nothing in this Agreement shall be construed to confer upon the District Court jurisdiction to review any final decision made, or action performed, by EPA pursuant to or in accordance with this Agreement, nor shall it create jurisdiction before this Court that does not otherwise exist, except as specifically provided for herein.

H. Any requirements of EPA to obligate or expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require EPA to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341 or any other applicable provision of federal law.

I. This Settlement Agreement shall be governed and construed under the laws of the United States.

J. The individuals signing this Settlement Agreement on behalf of the parties hereby certify that they are authorized to bind their respective parties to this Settlement Agreement.

K. The Parties may amend or modify this Settlement Agreement only by mutual agreement in writing and with approval of the Court.

L. The obligations of this Settlement Agreement and all terms herein shall apply to and be binding upon each Party to this Settlement Agreement, including on its officers, directors, agents, employees and servants, and its successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with each Party, whether or not such person has notice of this Settlement Agreement.

M. EPA shall perform the actions specified in this Settlement Agreement within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events that constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of EPA, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action specified this Agreement within the specified time period. If a Force Majeure event occurs, the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. The Parties shall coordinate to determine when to begin or resume the actions that had been affected by any Force Majeure event.

N. Nothing in this Settlement Agreement shall be construed to limit or modify any discretion accorded EPA by the Clean Water Act, the Act's administering regulations, or by general principles of administrative law in taking the actions that are the subject of this Agreement. EPA's obligation to perform the actions specified in this Settlement Agreement, at or by the times specified therein, does not constitute a limitation or modification of EPA's discretion in taking such actions.

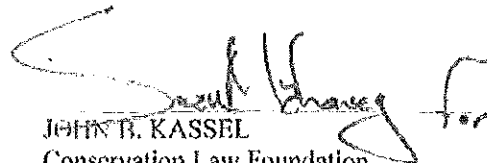
O. The captions contained in this Settlement Agreement are for convenience only and shall not constitute enforceable portions of the Settlement Agreement.


P. This Settlement Agreement constitutes the entire Agreement between the Parties and shall not be modified by any oral agreement or statements of any kind.

SO AGREED TO BY:

FOR CLF:

Dated: October 21, 2014


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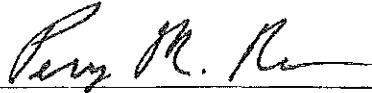

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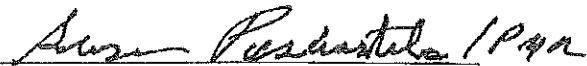
SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources
Division

Dated: Nov. 17, 2014

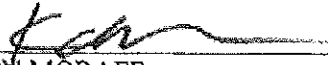

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Dated: Oct. 20, 2014


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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____ CONSERVATION LAW FOUNDATION)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:11-cv-11657-MLW
)	
REGINA McCARTHY, et al.,)	
)	
Defendants.)	
_____)	
)	
CONSERVATION LAW FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-12704-MLW
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Defendants.)	
_____)	

ORDER FOR STAY AND DISMISSAL

WHEREAS, the parties, Plaintiff, Conservation Law Foundation ("CLF" or "Plaintiff"), and Defendants, the United States Environmental Protection Agency, its Administrator, Gina McCarthy, and its Regional Administrator, H. Curtis Spalding (collectively "EPA"), have executed a Settlement Agreement in order to resolve their disputes in both of the above-captioned actions, and

WHEREAS said Settlement Agreement calls for certain actions to occur on or before September 15, 2015 (unless the Parties mutually agree to extend this deadline), the Court hereby FINDS and ORDERS the following:

1. Both of the above-captioned actions are hereby stayed until September 15, 2015.

2. The Court shall retain jurisdiction over both of the above-captioned actions for the express purpose of addressing and administering, in accordance with the express terms of the Settlement Agreement, disputes that may arise with regard to EPA's performance of the Preliminary Actions identified in the Settlement Agreement and which are subject to dispute resolution by the Court under the terms of the Settlement Agreement.

3. In the event, after attempted resolution of disputes with regard to the application of the terms of the Settlement Agreement in accordance with the terms of that Agreement, the Court finds that EPA has failed to carry out the specified actions under paragraphs III.A-D of the Settlement Agreement within the time periods identified in those paragraphs, and/or has failed to approve the Section 208 Areawide Plan Update in accordance with paragraph IV.A of the Settlement Agreement by September 15, 2015 or such other date as the Parties may agree in writing under the terms of the Settlement Agreement, the sole remedy for Plaintiff shall be to reinstate either or both of the above-captioned actions, which Plaintiff can effectuate by submitting to the Court a motion requesting that the stay(s) be lifted.

4. Upon EPA's completion of the actions specified under paragraphs III.A-D and IV.A of the Settlement Agreement in compliance with the time periods set forth in those paragraphs or such deadlines that are modified pursuant to the express terms of the Settlement Agreement, both of the above-captioned actions are, by operation of this Order, dismissed with prejudice. In order to clarify the date on which dismissal with prejudice pursuant to this Order becomes effective, EPA shall file in the docket notice that all tasks specified under the Settlement Agreement for dismissal to occur have been completed and that, under the terms of this Order, all claims in both of the above-captioned actions have been dismissed with prejudice.

5. The Court further ORDERS that upon dismissal of the above-captioned actions with prejudice, EPA shall pay to the Plaintiff attorneys' fees and costs in the amount set forth in paragraph VII of the Settlement Agreement and within the time period set forth in said paragraph. Upon such payment, all claims related to attorney's fees and costs in the two above-captioned actions up through the effective date of final dismissal of this action, as well as any claim for fees and costs that could potentially be made in conjunction with the first TMDL action that was dismissed, *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:10-cv-11455, shall be deemed to be finally resolved.

It is so ORDERED, this _____ day of _____, 2014.

Mark L. Wolf
UNITED STATES DISTRICT JUDGE

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:11-cv-11657-MLW
)	
REGINA McCARTHY, et al.,)	
)	
Defendants.)	
)	
)	
CONSERVATION LAW FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-12704-MLW
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Defendants.)	
)	

**JOINT MOTION FOR A STAY OF PROCEEDINGS AND DISMISSAL
WITH PREJUDICE UPON COMPLETION OF CONDITIONS**

Plaintiff, Conservation Law Foundation (“CLF” or “Plaintiff”), and Defendants, the United States Environmental Protection Agency, its Administrator, Gina McCarthy, and its Regional Administrator, H. Curtis Spalding (collectively “EPA”), having entered into a Settlement Agreement between the parties covering both of the above-referenced actions (“Settlement Agreement”, attached at Ex. A, jointly move the Court to issue an Order: (a) extending the stay in Case No. 1:11-cv-11657-MLW (the “Section 208 Action”), which is presently stayed until June 1, 2015, until September 15, 2015; (b) issuing a stay in Case No. 1:13-cv-12704-MLW (the “Second TMDL Action”) until September 15, 2015; (c) retaining

jurisdiction over these actions until certain designated actions called for in the Settlement Agreement (EPA Preliminary Actions and approval of the Section 208 Plan Update) are completed; and (d) dismissing the above-captioned actions with prejudice upon completion of said designated actions in the Settlement Agreement. A proposed order (“Proposed Order”) is attached hereto. In support of the requested relief in this Motion, the Parties submit the following:

1. On August 24, 2010, CLF filed a complaint in the United States District Court for the District of Massachusetts (the “Court”), captioned *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:10-cv-11455 (the “First TMDL Action”), challenging EPA’s approval of thirteen (13) Total Maximum Daily Load (“TMDL”) determinations submitted to EPA by the Commonwealth of Massachusetts (“Commonwealth”) under section 303(d) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1313(d), as arbitrary and capricious, an abuse of discretion, and in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

2. On September 19, 2011, CLF filed a complaint, captioned *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:11-cv-11657 (the “Section 208 Action”), alleging, *inter alia*, that EPA (i) failed to perform non-discretionary duties under section 208 of the CWA, 33 U.S.C. § 1288 (“Areawide waste treatment management”) and (ii) issued determinations under sections 601-606 of the CWA, 33 U.S.C. §§ 1381-1386 (“State Water Pollution Control Revolving Funds”), that were arbitrary, capricious, contrary to law or otherwise in violation of the Administrative Procedure Act.

3. On or about August 23, 2013, the Court, after hearing oral argument, issued orders dismissing the First TMDL Action for lack of jurisdiction and further dismissing three of

the four Counts contained in the Section 208 Action. The dismissal of the first TMDL Action was not timely appealed.

4. On October 24, 2013, CLF filed a complaint in this Court captioned *Conservation Law Foundation v. United States Environmental Protection Agency, et al.*, Action No. 1:13-12704 (the “Second TMDL Action”), challenging EPA’s approval of the same thirteen (13) TMDL determinations that were the subject of CLF’s challenge in the First TMDL Action.

5. The Commonwealth, in conjunction with the Cape Cod Commission (“CCC” or “Commission”), is in the process of completing an update of the Section 208 Plan for Cape Cod related to nitrogen, which EPA has reported on through various status reports to the Court in the Section 208 Action. The Commonwealth anticipates submitting the completed Update for EPA approval in the near future. Upon such submission, EPA will consider the Update Section 208 Plan for approval, including its compliance with CWA Section 208(c), 33 U.S.C. § 1288(c), in accordance with the time period and parameters set forth in paragraph IV, A of the Settlement Agreement. If the Court grants this Motion and enters the proposed Final Order, thereby making the Settlement Agreement effective, EPA also will take certain actions in conjunction with its review of the Section 208 Plan Update, said actions being set forth in the Settlement Agreement at paragraph III.A-D under the heading “EPA Preliminary Actions.”

6. In order to allow time for the Commonwealth to complete and submit to EPA the Section 208 Plan Update, for EPA to consider and approve such Update, if appropriate, and for EPA to take the Preliminary Actions set forth at paragraph III.A-D of the Settlement Agreement, all within the time periods provided for in the Settlement Agreement, the Parties respectfully move the Court to stay both of the above-captioned actions until September 15, 2015. EPA will

continue to submit status reports in the Section 208 action as previously ordered by the Court, with the next report due December 23, 2014.

7. The Parties further move that the Court retain jurisdiction over both actions to address compliance issues that are subject to being addressed under the terms of the Settlement Agreement and, to the extent any such issue arises and is presented to the Court under the terms of the Settlement Agreement, to address said issue(s) in accordance with the dispute resolution terms in Section III.E of the Settlement Agreement.

8. The Parties further move that upon completion of EPA's Preliminary Actions and EPA's approval of the Section 208 Plan Update within the time periods specified in the Settlement Agreement, that both actions shall, by operation of the Court's Order approving this Motion in a form set out in the Proposed Order, be dismissed with prejudice, with EPA to pay the attorney's fees and costs agreed to in the Settlement Agreement. Under the terms of the Proposed Order, dismissal of the two above-captioned actions shall occur by operation of the Order granting this Motion, upon completion of the designated tasks. In order to clarify when such dismissal is to become effective, EPA shall file in the docket notice that all tasks specified under the Settlement Agreement for dismissal to occur have been completed and, under the terms of the Court's Order granting this Motion, that all claims in both of the above-captioned actions have, therefore, by order of the Court, been dismissed with prejudice.

Accordingly, the Parties jointly request that the Court grant this Motion. The Parties note that no provision of the Settlement Agreement will become effective unless and until the Court grants this Motion and executes and files the Proposed Order, or a similar Order after consultation with the Parties.

Respectfully submitted this 17th day of November, 2014, by

/s/ Caitlin Peale Sloan (by permission)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Motion for a Stay of Proceedings and Dismissal with Prejudice Upon Completion of Conditions, was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of said document to the attorneys of record/parties who have registered as CM/ECF participants.

Date: November 17, 2014,

/s/ Perry M. Rosen
Perry M. Rosen