

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 14 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: ENVIRONMENTAL DEFENSE
CENTER and NATURAL RESOURCES
DEFENSE COUNCIL, INC.,

No. 14-80184

ENVIRONMENTAL DEFENSE
CENTER and NATURAL RESOURCES
DEFENSE COUNCIL, INC.,

ORDER

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Real Party in Interest.

Before: REINHARDT, TASHIMA, and RAWLINSON, Circuit Judges.

The joint motion for entry of the proposed order is granted. The Clerk shall enter the proposed order submitted by the parties with their August 26, 2015 joint motion.

This petition is held in abeyance pending the filing of status reports and further order of this court.

CC/MOATT

No. 14-80184

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE ENVIRONMENTAL DEFENSE CENTER & NATURAL
RESOURCES DEFENSE COUNCIL, INC.

ENVIRONMENTAL DEFENSE CENTER & NATURAL RESOURCES
DEFENSE COUNCIL, INC.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

[PROPOSED] ORDER

Upon consideration of the parties' joint motion for entry of order, it is **ORDERED** that the motion be granted. It is further **ORDERED** that:

- (1) For the purposes of this Order, the term "MS4 Issues" shall mean those matters identified by the Court in its 2003 opinion in *Environmental Defense Center, Inc. v. U.S. Environmental Protection Agency (EDC v. EPA)*, 344 F.3d 832 (9th Cir. 2003), as grounds for vacating and remanding portions of the Phase II rule relating to

- municipal separate storm sewer system (MS4) general permits. 344 F.3d at 832, 858, 879. “Forest Road Issue” shall mean the Court’s direction in *EDC v. EPA* that the U.S. Environmental Protection Agency (EPA) consider and decide in an appropriate proceeding that allows for judicial review whether Clean Water Act section 402(p)(6), 33 U.S.C. § 1342(p)(6), requires that stormwater discharges from forest roads be regulated. 344 F.3d at 863, 879.
- (2) On or before December 17, 2015, EPA shall sign for publication in the Federal Register a notice of proposed rulemaking to respond to the Court’s vacatur and remand regarding the MS4 Issues. EPA shall promptly transmit the notice of proposed rulemaking to the Office of the Federal Register, and shall notify the Court of the signature within five business days of the date of signature.
- (3) On or before November 17, 2016, EPA shall sign for publication a final rule regarding the MS4 Issues, to fully comply with the Court’s vacatur and remand regarding the MS4 Issues. EPA shall promptly transmit the final rule to the Office of the Federal Register for publication, and shall notify the Court of the signature within five business days of the date of signature.

- (4) On or before May 26, 2016, EPA shall sign for publication a notice setting forth EPA's determination as to whether stormwater discharges from forest roads are required to be regulated pursuant to Clean Water Act section 402(p)(6), 33 U.S.C. § 1342(p)(6), to fully comply with the Court's remand regarding the Forest Road Issue. EPA shall promptly transmit the determination to the Office for the Federal Register for publication, and shall notify the Court of the signature within five business days of the date of signature.
- (5) No later than 120 days from the date of this Order, and at 120-day intervals thereafter, EPA shall file in this Court reports on the status of EPA's progress towards compliance with this Order and implementation of the actions in paragraphs 2 through 4.
- (6) The parties may extend the deadlines set forth in paragraphs 2 through 5 by written stipulation executed by counsel for the parties and filed with the Court. Neither EDC nor NRDC shall unreasonably refuse to consent to one extension of each deadline of no more than seven calendar days. In the event that the parties cannot agree to the terms of a requested extension, any party may, after meeting and conferring, move this Court for relief.

- (7) The Court shall retain jurisdiction over this case to enforce this Order until EPA complies with the deadlines in paragraphs 2 through 5, and to hear any motion for litigation costs, including attorneys' fees, by EDC and/or NRDC. Any deadline imposed by Ninth Circuit Rule 39-1.6, or by any other rule or provision of law, for seeking fees and costs is extended until 90 days after the entry of this Order.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 26, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Jaclyn H. Prange