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Greenpeace, Inc.  
11 City of Boulder, CO  
City of Oakland, CA  
12 City of Arcata, CA  
City of Santa Monica, CA

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Attorneys for Defendants

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 FRIENDS OF THE EARTH, INC., )  
18 *et al.*, )  
19 Plaintiffs, )  
20 v. )  
21 LARRY SPINELLI, in his official capacity as )  
Acting President, Overseas Private )  
Investment Corporation, *et al.*,<sup>1/</sup> )  
22 Defendants. )

Case No. C 02-4106 JSW

24 **JOINT MOTION FOR DISMISSAL WITH PREJUDICE**

25 The parties in the above-captioned case, by and through their attorneys, hereby jointly move this  
26 Court for an order dismissing this case with prejudice. The reasons for this motion are as follows:

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28 <sup>1/</sup> Larry Spinelli is automatically substituted for Robert J. Mosbacher, Jr., pursuant to Rule 25(d)  
of the Federal Rules of Civil Procedure.

1           1.       The parties have agreed to settle this dispute upon the terms set forth in the Settlement  
2 Agreements (attached as Exhibits A and B), which are incorporated into this motion by reference.

3           2.       The parties request that the Court issue an order dismissing this action with prejudice  
4 pursuant to Fed. R. Civ. P. 41(a)(2), provided that the Court retain jurisdiction over this matter, if  
5 necessary, solely to enforce the terms regarding the payment of attorneys' fees and costs (Ex. A, ¶¶ 6, 7,  
6 and 8; Ex. B, ¶¶ 8, 9, and 10).

7           For the foregoing reasons and based upon the attached Settlement Agreements, Plaintiffs and  
8 Defendants jointly move the Court for an order dismissing this case with prejudice.

9  
10 ON BEHALF OF ALL PLAINTIFFS:

11 Dated: Feb. 6, 2009

s/ Ron Shems (with permission)

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21 ON BEHALF OF ALL DEFENDANTS:

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

22  
23  
24 Dated: Feb. 6, 2009

s/ Brian C. Toth

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## Exhibit A

### *Settlement Agreement Export-Import Bank of the United States*

This Settlement Agreement (“Agreement”) is entered into by and between: (1) Friends of the Earth, Inc., Greenpeace, Inc., City of Boulder, Colorado, City of Oakland, California, City of Arcata, California, and City of Santa Monica, California (“Plaintiffs”); and (2) James H. Lambright, in his official capacity as Chairman of the Board and President of the Export-Import Bank of the United States (“Ex-Im Bank,” or “Defendant”).

The parties hereby agree to settlement of *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.)<sup>1/</sup> on the following terms and conditions:

1. This Settlement Agreement is negotiated in good faith and constitutes a settlement of claims that were vigorously contested, denied and disputed by the parties.

2. Within 10 days of the execution of this Settlement Agreement by all parties, Plaintiffs and Defendant agree to file this Settlement Agreement attached to a Joint Motion for Dismissal with Prejudice with respect to Ex-Im Bank in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.). This Settlement Agreement is effective as of the date that the court enters an order dismissing the case with prejudice with respect to Ex-Im Bank in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.).

3. Within 60 days of the effective date of this Agreement, Ex-Im Bank shall produce and implement a written directive to staff that shall, for all financing applications submitted after that date, require Ex-Im Bank staff to provide to the Ex-Im Bank Board of Directors (“Board”), information about carbon dioxide (“CO<sub>2</sub>”) emissions as part of and for consideration in conjunction with Ex-Im Bank’s decisions whether or not to approve transactions related to fossil fuel projects.<sup>2/</sup> A context for evaluating such information (e.g., a comparison to CO<sub>2</sub> emissions on a global level, national level, and/or industry level) shall also be provided. Ex-Im-Bank shall issue a record notice for each Category A and B fossil fuel project stating its determination as to whether NEPA review is necessary and, if not, the basis for that determination (e.g., no major federal action, applicability of categorical exclusion, no potential for significantly affecting the quality of the human environment of the United States).<sup>3/</sup> Such notice shall be published at least thirty days in advance of any decision.

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<sup>1/</sup>Larry Spinelli is automatically substituted for Robert J. Mosbacher, Jr., pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

<sup>2/</sup> For purposes of this Agreement, the term “fossil fuel projects” means the following: coal-fired or gas-fired power plants, oil fields, oil pipelines, gas fields, gas pipelines, refineries, liquefied natural gas plants, and fuels derived from tar sands, oil shale, coalbed methane, and peat projects.

<sup>3/</sup>For the purposes of this Agreement, “Category A” and “Category B” have the same meaning as they are defined in Ex-Im Bank’s Environmental Procedures and Guidelines.

In addition, all non-privileged environmental review documents for Category A and B fossil fuel projects (or their availability) shall be posted on Ex-Im Bank's website sufficiently in advance of the Board's vote to give outside parties an opportunity to review or request copies of such documents and provide comments. Ex-Im Bank staff's estimate of the annual amount of CO<sub>2</sub> expected to be produced by the project shall also be posted on the website. Ex-Im Bank staff shall provide the Board any timely submitted public comments prior to the Board's consideration of the transaction.

4. Ex-Im Bank shall confer with one individual from each of the named Plaintiffs or, as substitutes for one or more of the Plaintiffs, an equal number of Plaintiffs' delegates from the attached list of organizations, to develop and implement a carbon policy, utilizing the following procedures:

a. Within 60 days of the effective date of this Agreement, Ex-Im Bank shall confer with Plaintiffs to discuss the contents of the proposed carbon policy.

b. Within 180 days of the effective date of this Agreement, Ex-Im Bank shall present to Plaintiffs a draft proposed carbon policy. Such draft proposed policy, at a minimum, shall include the following:

(1) Incentives to reduce CO<sub>2</sub> emissions projects.

(a) *Financing Incentives.* Ex-Im Bank shall consider financing aspects of project development that reduce, or mitigate, carbon emissions, subject to compliance with the requirements of the Organization for Economic Cooperation and Development ("OECD") and Ex-Im Bank's Charter.

(b) *Renewable Energy Loan Guarantee Facility.* Ex-Im Bank shall establish a facility of \$250 million offering Ex-Im Bank's full range of financial products to promote renewable energy projects.<sup>4</sup>

(c) *Energy efficiency.* Ex-Im Bank shall encourage energy efficiency and corresponding reduction in project-related CO<sub>2</sub> emissions in a manner appropriate to the project.

(2) *Enhanced review.* Ex-Im Bank shall revise its Environmental Procedures and Guidelines to implement this Agreement as appropriate.

c. Within 30 days of being presented with the draft proposed policy, Plaintiffs or their delegates shall confer with Ex-Im Bank and present Plaintiffs' comments on the draft proposed policy.

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<sup>4</sup>/"Renewable energy projects" shall exclude fossil fuel-related, gas (other than methane captured from livestock, landfill, or non-coalbed extraction operations), nuclear power, large dam, and large-scale bio-fuel projects.

d. Within 60 days of being presented with Plaintiffs' comments, Ex-Im Bank staff shall present the proposed carbon policy to Ex-Im Bank's Board requesting the Board's approval. The parties recognize that Ex-Im Bank's staff cannot control the Board's ultimate disposition of its request.

5. *Leadership role.* Ex-Im Bank shall, consistent with its authority, and subject to the concurrence of the U.S. delegates to the OECD, and subject to the President's plenary authority to determine the foreign policy of the United States, and in a manner consistent with the international legal obligations of the United States, promote consideration of climate change issues, including greenhouse gas mitigation measures, within the OECD and amongst export credit agencies ("ECAs"), in a manner that ensures a level playing field (equal competition among ECAs based on price, time, and quality). Examples of such promotion, consideration, and/or mitigation measures include:

- a. proposing longer terms for projects designed with significant CO<sub>2</sub> reductions and mitigants;
- b. considering how the potential economic costs associated with high carbon intensity projects can be assessed by ECAs and factored into financing decisions;
- c. expanding the scope, flexibility and terms of ECA support for renewable energy projects;
- d. identifying and reducing barriers to ECA support for renewable energy projects;
- e. encouraging transparency and involvement of stakeholders, including renewable energy industry associations, project developers and nongovernmental organizations; and
- f. improving and proposing common greenhouse gas mitigation standards for financed projects.

6. Plaintiffs shall receive attorneys fees, costs, and expenses in the amount of \$100,000 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. All Plaintiffs agree that such award encompasses the entire amount of attorneys' fees and costs to which any and all of the Plaintiffs might be entitled to receive from Defendant under any authority in the above-captioned matter, including all work and costs already performed or incurred in this action through and including the date of this Settlement Agreement and any additional work or costs performed or incurred after this Settlement Agreement, including but not limited to any work associated with the dismissal of this action. Plaintiffs agree that they are not entitled to any further monetary award in connection with this action except as expressly provided in the separate Settlement Agreement in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.) between Plaintiffs and Larry Spinelli, in his official capacity as acting President of the Overseas Private Investment Corporation.

7. Plaintiffs agree to provide Defendant with the information necessary to process the payment set forth in paragraph 6 within 10 days of the effective date of this Settlement Agreement. Such information shall include the following: account number for plaintiffs' client trust account; bank name; bank address; routing number; and taxpayer identification number. Defendants agree to submit all necessary paperwork for such payment to the appropriate office within thirty business days of the effective date of this Agreement.

8. Ex-Im Bank's obligation to pay such fees, expenses, and costs shall be entered as an Order of the Court. Full payment of all fees, expenses and costs shall be made directly to the client trust account held by Shems Dunkiel Kassel & Saunders PLLC.

9. The terms of this Settlement Agreement will expire five years from its effective date. In the event that any statutory enactment or Executive Order makes compliance with any term of this Agreement illegal, *ultra vires*, or otherwise inconsistent with the agency's statutory mandate, failure to comply with such terms in the Agreement shall not be grounds for a claim of violation of the Agreement.

10. The provisions of this Settlement Agreement shall apply to and be binding upon all of the Parties including, but not limited to, their officers, directors, employees, successors, and assigns.

11. This Settlement Agreement constitutes the entire agreement of the Plaintiffs and Ex-Im Bank concerning the rights and obligations discussed herein and subject to dispute in this suit. No other agreement shall govern the rights of the Plaintiffs and Ex-Im Bank with respect to the matters resolved by this Settlement Agreement, except in accordance with the terms herein. No modification to this Settlement Agreement shall be valid unless written and executed by all parties thereto.

12. Any claims of violations of the terms of this Settlement Agreement shall be brought to the attention of the parties in writing before raising such claims in the context of a judicial proceeding. If the parties do not resolve the situation to the satisfaction of the parties within thirty days of the receipt of the written notice, then the party claiming violation of the Settlement Agreement may pursue such claims in a judicial proceeding. The parties agree that, except for the provisions in paragraphs 6, 7, and 8 (i.e., regarding attorneys' fees and costs), the sole remedy for any violation of this Agreement shall be limited to reinstatement of the litigation against Ex-Im Bank in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.). The parties agree that the court may retain jurisdiction, if necessary, solely to enforce the provisions in paragraphs 6, 7, and 8 of this Agreement. The parties agree that alleged non-compliance with any of NEPA's requirements shall not constitute a violation of this Agreement. Nothing in this Agreement shall be interpreted to preclude Plaintiffs from bringing a new lawsuit challenging any future act or omission by Defendants that is judicially reviewable, including an act or omission for non-compliance with any of NEPA's requirements.

13. The undersigned representatives of each party certify that they are authorized by the party or parties they represent to execute this Settlement Agreement.

14. Nothing in this Settlement Agreement or the accompanying Joint Motion for Dismissal with Prejudice and Proposed Order constitutes an admission by any Party to any fact, claim, or defense in this lawsuit. This Settlement Agreement is limited to the facts in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.), and shall not be cited as precedent in any other legal proceeding.

15. Nothing in this Settlement Agreement or the accompanying Joint Motion for Dismissal with Prejudice and Proposed Order will be construed: (1) to deprive a federal official of the authority to revise, amend, or promulgate regulations; (2) to commit a federal official or a local government to expend funds not appropriated by Congress or by the appropriate local governmental body; (3) to bind any federal agency other than Ex-Im Bank; or (4) to require a party to take any action contrary to law.

16. This Settlement Agreement may be executed in one or more separate counterparts, each of which, when so executed, shall together constitute one and the same instrument.

ON BEHALF OF ALL PLAINTIFFS:

Dated: Feb. 6, 2009

s/ Ron Shems (with permission)  
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ON BEHALF OF DEFENDANT EXPORT-IMPORT BANK OF THE UNITED STATES:

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

Dated: Feb. 6, 2009

s/ Brian C. Toth  
BRIAN C. TOTH

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Attachment to Settlement Agreement for  
Export-Import Bank of the United States in  
*Friends of the Earth, Inc., et al. v. Spinelli*, Civ. No. 02-4106 (N.D. Cal.)<sup>5/</sup>

List of Plaintiffs' Designated Organizations Under Paragraph 4:

Friends of the Earth  
Greenpeace  
Environmental Defense  
Pacific Environment  
World Resources Institute  
Center for International Environmental Law  
Oil Change International

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<sup>5/</sup> Larry Spinelli is automatically substituted for Robert J. Mosbacher, Jr., pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

## Exhibit B

### *Settlement Agreement Overseas Private Investment Corporation*

This Settlement Agreement (“Agreement”) is entered into by and between: (1) Friends of the Earth, Inc., Greenpeace, Inc., City of Boulder, Colorado, City of Oakland, California, City of Arcata, California, and City of Santa Monica, California (“Plaintiffs”); and (2) Larry Spinelli, in his official capacity as acting President of the Overseas Private Investment Corporation (“OPIC,” or “Defendant”).<sup>1/</sup>

The parties hereby agree to settlement of *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.) on the following terms and conditions:

1. This Settlement Agreement is negotiated in good faith and constitutes a settlement of claims that were vigorously contested, denied and disputed by the parties.

2. Within 10 days of the execution of this Agreement by all parties, Plaintiffs and Defendant agree to file this Settlement Agreement attached to a Joint Motion for Dismissal with Prejudice with respect to OPIC in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.). This Settlement Agreement is effective as of the date that the court enters an order dismissing the case with prejudice with respect to OPIC in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.).

3. As of the effective date of this Agreement, OPIC shall thereafter treat applications for projects that emit more than 100,000 tons (short, U.S.) of carbon dioxide (“CO<sub>2</sub>”) equivalents per year<sup>2/</sup> as Category A projects pursuant to OPIC’s Environmental Handbook. The Environmental Impact Assessment (“EIA”) required by OPIC’s Environmental Handbook for Category A projects shall take into account the degree to which the project emits greenhouse gases. As provided by OPIC’s Environmental Handbook, the EIA shall include a discussion of whether the project has significant effects upon the environment, a statement of alternatives, a discussion of mitigation measures, and other information, as appropriate. The EIA shall be publicly posted on OPIC’s website for 60 days, and OPIC shall post comments received. Notice of the EIA shall be provided through an OPIC list server and shall be available through OPIC’s

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<sup>1/</sup>Larry Spinelli is automatically substituted for Robert J. Mosbacher, Jr., pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

<sup>2/</sup>100,000 tons (short, U.S.) of CO<sub>2</sub> equivalents per year currently is a commonly accepted threshold in analyzing climate change impacts in the context of international financing in developing countries. If the World Bank Group and/or International Finance Corporation reduce their threshold to a lower level, OPIC shall, consistent with past practices, likewise consider reducing its threshold by at least such amount. OPIC will provide notice to Plaintiffs of its action and/or intended action within 45 days of any such World Group and/or IFC change. If OPIC declines to make the change, OPIC shall, along with such notice, provide a rationale for such decision.

public website. EIAs and comments received shall be provided to OPIC's Board of Directors, which shall not approve any such project that has failed to comply with these requirements.

4. As of the effective date of this Agreement, OPIC shall, on an annual basis, publicly report greenhouse gas ("GHG") emissions from projects in its active portfolio that emit more than 100,000 tons (short, U.S.) of CO<sub>2</sub> equivalents per year. Such public report shall be posted on OPIC's website.

5. As of the effective date of this Agreement, it shall be OPIC policy to substantially increase support to projects that use, develop, or otherwise promote the use of renewable energy<sup>3/</sup> for a 10 year period. OPIC shall provide notice to the public of proposed methods, which shall include one or more of the following: establishing a revolving investment fund of no less than \$250 million for projects that include renewable energy projects, applying preferential financing terms, and other methods to attract investment in developing markets. The proposed methods shall give priority to renewable energy projects. "Preferential financing terms" include but are not limited to adjustment of fees, tenor, and interest rates in order to facilitate the approval of a transaction. The investment fund may be established prior to the effective date of this Agreement through the issuance of a call for proposals. OPIC shall evaluate any proposals received for such fund within 12 months of the effective date of this Agreement.

6. As of the effective date of this Agreement, it shall be OPIC policy to reduce by 20 percent over the next 10 years, greenhouse gas emissions associated with projects that emit more than 100,000 tons (short, U.S.) of CO<sub>2</sub> equivalents per year in OPIC's portfolio. OPIC shall limit new investment in projects associated with GHG emissions to meet the foregoing policy. Within 180 days of the effective date of this Agreement, OPIC shall provide notice to the public of the interim time tables that OPIC anticipates will meet this requirement.

7. Within 180 days of enactment of the Overseas Private Investment Corporation Reauthorization Act of 2008 or successor legislation, OPIC shall propose energy efficiency requirements to be adopted and included in the next version of OPIC's Environmental Handbook. OPIC shall allow for public comment on the proposed revisions to OPIC's Environmental Handbook. Within 180 days of the close of public comments, OPIC shall provide notice to the Plaintiffs whether the proposed changes have been adopted. If OPIC declines to make such changes, OPIC shall, along with such notice, provide a rationale for such decision.

a. The proposed revisions shall include the following:

i. OPIC shall encourage all Applicants seeking OPIC support to periodically evaluate energy use for all major facilities and functions associated with projects for which they are seeking OPIC support and to explore

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<sup>3/</sup> "Renewable energy" is defined for purposes of this Agreement to mean a subset of clean energy technology that shall exclude fossil fuel-related, gas (other than methane captured from livestock, landfill, or non-coalbed extraction operations), nuclear power, large dam (as defined in the OPIC Environmental Handbook), and large-scale bio-fuel projects.

opportunities to reduce energy requirements by utilizing best principles in engineering, efficient methods, devices and appliances in lighting, refrigeration, transport and load management.

ii. OPIC shall encourage all Applicants to explore opportunities to employ renewable energy sources in project design. The proposed revisions of the Environmental Handbook shall provide that, as a condition of OPIC support, projects in energy intensive sectors will either: (a) meet energy efficiency guidelines and benchmarks, as established by international organizations; or (b) develop and implement an energy management program to achieve these guidelines and benchmarks within a reasonable period of time. They shall further provide that energy management will be appropriate to the nature and scale of project operations.

b. The proposed revisions to the Environmental Handbook shall further provide that a project will document methods to reduce overall energy consumption patterns through loss reduction and improvements in energy conversion efficiency.

c. Such proposed revisions shall acknowledge that, in some projects, process modifications may be required to achieve guidelines and benchmarks.

d. As a condition of OPIC's support, OPIC shall require the application of additional measures, as necessary, in order to ensure that a project will meet the proposed requirements in subparagraphs (a) through (c) of this part.

8. Plaintiffs shall receive attorneys fees, costs, and expenses in the amount of \$100,000 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. All Plaintiffs agree that such award encompasses the entire amount of attorneys' fees and costs to which any and all of the Plaintiffs might be entitled to receive from Defendant under any authority in the above-captioned matter, including all work and costs already performed or incurred in this action through and including the date of this Settlement Agreement and any additional work or costs performed or incurred after this Settlement Agreement, including but not limited to any work associated with the dismissal of this action. Plaintiffs agree that they are not entitled to any further monetary award in connection with this action except as expressly provided in the separate Settlement Agreement in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.) between Plaintiffs and James H. Lambright in his official capacity as Chairman of the Board and President of the Export-Import Bank of the United States.

9. Plaintiffs agree to provide Defendant with the information necessary to process the payment set forth in paragraph 8 within 10 days of the effective date of this Settlement Agreement. Such information shall include the following: account number for plaintiffs' client trust account; bank name; bank address; routing number; and taxpayer identification number. Defendants agree to submit all necessary paperwork to the appropriate office within thirty business days of the effective date of this Agreement.

10. OPIC's obligation to pay such fees, expenses, and costs shall be entered as an Order of the Court. Full payment of all fees, expenses and costs shall be made directly to the client trust account held by Shems Dunkiel Kassel & Saunders PLLC.

11. The terms of this Settlement Agreement will expire five years from its effective date. In the event that any statutory enactment or Executive Order makes compliance with any term of this Agreement illegal, *ultra vires*, or otherwise inconsistent with the agency's statutory mandate, failure to comply with such terms in the Agreement shall not be grounds for a claim of violation of the Agreement.

12. The provisions of this Settlement Agreement shall apply to and be binding upon all of the Parties including, but not limited to, their officers, directors, employees, successors, and assigns.

13. This Settlement Agreement constitutes the entire agreement of the Plaintiffs and OPIC concerning the rights and obligations discussed herein and subject to dispute in this suit. No other agreement shall govern the rights of the Plaintiffs and OPIC with respect to the matters resolved by this Settlement Agreement, except in accordance with the terms herein. No modification to this Settlement Agreement shall be valid unless written and executed by all parties thereto.

14. Any claims of violations of the terms of this Settlement Agreement shall be brought to the attention of the parties in writing before raising such claims in the context of a judicial proceeding. If the parties do not resolve the situation to the satisfaction of the parties within thirty days of the receipt of the written notice, then the party claiming violation of the Settlement Agreement may pursue such claims in a judicial proceeding. The parties agree that, except for the provisions in paragraphs 8, 9, and 10 (i.e., regarding attorneys' fees and costs), the sole remedy for any violation of this Agreement shall be limited to reinstatement of the litigation against OPIC in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.). The parties agree that the court may retain jurisdiction, if necessary, solely to enforce the provisions in paragraphs 8, 9, and 10 of this Agreement. The parties agree that alleged non-compliance with any of NEPA's requirements shall not constitute a violation of this Agreement. Nothing in this Agreement shall be interpreted to preclude Plaintiffs from bringing a new lawsuit challenging any future act or omission by Defendants that is judicially reviewable, including an act or omission for non-compliance with any of NEPA's requirements.

15. The undersigned representatives of each party certify that they are authorized by the party or parties they represent to execute this Settlement Agreement.

16. Nothing in this Settlement Agreement or the accompanying Joint Motion for Dismissal with Prejudice and Proposed Order constitutes an admission by any Party to any fact, claim, or defense in this lawsuit. This Settlement Agreement is limited to the facts in *Friends of the Earth, Inc., et al. v. Spinelli, et al.* (Civ. No. 02-4106, N.D. Cal.), and shall not be cited as precedent in any other legal proceeding.

17. Nothing in this Settlement Agreement or the accompanying Joint Motion for Dismissal with Prejudice and Proposed Order will be construed: (1) to deprive a federal official of the authority to revise, amend, or promulgate regulations; (2) to commit a federal official or local government to expend funds not appropriated by Congress or the appropriate local governmental body; (3) to bind any federal agency other than OPIC; or (4) to require a party to take any action contrary to law.

18. This Settlement Agreement may be executed in one or more separate counterparts, each of which, when so executed, shall together constitute one and the same instrument.

ON BEHALF OF ALL PLAINTIFFS:

Dated: Feb. 6, 2009

s/ Ron Shems (with permission)  
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ON BEHALF OF DEFENDANT OVERSEAS PRIVATE INVESTMENT CORPORATION:

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

Dated: Feb. 6, 2009

s/ Brian C. Toth  
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1  
2 **UNITED STATES DISTRICT COURT**  
3 **NORTHERN DISTRICT OF CALIFORNIA**  
4 **SAN FRANCISCO DIVISION**

5 FRIENDS OF THE EARTH, INC.,  
6 *et al.*,

7 Plaintiffs,

8 v.

9 LARRY SPINELLI, in his official capacity as  
10 Acting President, Overseas Private  
11 Investment Corporation, *et al.*,<sup>2/</sup>

12 Defendants.

Case No. C 02-4106 JSW

13 **[proposed] ORDER FOR DISMISSAL WITH PREJUDICE**

14 This matter is before the Court upon the parties' joint motion to dismiss this case voluntarily  
15 with prejudice pursuant to the Settlement Agreements that are attached as Exhibits A and B to the  
16 parties' motion. For good cause shown, it is hereby ORDERED that this case is dismissed with  
17 prejudice pursuant to the Settlement Agreements, provided that the Court shall retain jurisdiction  
18 solely to enforce, if necessary, the terms of the Settlement Agreements regarding the payment of  
19 attorneys' fees and costs. *See* J. Mot. for Dism., Ex. A, ¶¶ 6, 7, 8; *id.*, Ex. B, ¶¶ 8, 9, 10.

20 It is so ORDERED.

21 Dated:

22 \_\_\_\_\_  
23 Honorable Jeffrey S. White  
24 United States District Judge

25  
26  
27  
28 <sup>2/</sup> Larry Spinelli is automatically substituted for Robert J. Mosbacher, Jr., pursuant to Rule 25(d)  
of the Federal Rules of Civil Procedure.