

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”).^{1/}

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 (“CO₂”) equivalents per year^{2/} 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

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

^{2/}100,000 tons (short, U.S.) of CO₂ 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 CO₂ 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^{3/} 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 CO₂ 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

^{3/} "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

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