

EIGHTH MODIFICATION OF SETTLEMENT AGREEMENT
Sierra Club et al. v. Jackson
No. 3:10-cv-04060-CRB (N.D. Cal.)

WHEREAS, on August 10, 2011 Plaintiffs Sierra Club and WildEarth Guardians filed their second amended complaint in Sierra Club v. Jackson, No. 3:10-cv-04060-CRB (N.D. Cal.) against Defendant Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), alleging that EPA failed to undertake certain nondiscretionary duties under the Clean Air Act, 42 U.S.C. §§ 7404-7671q; and

WHEREAS, on June 30, 2011, Sierra Club submitted a petition for rulemaking to EPA, requesting that EPA act on specific alleged State Implementation Plan (“SIP”) deficiencies related to provisions in SIPs related to excess emissions during periods of startup, shutdown, or malfunction at sources (“Plaintiff’s SSM Petition”);

WHEREAS, on November 30, 2011, the Parties executed a settlement agreement (“Agreement”) resolving the lawsuit in Sierra Club v. Jackson, No. 3:10-cv-04060-CRB (N.D. Cal.) and also avoiding Plaintiffs filing motions seeking to enforce the consent decrees in certain other cases;

WHEREAS, Paragraph 19 of the Agreement provides that the Parties may modify any deadline in the Agreement by mutual written consent;

WHEREAS, Paragraph 15 of the Agreement, as modified by a previous stipulation, provides:

Sierra Club submitted Plaintiff’s SSM Petition on June 30, 2011. Plaintiff’s SSM Petition addresses certain specifically identified provisions in the SIPs of states that Sierra Club contends are contrary to the CAA and EPA’s policies for emissions during SSM events, and explains the basis for that contention with respect to each identified provision. EPA shall propose action to grant or to deny Plaintiff’s SSM Petition by February 12, 2013. EPA shall take final action to grant or to deny Plaintiff’s SSM Petition by June 12, 2014. Plaintiffs agree that EPA may meet these obligations in one or more administrative actions, as EPA

determines appropriate, and that EPA may elect to grant or to deny Plaintiff's SSM Petition with respect to individual alleged illegal SSM provisions, as EPA determines is consistent with the CAA and its policies. EPA further agrees that for purposes of this Settlement Agreement, a grant of the petition in question with respect to an alleged illegal SSM provision shall entail the issuance of a final SIP call under CAA section 110(k)(5) or of a final error correction under CAA section 110(k)(6), as EPA deems appropriate, by the June 12, 2014 deadline. Nothing in this Settlement Agreement shall be construed as precluding the Plaintiff from challenging EPA's response to Plaintiff's SSM Petition in whole or in part.

WHEREAS, on February 12, 2013, EPA proposed action to grant or deny Plaintiff's SSM Petition, *see* 78 Fed. Reg. 12,460 (Feb. 22, 2013);

WHEREAS, on April 18, 2014, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *Natural Resources Defense Council v. EPA*, No. 10-1371, in which the Court addressed affirmative defenses under the Clean Air Act;

WHEREAS, in light of the opinion in *Natural Resources Defense Council v. EPA*, No. 10-1371 and EPA's February 12, 2013 proposed action on the Plaintiff's SSM Petition, EPA intends to issue a supplemental proposed action related to the issue of affirmative defenses;

WHEREAS, the Parties wish to extend the deadline for EPA to take final action until May 22, 2015;

NOW, THEREFORE, the Parties agree as follows:

1. Paragraph 15 shall be replaced with the following provision:

Sierra Club submitted Plaintiff's SSM Petition on June 30, 2011. Plaintiff's SSM Petition addresses certain specifically identified provisions in the SIPs of states that Sierra Club contends are contrary to the CAA and EPA's policies for emissions during SSM events, and explains the basis for that contention with respect to each identified provision. No later than September 5, 2014, EPA shall issue a supplemental proposed action on the SSM Petition. EPA shall take final action to grant or to deny Plaintiff's SSM Petition by May 22, 2015. Plaintiffs agree that EPA may meet these obligations in one or more administrative actions, as EPA determines appropriate, and that EPA may elect to grant or to deny Plaintiff's SSM Petition with respect to individual alleged illegal SSM provisions, as EPA determines is consistent with the CAA and its policies. EPA further agrees that for purposes of this Settlement Agreement, a grant of the petition in

question with respect to an alleged illegal SSM provision shall entail the issuance of a final SIP call under CAA section 110(k)(5) or of a final error correction under CAA section 110(k)(6), as EPA deems appropriate, by the May 22, 2015 deadline. Nothing in this Settlement Agreement shall be construed as precluding the Plaintiff from challenging EPA's response to Plaintiff's SSM Petition in whole or in part.

2. The references in Paragraphs 16 and 17, as modified by previous stipulations, to "June 12, 2014 deadline" is hereby replaced by "May 22, 2015 deadline."
3. The modification changes only the above-specified text, and does not change any other requirement or term of the Agreement.
4. Each undersigned representative of the Parties certifies that he or she is fully authorized by that Party to enter into and execute the terms of this modification, and to legally bind such Party to this modification.
5. This modification may be executed in any number of counterpart originals, all of which shall collectively constitute one agreement.

SO AGREED:

FOR PLAINTIFFS:
/s Robert Ukeiley

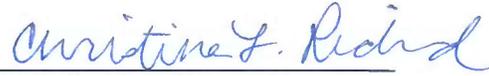
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Dated: 6/10/14

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Dated: 6/16/2014

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