

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”); and

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

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

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 December 14, 2012. EPA shall take final action to grant or to deny Plaintiff’s SSM Petition by June 28, 2013. 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 June 28, 2013, 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, Paragraph 28 was added to the Agreement by a previous stipulation, and provides that counsel for EPA shall confer with counsel for Sierra Club concerning the Agency’s

progress towards meeting these obligations on November 2 and December 2, 2012, and January 8, February 2, March 2, April 2, May 2 and June 2, 2013, or on such other date that is mutually agreeable.

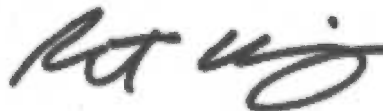
WHEREAS, the Parties wish to extend the deadlines for EPA to propose action and to take final action by 60 days, and to continue to confer on the Agency's progress toward these obligations on a monthly basis;

NOW, THEREFORE, the Parties agree as follows:

1. The references in Paragraph 15, as modified by previous stipulations, to "December 14, 2012" and "June 28, 2013" are hereby replaced by "February 12, 2013" and "August 27, 2013," respectively.
2. The references in Paragraphs 16 and 17, as modified by previous stipulations, to "December 14, 2012 or June 28, 2013 deadlines" are hereby replaced by "February 12, 2013 or August 27, 2013 deadlines."
3. Paragraph 28 is replaced by:

The Parties agree that counsel for EPA shall confer with counsel for Sierra Club concerning the Agency's progress towards meeting these obligations on a mutually agreeable date at the beginning of each month until EPA takes final action to grant or to deny Plaintiff's SSM Petition.
4. The modification changes only the above-specified text, and does not change any other requirement or term of the Agreement.
5. 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.
6. This modification may be executed in any number of counterpart originals, all of which shall collectively constitute one agreement.

FOR PLAINTIFFS:



Robert Ukeiley
Law Office of Robert Ukeiley

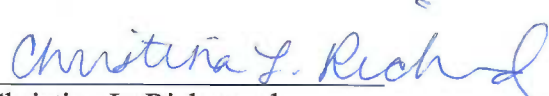
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Dated: 12/15/12

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Dated: 12/17/2012

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