

## **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 also avoiding Plaintiffs filing motions alleging contempt of court in certain other cases; 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 February 12, 2013. EPA shall take final action to grant or to deny Plaintiff’s SSM Petition by August 27, 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 the August 27, 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, EPA has chosen to respond to Plaintiff's SSM Petition under CAA section 110(k)(5), a statutory process which will provide states with the first opportunity to resolve any SSM issues in their SIPs and will also allow two additional opportunities for public notice and comment in other phases of the SIP process; and

WHEREAS, the Parties wish to extend the deadline for EPA to take final action by 30 days;

NOW, THEREFORE, the Parties agree as follows:

1. The reference in Paragraph 15, as modified by previous stipulations, to "August 27, 2013" is hereby replaced by "September 26, 2013."
2. The references in Paragraphs 16 and 17, as modified by previous stipulations, to "August 27, 2013 deadline" is hereby replaced by "September 26, 2013 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

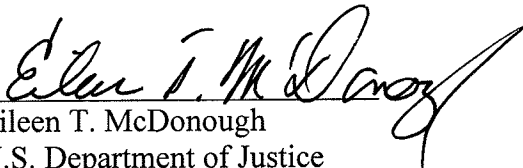
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Dated: 5/3/13

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