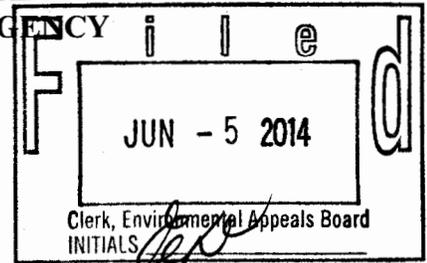


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



In re:)

Sierra Pacific Industries)

PSD Permit No. SAC 12-01)
_____)

PSD Appeal Nos. 14-03, 14-05, & 14-06

ORDER DISMISSING APPEALS FOR LACK OF JURISDICTION

Marily Woodhouse, Russ Wade, and the Center for Biological Diversity (“CBD”) petition the Environmental Appeals Board (“Board”) to review a Clean Air Act prevention of significant deterioration (“PSD”) permit, PSD Permit No. SAC 12-01, issued by Region 9 of the U.S. Environmental Protection Agency (“Region 9”) on April 25, 2014.¹ Previously, the Board remanded an earlier version of this permit to Region 9 so that the Region could hold a public hearing. At that time, the Board directed that “[o]nce the Region issues a final permit decision following the public hearing required by this remand, that final permit decision and the Board’s decision in this case become final agency action subject to judicial review.” *In re Sierra Pacific Indus.*, PSD Appeal Nos. 13-01 through 13-04, slip op. at 67 (EAB July 18, 2013), 15 E.A.D. ___ (Order Remanding in Part and Denying Review in Part); *see* 40 C.F.R. § 124.19(*l*). The Board made clear that, pursuant to section 124.19(*l*)(2)(iii) of Title 40, it “is not requiring, and will not accept, an appeal to the Board on the final permit decision following remand in this case.” *Sierra Pacific*, slip op. at 67, 15 E.A.D. at ___.

¹ Ms. Woodhouse also filed a document titled “Supplemental Petition with Attachment” on May 29, 2014. The Board has treated this filing as an addendum to her petition.

Neither Ms. Woodhouse nor Mr. Wade address in their petitions the appropriateness of filing a challenge to the reissued permit with the Board.² CBD, while acknowledging the Board's prior statement on a second round of review, nevertheless argues that it is important for the Board to accept its petition because of the new issues addressed by Region 9 on remand. Specifically, CBD points to the new Best Available Control Technology analysis undertaken by Region 9, which included, for the first time, greenhouse gas emissions limits on carbon dioxide. CBD asserts that, if the Board does not consider its appeal, "a federal court would, in effect, become the 'first-level decision maker' with respect to issues that the Board – and EPA as a whole – has not had an opportunity to address, and as to clear errors that the agency as a whole has not had an opportunity to correct." CBD Petition for Review at 5 (May 27, 2014).

Under the Board's regulations, where the Board chooses not to require a further appeal to the Board to exhaust administrative remedies, the Regional Administrator's issuance of the final permit decision is "final agency action" for the purpose of judicial review. 40 C.F.R. § 124.19(l)(2)(providing that a permit decision is final for purposes of judicial review "upon completion of remand proceedings if the proceedings are remanded, *unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies*" (emphasis added)). There is no question that the Board specifically did not require an appeal following remand. *Sierra Pacific*, slip op. at 67, 15 E.A.D. at __. Thus, the Region's final permit decision on remand is final agency action and the

² These petitioners might have thought appeal to the Board was available because Region 9's announcement of its final permit decision, although noting the Board's determination that it would not exercise appellate jurisdiction over the Region's decision on remand, contains other boilerplate language that suggests appeal to the Board might be appropriate. Region 9 has explained that this language was included in the final permit decision because it "considered it prudent not to preclude interested parties from presenting for consideration by Region 9 and the Board any arguments as to why review to the Board should be available notwithstanding the above-quoted paragraph from the Board's earlier order." Motion for Consolidation and Clarification of Deadlines at 2 (June 2, 2014).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Order Dismissing Appeals for Lack of Jurisdiction* in the matter of Sierra Pacific Industries, PSD Appeal Nos. 14-03, 14-05, & 14-06, were sent to the following persons in the manner indicated:

By U.S. First Class Mail:

Marily Woodhouse
The Battlecreekalliance.org
P.O. Box 255
Montgomery Creek, CA 96065

Russ Wade
1991 Heller Lane
Redding, CA 96001

Kevin Bundy
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104

By EPA Pouch Mail:

Kara Christenson
Office of Regional Counsel,
U.S. EPA Region 9 (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105

Courtesy Copy By U.S. First Class Mail:

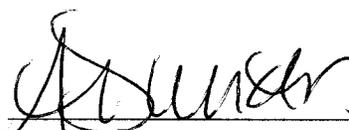
Rick Simon
Air Pollution Control Officer
Department of Resource Management
Shasta County Air Quality Management
District
1855 Placer Street, Suite 101
Redding, CA 96001

Tony Jaegel
Sierra Pacific Industries
19794 Riverside Avenue
Redding, CA 96049-6028

William M. Sloan
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

Courtesy Copy By EPA Interoffice Mail:

Brian Doster
Office of General Counsel
Air and Radiation Law Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
MC 2344A
Washington, D.C. 20460-0001



Annette Duncan
Secretary

Date: JUN - 5 2014