

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

In re:	)	
	)	
Panoche Energy Center, LLC	)	
	)	SDWA Appeal No. 22-01
UIC Permit No. R9UIC-CA1-FY17-2R	)	
	)	

**EPA REGION 9’S RESPONSE TO ORDER REQUESTING CLARIFICATION**

On February 17, 2023, the U.S. Environmental Protection Agency Environmental Appeals Board (“EAB”) issued an Order in the above-referenced matter, directing the U.S. Environmental Protection Agency, Region 9 (“Region”) to: (1) clarify whether [CalGEM records for each abandoned well in the Area of Review] are included in the administrative record for UIC Permit No. R9UIC-CA1-FY17-2R; provide a citation to the Certified Index of the Administrative Record (“A.R. Index”) that reflects their inclusion; or if they are not included, explain why they are not included; and (2) provide an updated A.R. Index with any corrections, if necessary, to reflect a complete and accurate administrative record index. *See* EAB Order Requesting Clarification at 1-2. The EAB ordered the Region to file its response no later than Friday, February 24, 2023. *Id.* at 2.

The Region hereby responds to the EAB’s Order.

1. Whether the CalGEM Records are included in the Administrative Record

Yes, the CalGEM records are included in the administrative record and are referenced in the A.R. Index at 1c and 3c. The first entry to the A.R. Index lists the 2019

Update and Re-submittal of Panoche Energy Center’s (“PEC”) 2017 UIC Permit Renewal Application, including all attachments. “Attachment C – Corrective Action and Well Data” to PEC’s 2019 application includes a number of tables, figures, and exhibits—among them the CalGEM records.<sup>1</sup> The third entry to the A.R. Index lists the 2017 UIC Permit Renewal Application, including all attachments. “Attachment C” to PEC’s 2017 application also includes the CalGEM records. Those documents are therefore part of the administrative record.<sup>2</sup>

Evidence of the Region’s inclusion of the CalGEM records in the administrative record is also demonstrated in the Response to Comments (“RTC”). During the technical review of the permit renewal application, the Region reviewed for each well in the Area of Review: completion and plugging records, abandonment procedures in effect at the time the well was abandoned, and hydraulic connections with underground sources of drinking water. *See* RTC #12 at 12; AR #48. The CalGEM records were part of that review and are therefore included in the administrative record.

2. Corrections to A.R. Index

The A.R. Index is complete and accurate. Therefore, no corrections to the A.R. Index are necessary.

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<sup>1</sup> In the 2019 Update and Resubmittal of PEC’s 2017 UIC Permit Renewal Application, PEC notes that “each attachment includes relevant tables, figures, and exhibits.” *See* AR #1 at 1.

<sup>2</sup> The excerpts of record that EPA submitted to the EAB, *see* 40 C.F.R. § 124.19(b)(3), did not include the voluminous exhibits and other documents, including the CalGEM records, that PEC submitted via compact disc to EPA. The Region can provide the compact disc, or portions of the compact disc, upon request by the EAB. The CalGEM records are also included as Attachments 2-5 to PEC’s Reply Brief. *See* Petitioner Reply Brief, Docket #6 (Jan. 31, 2023).

Dated: February 23, 2023

Respectfully submitted,

**For EPA**

*/s/ Desean Garnett*

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## Certificate of Service

I hereby certify that copies of the foregoing *RESPONSE TO ORDER REQUESTING CLARIFICATION FROM U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 9* in the matter of Panoche Energy Center, LLC, Appeal No. SDWA 22-01, were served via email upon the persons listed below.

February 23, 2023

Respectfully submitted,

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