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NORTHERN DISTRICT OF CALIFORNIA
MKS

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

CV 10 3051

11 ASSOCIATION OF IRRITATED RESIDENTS,)
12 an unincorporated association,)

Case No.

13 Plaintiff,)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

14 v.)

15 UNITED STATES ENVIRONMENTAL)
16 PROTECTION AGENCY, LISA JACKSON,)
in her official capacity as Administrator of)
the United States Environmental)
17 Protection Agency, and JARED BLUMENFELD,)
in his official capacity as Acting)
18 Regional Administrator for Region IX)
of the United States Environmental)
19 Protection Agency,)

20 Defendants.)
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WHA

INTRODUCTION

1
2 1. Fine particulate matter (“PM2.5”) levels in the San Joaquin Valley constitute a public
3 health crisis. Each year 1,292 San Joaquin Valley residents die from long-term exposure to fine
4 particulate matter. PM2.5 pollution exacerbates respiratory conditions, including asthma,
5 increases hospitalizations and emergency room visits, contributes to cardiac illnesses, and
6 increases school and work absenteeism. For long term exposure to PM2.5, the American Lung
7 Association ranks the San Joaquin Valley counties of Kern, Tulare, Fresno, and Kings as the
8 second, third, sixth, and ninth most PM2.5-polluted counties in the United States.

9 2. Plaintiff Association of Irritated Residents (“AIR”) brings this Clean Air Act (“CAA”)
10 citizen suit to compel the U.S. Environmental Protection Agency (“EPA”) to undertake long-
11 overdue nondiscretionary duties and approve, disapprove, or partially approve/disapprove the
12 2008 PM2.5 Plan for the San Joaquin Valley Unified Air Pollution Control District (hereafter
13 “Plan”).

14 3. The CAA is a model of cooperative federalism, whereby the EPA sets health-based
15 National Ambient Air Quality Standards (“NAAQS”) and individual states develop the plans to
16 achieve the standards. States submit these plans and plan revisions to EPA, which reviews the
17 submissions to ensure that the plans or plan revisions meet the minimum requirements of the
18 CAA. If satisfactory, EPA approves the plans or plan revisions as part of the State
19 Implementation Plan (“SIP”). If the plans or plan revisions do not meet the CAA’s minimum
20 requirements, then EPA must disapprove the submissions, triggering mandatory sanctions and an
21 EPA promulgated plan if the state does not correct the deficiencies within 18 months. 42 U.S.C.
22 §§ 7410(c), 7509(a)-(b).

23 4. Specifically, the CAA sets deadlines for EPA to approve or disapprove any proposed
24 changes to the SIP. On April 30, 2008, the San Joaquin Valley Unified Air Pollution Control
25 District (“District”) adopted the Plan. On May 2, 2008, the District transmitted the Plan to the
26 Air Resources Board (“ARB”). On May 22, 2008, ARB approved the Plan as a revision to the
27 SIP. On June 30, 2008, ARB submitted the Plan to EPA for approval as part of the SIP. EPA
28 has a mandatory duty to take final action on the Plan no later than December 30, 2009. As of

1 July 12, 2010, EPA has neither proposed action, nor taken final action, on the Plan. EPA has
2 violated the CAA, and continues to violate the CAA, by failing to take final action on the plan
3 within one year of the completeness finding or within 18 months of EPA's receipt of the Plan.

4 5. Had EPA approved the Plan as a revision to the SIP on time, EPA and citizens would
5 already be able to enforce the strategies in the plan to ensure that various areas in California
6 attain health-based NAAQS by the deadlines in the CAA. Had EPA disapproved the Plan as
7 inconsistent with the CAA, California would have already made changes to ensure that the plans
8 meet the minimum requirements of the CAA.

9 6. Instead, EPA's failure to perform its non-discretionary duty to take timely action on the
10 2008 PM2.5 Plan has compromised public health, interfered with appropriate permitting of
11 agricultural stationary sources in the San Joaquin Valley air basin, and impeded the progress of
12 meritorious citizen suits.

13 JURISDICTION

14 7. This Court has jurisdiction over this action to compel the performance of nondiscretionary
15 duties by EPA pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the CAA) and 28 U.S.C.
16 § 1331 (federal question jurisdiction).

17 8. The relief AIR requests is authorized by 28 U.S.C. §§ 2201(a) and 2202, and 42 U.S.C. §
18 7604.

19 9. On May 6, 2010, at least 60 days before commencing this action, AIR provided EPA written
20 notice of the claims stated in this action as required by CAA § 304(b)(2), 42 U.S.C. § 7604(b)(2) and
21 40 C.F.R. §§ 54.2 and 54.3. A copy of the notice letter, sent by certified mail, return receipt
22 requested, is attached as Exhibit 1. Although more than 60 days have elapsed since AIR gave notice,
23 EPA remains in violation of the CAA.

24 VENUE

25 10. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1),
26 because the Acting EPA Administrator for Region IX is located in San Francisco County, and
27 pursuant to 28 U.S.C. § 1391(e)(2), because EPA's alleged inactions relate to the duties of the
28 Acting EPA regional administrator in San Francisco.

INTRADISTRICT ASSIGNMENT

11. Similarly, because the omissions alleged in this Complaint relate to the duties of the Acting Regional Administrator, assignment to the San Francisco Division of this Court is proper under Civil L.R. 3-2(c)-(d).

PARTIES

12. Plaintiff ASSOCIATION OF IRRITATED RESIDENTS is an unincorporated association that advocates for air quality and environmental health in the San Joaquin Valley. Members of ASSOCIATION OF IRRITATED RESIDENTS reside in Fresno, Kern, Kings, Stanislaus, and Tulare Counties in the San Joaquin Valley air basin.

13. ASSOCIATION OF IRRITATED RESIDENTS (“AIR”) is a “person” within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7602(e), and may commence a civil action under section 304(a) of the CAA, 42 U.S.C. § 7604(a).

14. Members of AIR live, raise their families, work, and recreate in the San Joaquin Valley. They are adversely affected by exposure to levels of air pollution that exceed the health-based PM 2.5 NAAQS. The adverse effects of such pollution include actual or threatened harm to their health, their families’ health, their professional, educational and economic interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley.

15. The CAA violations alleged in this Complaint also deprive members of plaintiff organizations of certain procedural rights associated with EPA’s required action on the Plan, including notice and opportunity to comment.

16. The CAA violations alleged in this Complaint have injured and continue to injure the interests of plaintiff organization and its members. Granting the relief requested in this lawsuit would redress these injuries by compelling EPA action that Congress determined to be an integral part of the regulatory scheme for improving air quality in areas violating NAAQS, such as the San Joaquin Valley.

17. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the federal agency charged with implementation and enforcement of the CAA. As described below, the CAA assigns to EPA certain non-discretionary duties.

1 18. Defendant LISA JACKSON is sued in her official capacity as the Administrator of the EPA.
2 She is charged in that role with taking various actions to implement and enforce the CAA, including
3 the actions sought in this Complaint.

4 19. Defendant JARED BLUMENFELD is sued in his official capacity as Acting EPA Regional
5 Administrator for Region IX. He is responsible for implementing and enforcing the CAA in Region
6 IX, which includes the San Joaquin Valley.

7 STATUTORY FRAMEWORK

8 20. The CAA establishes a partnership between EPA and the states for the attainment and
9 maintenance of national air quality goals. *See* 42 U.S.C. §§ 7401-7515. Under the CAA, EPA has
10 set health-based primary NAAQS for six pollutants. *See* 40 C.F.R. part 50.4 - 50.13. States, or
11 regions within a state, must adopt a SIP that contains enforceable emissions limitations necessary
12 to attain the NAAQS and meet applicable requirements of the CAA, including ensuring attainment,
13 maintenance, and enforcement of the NAAQS. 42 U.S.C. §§ 7410(a)(1), (a)(2)(A); 7502(c)(6). All
14 such plans and plan revisions must be submitted to, and approved by EPA. 42 U.S.C. § 7410(a)(1),
15 (k).

16 21. Within sixty days of EPA's receipt of a proposed SIP revision, the CAA requires EPA to
17 determine whether the submission is sufficient to meet the minimum criteria established by EPA for
18 such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make such a "completeness" finding,
19 the proposed SIP revision is complete by operation of law six months after submission. *Id.* If EPA
20 determines that the proposed SIP revision does not meet the minimum criteria, the state is considered
21 not to have made the submission. 42 U.S.C. § 7410(k)(1)(C).

22 22. Within twelve months of finding that a proposed SIP revision is complete (or deemed
23 complete by operation of law), EPA must act to approve, disapprove, or approve in part and
24 disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

25 23. If EPA disapproves the revision, then the CAA requires EPA to impose sanctions against
26 the offending state or region, including increased offsets for new and modified major stationary
27 sources or a prohibition on the use of federal highway funds, unless the State submits revisions
28 within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and highway funding

1 sanctions within 24 months unless the state has corrected the deficiency. *Id.* Moreover, the CAA
2 requires EPA to promulgate a Federal Implementation Plan within 24 months of disapproval unless
3 the state has corrected the deficiency and EPA has approved the revision. 42 U.S.C. § 7410(c).

4 24. Once EPA approves a SIP or SIP revision, the region must comply with any and all
5 emission standards and limitations contained in the SIP, and all such standards and limitations
6 become federal law and are enforceable by EPA and citizens in federal court. 42 U.S.C. §§ 7413;
7 42 U.S.C. § 7604(a), (f).

8 25. If EPA fails to comply with a non-discretionary duty, such as acting on a proposed SIP
9 revision within the CAA deadlines, the CAA allows citizens to bring suit to compel EPA to perform
10 its duty. 42 U.S.C. § 7604(a)(2).

11 **FACTUAL BACKGROUND**

12 Particulate Matter Pollution in California

13 26. PM_{2.5} particles are air pollutants composed of carbon and secondary particles such as
14 volatile organic compounds (VOC), sulfur oxides (SO_x), and nitrogen oxides (NO_x), among
15 others. PM_{2.5} particles have a diameter of 2.5 micrometers or less, small enough to penetrate
16 deep into the lungs.

17 27. Health studies indicate that acute levels above the PM_{2.5} NAAQS cause premature
18 death. Failure to achieve the PM_{2.5} NAAQS results in excess mortality in the San Joaquin
19 Valley. 1,292 San Joaquin Valley residents die each year from long term exposure to PM_{2.5} at
20 levels above the NAAQS.

21 28. PM_{2.5} levels in the San Joaquin Valley constitute a public health crisis. PM_{2.5}
22 pollution exacerbates respiratory conditions, including asthma, increases hospitalizations and
23 emergency room visits, contributes to cardiac illnesses, and increase school and work
24 absenteeism.

25 29. For long term exposure to PM_{2.5}, the American Lung Association ranks the San
26 Joaquin Valley counties of Kern, Tulare, Fresno, and Kings as the second, third, sixth, and ninth
27 most PM_{2.5}-polluted counties in the United States.

28 30. Agricultural sources, including dairies, are major producers of PM_{2.5}-forming VOC

1 and NOx in the San Joaquin Valley.

2 31. EPA designated the San Joaquin Valley air basin as a nonattainment area for the 1997
3 24-hour and annual average PM2.5 NAAQS. The 1997 24-hour PM2.5 NAAQS is 65
4 micrograms per cubic meter and the 1997 annual average PM2.5 NAAQS is 15 micrograms per
5 cubic meter.

6 32. In 2006, EPA promulgated a new 24-hour PM2.5 NAAQS (35 micrograms per cubic
7 meter), which is more stringent than the 1997 24-hour PM2.5 NAAQS. EPA has not classified
8 the San Joaquin Valley's attainment status for the 2006 24-hour PM2.5 NAAQS, but because it
9 is more stringent than the 1997 standard, the Valley's nonattainment with the 2006 24-hour
10 PM2.5 NAAQS is not the subject of reasonable dispute.

11 33. The District's 2008 PM2.5 Plan identified strategies and made commitments necessary
12 to bring the San Joaquin Valley into attainment of the 1997 NAAQS for PM2.5. On April 30,
13 2008, the District adopted the 2008 PM2.5 Plan. On May 2, 2008, the District transmitted the
14 plan to the Air Resources Board ("ARB"). On May 22, 2008, ARB approved the plan as a
15 revision to the SIP.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO ACT ON**

18 **THE DISTRICT'S 2008 PM2.5 PLAN**

19 **(42 U.S.C. § 7410(k)(2))**

20 34. AIR re-alleges and incorporates by reference, the allegations set forth in paragraphs 1-33.

21 35. The Air Resources Board submitted the Plan to EPA for approval as part of the SIP on June
22 30, 2008.

23 36. On or about June 30, 2008, EPA received the Plan.

24 37. By operation of law, the Plan was deemed complete on or about January 30, 2009, when
25 EPA failed to make a completeness finding. 42 U.S.C. § 7410(k)(1)(B). The CAA requires EPA
26 to act on (*i.e.* approve, disapprove, or approve in part and disapprove in part) the Plan within 12
27 months of the date of the completeness finding. 42 U.S.C. § 7410(k)(2). Thus, the deadline for EPA
28 to act on the Plan was on or about December 30, 2009.

1 38. EPA has failed to take any action on the Plan.

2 39. Accordingly, EPA has violated and continues to violate CAA § 110(k)(2), 42 U.S.C. §
3 7410(k) since December 30, 2009.

4 40. This CAA violation constitutes a “failure of the Administrator to perform any act or duty
5 under this chapter which is not discretionary with the Administrator,” within the meaning of the
6 CAA’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation is ongoing and will continue
7 unless remedied by this Court.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request the Court to grant the following relief:

10 A. DECLARE that EPA violated the CAA by failing to take final action on District 2008
11 PM2.5 Plan;

12 B. ISSUE preliminary and permanent injunctions directing EPA to finalize action on
13 District 2008 PM2.5 Plan;

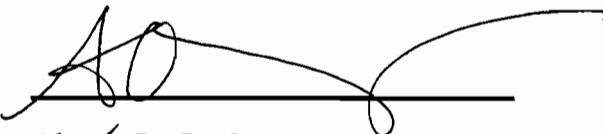
14 C. RETAIN jurisdiction over this matter until such time as EPA has complied with its non-
15 discretionary duties under the CAA;

16 D. AWARD to plaintiffs their costs of litigation, including reasonable attorney and expert
17 witness fees; and

18 E. GRANT such additional relief as the Court may deem just and proper.

19 Respectfully submitted on this 12th day of July, 2010.

20 CENTER ON RACE, POVERTY & THE ENVIRONMENT

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22

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