

1 BRENT NEWELL (SBN 210312)
2 ALEGRIA DE LA CRUZ (SBN 229713)
3 Center on Race Poverty & the Environment
4 47 Kearny Street, Suite 804
5 San Francisco, CA 94108
6 Telephone: (415) 346-4179
7 Fax: (415) 346-8723
8 Email: bnewell@crpe-ej.org
9 adelacruz@crpe-ej.org
10 *Attorneys for Plaintiff*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

MICHELLE R. LAMBERT
Trial Attorney
United States Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
Telephone: (202) 616-7501
Fax: (202) 514-8865
Email: michelle.lambert@usdoj.gov
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASSOCIATION OF IRRITATED
RESIDENTS, an unincorporated association,

Plaintiff,

v.

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

Defendants.

Case No. 3:10-CV-03051-WHA

CONSENT DECREE

1 WHEREAS, on July 12, 2010, Plaintiff Association of Irritated Residents filed the
2 complaint in the above-captioned matter against Defendants United States Environmental
3 Protection Agency, Lisa Jackson, in her official capacity as Administrator of the United States
4 Environmental Protection Agency, and Jared Blumenfeld, in his official capacity as Regional
5 Administrator for Region IX of the United States Environmental Protection Agency
6 (collectively, “EPA”), alleging that EPA has failed to undertake a certain nondiscretionary duty
7 under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is
8 actionable under section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

9 WHEREAS, section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires States to
10 adopt and submit to EPA for review state implementation plans (“SIPs”), which establish
11 specific control measures and other requirements that apply to particular sources of air pollution
12 within a State and are designed to attain, maintain, and enforce National Ambient Air Quality
13 Standards established by EPA that specify the maximum permissible concentrations for those
14 pollutants in the ambient air, *see* 42 U.S.C. §§ 7408, 7409;

15 WHEREAS, section 110(k) of the CAA, 42 U.S.C. § 7410(k), sets forth the process by
16 which EPA is to review SIP submissions, including SIP revisions;

17 WHEREAS, Plaintiff’s complaint alleges that EPA has a nondiscretionary duty to act on
18 SIP submissions and revisions submitted to EPA within the time lines set forth in section
19 110(k)(2) of the CAA, 42 U.S.C. § 7410(k)(2);

20 WHEREAS, Plaintiff’s complaint alleges that EPA has failed to take timely final action
21 to approve, disapprove, or partially approve/disapprove the 2008 PM2.5 San Joaquin Valley
22 Unified Air Pollution Control District Plan, which was submitted to EPA on or about June 30,
23 2008 and includes measures to control emissions of fine particulate matter and its precursors
24 within the San Joaquin Valley (hereinafter, “PM2.5 Plan”);

25 WHEREAS, Plaintiff’s complaint seeks an order from this Court directing EPA to take
26 final action on the PM2.5 Plan pursuant to section 110(k) of the CAA;

27 WHEREAS, EPA intends to provide public notice and an opportunity to comment on its
28 proposed action on any SIP submission, or revision thereto, that provides a basis for the final

1 action specified in Paragraph 1 below, and to consider and address in that final action any
2 relevant comments received;

3 WHEREAS, the parties have agreed to a settlement of this action without admission of
4 any issue of fact or law;

5 WHEREAS, the parties, by entering into this Consent Decree, do not waive or limit any
6 claim or defense, on any grounds, related to any final EPA action;

7 WHEREAS, the parties consider this Consent Decree to be an adequate and equitable
8 resolution of all of the claims in this matter;

9 WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve
10 this matter without protracted litigation;

11 WHEREAS, the parties agree that this Court has jurisdiction over this matter pursuant to
12 the citizen suit provision in section 304(a)(2) of the CAA and that venue lies in the Northern
13 District of California;

14 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is
15 fair, reasonable, in the public interest, and consistent with the CAA;

16 NOW THEREFORE, before the taking of testimony, without trial or determination of
17 any issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged and
18 decreed that:

19 1. No later than September 30, 2011, EPA shall sign a notice of the Agency's final
20 action on the PM2.5 Plan pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k). No later
21 than 15 business days following signature, EPA shall send the notice to the Office of the Federal
22 Register for review and publication in the Federal Register.

23 2. When EPA's obligations under Paragraph 1 have been completed, the parties
24 shall file a joint request to the Court to dismiss this matter with prejudice.

25 3. The parties may extend the deadlines established in Paragraphs 1 and 9 by written
26 stipulation executed by counsel for the parties and filed with the Court. In addition, the
27 deadlines established in Paragraphs 1 and 9 may be extended by the Court upon motion by any
28 party to this Consent Decree for good cause shown and demonstrating that such modification is

1 in the public interest, after consideration of any response by the non-moving party.

2 4. Nothing in this Consent Decree shall be construed to limit or modify the
3 discretion accorded EPA by the CAA and by general principles of administrative law, including
4 the discretion to alter, amend or revise any response and/or final action contemplated by this
5 Consent Decree. EPA's obligation to take the action set forth in Paragraph 1 by the time
6 specified therein does not constitute a limitation or modification of EPA's discretion within the
7 meaning of this paragraph.

8 5. Nothing in this Consent Decree shall be construed to confer upon the district
9 court jurisdiction to review any decision made in the final action identified in Paragraph 1.
10 Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to
11 review any issues that are within the exclusive jurisdiction of the United States Courts of
12 Appeals pursuant to sections 307(b)(1) and 505 of the CAA, 42 U.S.C. §§ 7607(b)(1), 7661d.

13 6. This Court shall retain jurisdiction to enforce the terms of this Consent Decree
14 and to consider any requests for costs of litigation, including attorneys' fees., **for one (1) year.**

15 7. In the event of a dispute between the parties concerning the interpretation or
16 implementation of any aspect of this Consent Decree, the disputing party shall provide the other
17 party with a written notice outlining the nature of the dispute and requesting informal
18 negotiations. If the parties cannot reach an agreed-upon resolution within ten (10) business days
19 after receipt of the notice, any party may move the Court to resolve the dispute.

20 8. No motion or other proceeding seeking to enforce this Consent Decree shall be
21 considered properly filed, unless Plaintiff has followed the procedure set forth in Paragraph 7
22 and provided EPA with written notice received at least ten (10) business days before the filing of
23 such motion or proceeding.

24 9. EPA agrees that, pursuant to section 304(d) of the CAA, 42 U.S.C. § 7604(d),
25 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including
26 reasonable attorneys' fees, incurred prior to entry of this Consent Decree. The deadline for filing
27 a bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
28 reasonable attorneys' fees, pursuant to Local Rule 54-6 for activities performed in this case prior

1 to entry of this Consent Decree, is hereby extended until 90 days after the date on which the
2 Court enters this Consent Decree. During this time the parties shall seek to resolve informally
3 any claim for costs of litigation, including reasonable attorneys' fees.

4 10. Plaintiff reserves the right to seek recovery of costs of litigation, including
5 reasonable attorneys' fees, consistent with section 304(d) of the CAA, for activities to enforce
6 this Consent Decree. EPA reserves the right to oppose any such request for costs of litigation.

7 11. The obligations imposed upon EPA under this Consent Decree may only be
8 undertaken using appropriated funds. No provisions of this Consent Decree shall be interpreted
9 as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of
10 the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law.

11 12. Plaintiff and EPA shall not challenge the terms of this Consent Decree or this
12 Court's jurisdiction to enter this Consent Decree.

13 13. The parties agree and acknowledge that before this Consent Decree is entered by
14 the Court, EPA must provide notice of this Consent Decree in the Federal Register and an
15 opportunity for public comment pursuant to section 113(g) of the CAA, 42 U.S.C. § 7413(g).
16 After this Consent Decree has undergone notice and comment, the Administrator and/or the
17 Attorney General, as appropriate, shall promptly consider any such written comments in
18 determining whether to withdraw or withhold their consent to the Consent Decree, in accordance
19 with section 113(g) of the CAA. If the Administrator and/or the Attorney General do not elect to
20 withdraw or withhold their consent, EPA shall promptly file a motion that requests the Court to
21 enter this Consent Decree.

22 14. Any notices required or provided for by this Consent Decree shall be made in
23 writing, via facsimile, e-mail or other means, and sent to the following:

24 For Plaintiff:

25 Brent Newell
26 Alegria De La Cruz
27 Center on Race Poverty & the Environment
28 47 Kearny Street, Suite 804
San Francisco, CA 94108
Telephone: (415) 346-4179
Email: bnewell@crpe-ej.org
adelacruz@crpe-ej.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Defendants:

Michelle R Lambert
Trial Attorney
U.S. Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
Phone: (202) 616-7501
Email: michelle.lambert@usdoj.gov

Geoffrey Wilcox
Office of General Counsel
U.S. Environmental Protection Agency
Ariel Rios Bldg., MC 2344A
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Phone: (202) 564-5601
Fax: (202) 564-5603
Email: wilcox.geoffrey@epa.gov


Jeanhee Hong
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street, ORC-2
San Francisco, CA 94105
Phone: (415) 972-3921
Fax: (415) 947-3570
Email: hong.jeanhee@epa.gov

15. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that party to the terms of this Consent Decree.

16. This Consent Decree shall not preclude any right of action by a non-party to bring a citizen suit pursuant to section 304 of the Clean Air Act, 42 U.S.C. § 7604, to enforce the non-discretionary duties alleged in the Complaint. In any such matter, EPA preserves all its defenses.

IT IS SO ORDERED.

Dated: January 12, 2011.



WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE

///
///

1 **COUNSEL FOR PLAINTIFFS:**

2 Dated: November 12, 2010

/s/ Brent Newell (with permission)
BRENT NEWELL (SBN 210312)
ALEGRIA DE LA CRUZ (SBN 229713)
Center on Race Poverty & the Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108
Telephone: (415) 346-4179
Email: bnewell@crpe-ej.org
Email: adelacruz@crpe-ej.org
Counsel for Plaintiff

8 **COUNSEL FOR DEFENDANTS:**

9 Dated: November 12, 2010

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ Michelle R. Lambert
MICHELLE R. LAMBERT
Trial Attorney
U.S. Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
Phone: (202) 616-7501
Email: michelle.lambert@usdoj.gov
Counsel for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28