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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

NATURAL RESOURCES DEFENSE  
COUNCIL, INC., and COALITION  
FOR A SAFE ENVIRONMENT, a  
California non-profit corporation,

Plaintiffs,

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. CV-10-6029-MMM-AGR

**CONSENT DECREE**

WHEREAS, on August 12, 2010, Plaintiffs Natural Resources Defense  
Council, Inc. and Coalition for a Safe Environment filed the complaint in the  
above-captioned matter against Defendants United States Environmental Protection  
Agency, Lisa P. Jackson, in her official capacity as Administrator of the United

1 States Environmental Protection Agency, and Jared Blumenfeld, in his official  
2 capacity as Regional Administrator for Region IX of the United States Protection  
3 Agency (collectively, “EPA”), alleging that EPA failed to fulfill certain non-  
4 discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q,  
5 and that such alleged failure is actionable under section 304(a)(2) of the Act, 42  
6 U.S.C. § 7604(a)(2);

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

14 WHEREAS, in 1997, EPA established an 8-hour ozone NAAQS and a 24-  
15 hour and an annual fine particulate matter (“PM2.5”) NAAQS;

16 WHEREAS, EPA designated the South Coast Air Basin as “nonattainment”  
17 under section 107(d) of the CAA, 42 U.S.C. § 7407(d), for the 1997 ozone and  
18 PM2.5 NAAQS;

19 WHERAS, States are required to submit SIP revisions for designated  
20 “nonattainment” areas;

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

23 WHEREAS, if EPA finalizes a rulemaking disapproving the SIP revisions at  
24 issue in this litigation, sanctions would apply pursuant to section 179(b) of the  
25 CAA, 42 U.S.C. § 7509(b), and 40 C.F.R. § 52.31;

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

1 WHEREAS, Plaintiffs' complaint alleges that EPA has failed to take final  
2 action within time lines set forth in section 110(k)(2) of the CAA to approve or  
3 disapprove (1) the State Strategy for the 2007 State Implementation Plan ("2007  
4 State SIP"), submitted to EPA on November 16, 2007, and (2) the 2007 Air Quality  
5 Management Plan for the South Coast Air Quality Management District ("2007  
6 South Coast SIP"), submitted to EPA on November 28, 2007;

7 WHEREAS, through discussions, the parties have limited the scope of this  
8 Consent Decree to address only those elements of the 2007 State SIP and 2007  
9 South Coast SIP that were submitted by the State of California in response to  
10 EPA's designations of "nonattainment" for the South Coast Air Basin with respect  
11 to the 1997 NAAQS for ozone and PM2.5;

12 WHEREAS, Plaintiffs' complaint seeks an order from this court directing  
13 EPA to take final action on the agreed to portions of 2007 State SIP and 2007 South  
14 Coast SIP;

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

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

19 WHEREAS, the parties consider this Consent Decree to be an adequate and  
20 equitable resolution of all of the claims in this matter related to the elements of the  
21 2007 State SIP and 2007 South Coast SIP submitted by the State of California in  
22 response to EPA's designations of "nonattainment" for the South Coast Air Basin  
23 with respect to the 1997 NAAQS for ozone and PM2.5;

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

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

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

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

7           1.     No later than September 30, 2011, EPA shall sign for publication in  
8 the Federal Register a notice of the Agency's final action on the portions of the  
9 2007 State SIP and 2007 South Coast SIP that relate to EPA's "nonattainment"  
10 designation of the South Coast Air Basin with respect to the 1997 PM2.5 NAAQS,  
11 and thereafter send the notice to the Office of the Federal Register for review and  
12 publication.

13           2.     No later than December 15, 2011, EPA shall sign for publication in the  
14 Federal Register a notice of the Agency's final action on the portions of the 2007  
15 State SIP and 2007 South Coast SIP that relate to the nonattainment designation of  
16 the South Coast Air Basin with respect to the 1997 ozone NAAQS, and thereafter  
17 send the notice to the Office of the Federal Register for review and publication.

18           3.     When EPA's obligations under Paragraphs 1 and 2 have been  
19 completed, the parties will file a joint request to the Court to dismiss this matter  
20 with prejudice.

21           4.     The parties may extend the deadlines established in Paragraphs 1, 2,  
22 and 10 by written stipulation executed by counsel for the parties and filed with the  
23 Court. In addition, the deadlines established in Paragraphs 1, 2, and 10 may be  
24 extended by the Court upon motion by any party to this Consent Decree for good  
25 cause shown, after consideration of any response by the non-moving party.

26           5.     Nothing in this Consent Decree shall be construed to limit or modify  
27 the discretion accorded EPA by the CAA and by general principles of  
28 administrative law, including the discretion to alter, amend or revise any response

1 and/or final action contemplated by this Consent Decree. EPA's obligation to take  
2 the action set forth in Paragraphs 1 and 2 by the time specified therein does not  
3 constitute a limitation or modification of EPA's discretion within the meaning of  
4 this paragraph.

5 6. Nothing in this Consent Decree shall be construed to confer upon the  
6 district court jurisdiction to review any decision made in the final action identified  
7 in Paragraphs 1 or 2. Nothing in this Consent Decree shall be construed to confer  
8 upon the district court jurisdiction to review any issues that are within the exclusive  
9 jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1)  
10 and 505 of the CAA, 42 U.S.C. §§ 7607(b)(1), 7661d.

11 7. This Court shall retain jurisdiction to enforce the terms of this Consent  
12 Decree and to consider any requests for costs of litigation, including attorneys' fees.

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

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

23 10. EPA agrees that, pursuant to section 304(d) of the CAA, 42 U.S.C. §  
24 7604(d), Plaintiff is both eligible and entitled to recover its costs of litigation in this  
25 action, including reasonable attorneys' fees, incurred prior to entry of this Consent  
26 Decree. The deadline for filing a bill of costs and a motion for costs of litigation,  
27 including reasonable attorneys' fees, pursuant to Local Rule 54-12 for activities  
28 performed in this case prior to the entry of this Consent Decree, is hereby extended

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

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

9 12. Plaintiffs and Defendants shall not challenge the terms of this Consent  
10 Decree or this Court's jurisdiction to enter this Consent Decree.

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

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

23 For Plaintiff:

24 Adriano L. Martinez  
25 Natural Resources Defense Council  
26 1314 Second St.  
27 Santa Monica, CA 90401  
28 Telephone: (310) 434-2300  
Facsimile: (310) 434-2399  
Email: amartinez@nrdc.org

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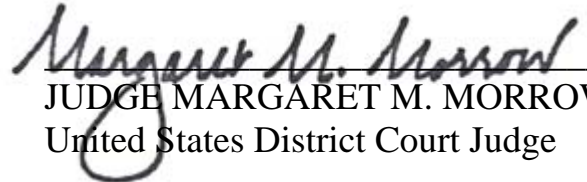
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1 15. The undersigned representatives of each party certify that they are  
2 fully authorized by the party that they represent to bind that party to the terms of  
3 this Consent Decree.

4 **IT IS SO ORDERED.**

5 Dated: February 8, 2011

  
JUDGE MARGARET M. MORROW  
United States District Court Judge

8 COUNSEL FOR PLAINTIFFS:

9 Dated: December 13, 2010 NATURAL RESOURCES DEFENSE COUNCIL

10 By: /s/ Adriano L. Martinez (with permission)  
11 Adriano L. Martinez  
12 Natural Resources Defense Council  
13 1314 Second St.  
14 Santa Monica, CA 90401  
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*Attorneys for Plaintiffs Natural Resources  
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17 Dated: December 13, 2010 LAW OFFICES OF ANGELA JOHNSON MESZAROS

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25 COUNSEL FOR DEFENDANTS:

26 Dated: December 13, 2010 IGNACIA S. MORENO  
27 Assistant Attorney General  
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