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7 *and National Parks Conservation Association*

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 COMMITTEE FOR A BETTER ARVIN,
11 COMMITTEE FOR A BETTER SHAFTER,
12 MEDICAL ADVOCATES FOR HEALTHY AIR,
AND NATIONAL PARKS CONSERVATION
ASSOCIATION,

13 Plaintiffs,

14 v.

15 ANDREW WHEELER, in his official capacity as
16 Acting Administrator of the United States
Environmental Protection Agency, and MIKE
17 STOKER, in his official capacity as Regional
Administrator of the United States Environmental
18 Protection Agency Region 9,

19 Defendants.

Case No.

COMPLAINT

20
21 **NATURE OF THE ACTION**

22 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401–7671q, to
23 compel the U.S. Environmental Protection Agency (“EPA”) to take the statutorily required action of
24 making findings under 42 U.S.C. § 7410(k)(1)(B), and publishing notice of those findings in the
25 *Federal Register*, that the State of California has failed to develop and submit at least four separate
26 nonattainment state implementation plan revisions to combat persistent violations of the 1997, 2006,
27 and 2012 National Ambient Air Quality Standards for fine particulate matter (PM_{2.5}) in the San
28 Joaquin Valley, California.

1 **NOTICE**

2 7. Plaintiffs provided EPA with written notice of the claim stated in this action at least
3 sixty days before commencing this action as required by 42 U.S.C. § 7604(b)(2). Exhibit A (Letter
4 from Colin C. O’Brien, counsel for Plaintiffs, to EPA Administrator, dated July 6, 2018).

5 **VENUE**

6 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). This civil action is
7 brought against officers of the United States acting in their official capacities. Defendant EPA
8 resides in the Northern District of California. EPA Region 9, which has authority over California
9 and is charged with reviewing state implementation plans and revisions for California, is
10 headquartered in San Francisco. A substantial part of the events or omissions giving rise to the
11 claims in this case likewise occurred in this judicial district. Further, Plaintiff NATIONAL PARKS
12 CONSERVATION ASSOCIATION resides in this judicial district.

13 **PARTIES**

14 9. Plaintiff COMMITTEE FOR A BETTER ARVIN (“CBA”) is a community group
15 consisting of residents from Arvin, California. CBA’s mission is to work to achieve environmental
16 justice and community leadership to protect the quality of water, air, and land for a better Arvin and
17 a healthier San Joaquin Valley. CBA was formed in 2007 as a community group and incorporated as
18 a 501(c)(3) nonprofit corporation in 2009. CBA is comprised of eight officers and fifty members.
19 CBA performs air quality monitoring to obtain data to fight for improved air quality. CBA recently
20 was involved in passing a local oil and gas ordinance that will enhance air quality and community
21 health in Arvin.

22 10. Plaintiff COMMITTEE FOR A BETTER SHAFTER (“CBS”) is a 501(c)(3)
23 nonprofit organization whose members reside and, in some cases, own property in Shafter,
24 California—a city located in the San Joaquin Valley. Incorporated in 2012, CBS has twelve full-
25 time members and thirty families that partner in its community garden. CBS’s mission is to work to
26 improve the quality of life in Shafter, to inform and unite the community, to address the
27 environmental problems that impact the community, and to ensure equality for all residents of
28 Shafter. CBS was created to promote organic and sustainable agriculture through community

1 gardens. CBS and its members and community gardeners actively engage on air quality issues,
2 owing to their concerns about the impact of air pollution upon their health and crops; members
3 participate in local, state, and national clean air advocacy efforts.

4 11. Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR (“Medical Advocates”) is
5 a California nonprofit organization based in Fresno, consisting of medical professionals living in the
6 San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused
7 or greatly exacerbated by the Valley’s unhealthy levels of air pollution. Formed in 2001, its mission
8 is to advocate for the expeditious attainment of state and federal health-based air quality standards in
9 the San Joaquin Valley through public education, litigation, and other means.

10 12. Plaintiff NATIONAL PARKS CONSERVATION ASSOCIATION (“NPCA”) is a
11 501(c)(3) nonprofit membership organization headquartered in Washington, D.C., with a Pacific
12 Regional Office located in Oakland, California, and a Sierra Nevada Field Office located in Fresno,
13 California. NPCA currently has over 1.3 million members and supporters nationwide, including
14 2,270 active members living in the counties that comprise the San Joaquin Valley Air Pollution
15 Control District. NPCA’s primary mission is to protect and preserve America’s national parks and
16 their resources, including air quality, for the use and enjoyment of present and future generations.
17 Since its founding in 1919, NPCA has pursued its mission through advocacy, education, and
18 strategic litigation to enforce environmental laws. For example, NPCA has worked to protect air
19 quality in national parks nationwide and in California through the implementation and enforcement
20 of Clean Air Act provisions that regulate air pollution sources affecting the national parks.

21 13. Plaintiffs’ members live, raise their families, work, recreate, and conduct educational,
22 advocacy, and other activities in the San Joaquin Valley. They are adversely affected by exposure to
23 levels of PM_{2.5} pollution that exceed the national standards for 24-hour and annual concentrations of
24 PM_{2.5} established under the Clean Air Act. Adverse effects of such PM_{2.5} pollution include actual or
25 threatened harm to: their health; the health of their families; their professional, educational, and
26 economic interests; and their recreational and aesthetic use and enjoyment of the environment in the
27 San Joaquin Valley, including their use and enjoyment of Yosemite, Sequoia, and Kings Canyon
28 National Parks.

1 14. The Clean Air Act violations alleged in this Complaint have injured and continue to
2 injure the interests of Plaintiffs and their members. The relief requested in this lawsuit would
3 redress these injuries by compelling EPA to take actions mandated by Congress in the Clean Air Act
4 for improving air quality in areas violating national air quality standards, such as the San Joaquin
5 Valley.

6 15. Defendant ANDREW WHEELER is sued in his official capacity as the Acting
7 Administrator of the EPA. He is responsible for taking various actions to implement and enforce the
8 Clean Air Act, including the mandatory duties at issue in this case.

9 16. Defendant MIKE STOKER is sued in his official capacity as EPA Regional
10 Administrator for Region 9. He is responsible for implementing and enforcing the Clean Air Act in
11 EPA Region 9, which includes the San Joaquin Valley, California.

12 **STATUTORY FRAMEWORK**

13 17. Congress enacted the Clean Air Act “to speed up, expand, and intensify the war
14 against air pollution in the United States with a view to assuring that the air we breathe throughout
15 the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970), *reprinted in* 1970
16 U.S.C.C.A.N. 5356, 5356. Consistent with these objectives, the Act requires EPA to set national
17 ambient air quality standards for certain pollutants, “the attainment and maintenance of which . . .
18 are requisite to protect the public health” with “an adequate margin of safety,” and “to protect the
19 public welfare from any known or anticipated adverse effects . . .” 42 U.S.C. § 7409(a), (b).

20 18. The Clean Air Act directs EPA to designate areas with air pollution levels that exceed
21 a national standard as “nonattainment” areas. 42 U.S.C. § 7407(d)(1).

22 19. The Clean Air Act provides that each state with a nonattainment area must adopt a
23 “state implementation plan” for improving air quality in that area in order to meet the national
24 ambient air quality standards. 42 U.S.C. §§ 7407(a), 7410(a), 7502(b), 7513a. Under the Act, states
25 must submit such plans to EPA for review. *Id.* §§ 7410(a)(1), 7502(b). The Act prescribes
26 deadlines for these submissions. For areas designated as nonattainment for particulate matter
27 pollution, plans are due no later than 18 months after a nonattainment designation. *See id.* §§ 7513–
28

1 7513b (Subpart 4 of Part D of Title I of the Act, “Additional Provisions for Particulate Matter
2 Nonattainment Areas”), 7513a(a)(2)(B) (particulate matter deadline).¹

3 20. Nonattainment areas for particulate matter pollution initially are designated as
4 “Moderate Areas.” 42 U.S.C. § 7513(a). State implementation plans for such Moderate Areas must
5 improve air quality to meet the relevant national ambient air quality standard “as expeditiously as
6 practicable but no later than the end of the sixth calendar year after the area’s designation as
7 nonattainment” *Id.* § 7513(c)(1).

8 21. Before the attainment deadline, if EPA determines that a Moderate Area cannot
9 practicably attain a particulate matter national ambient air quality standard by the prescribed
10 attainment date, EPA may reclassify it as a “Serious Area.” 42 U.S.C. § 7513(b)(1). If no such
11 determination is made but a Moderate Area, in fact, fails to attain the relevant health standard, it
12 likewise will be reclassified as a Serious Area. *Id.* § 7513(b)(2). Under the Clean Air Act, such
13 reclassification from Moderate to Serious results in a new, longer attainment deadline—“as
14 expeditiously as practicable but no later than the end of the tenth calendar year beginning after the
15 area’s designation as nonattainment” *Id.* § 7513(c)(2).

16 22. The Clean Air Act requires that a state implementation plan for a particulate matter
17 Serious Area must contain additional, stricter pollution prevention and control measures than a
18 Moderate Area plan. 42 U.S.C. § 7513a(b)(1). For example, plans for a Serious Area must include
19 “[p]rovisions to assure that the best available control measures for the control of [particulate matter]
20 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a
21 Serious Area.” *Id.* § 7513a(b)(1)(B). The Act requires states to submit Serious Area plans “no later
22 than 18 months after reclassification of the area as a Serious Area.” *Id.* § 7513a(b)(2).

23 23. If a Serious Area, despite the extended timeline for compliance, still does not meet
24 the particulate matter standard by the attainment date, “the State in which such area is located shall .

25
26 ¹ Sections 7513 through 7513b of the Clean Air Act, which collectively comprise Subpart 4 of Part
27 D of Title I of the Act, refer to “PM-10” but govern nonattainment requirements for both forms of
28 regulated particulate matter pollution—PM₁₀ and PM_{2.5}. *Natural Res. Def. Council v. EPA*, 706 F.3d
428, 435 (D.C. Cir. 2013) (“[B]y its express terms, Subpart 4, when enacted, governed all PM₁₀
particles, including those now denominated PM_{2.5}.”)

1 . . . submit within 12 months . . . plan revisions which provide for attainment.” 42 U.S.C. § 7513a(d).
2 The Clean Air Act specifies that plan revisions for such an overdue Serious Area must reduce direct
3 particulate matter emissions or particulate matter precursor emissions at least five percent annually
4 until air quality is improved enough to meet the air quality standard. *Id.*

5 24. The Clean Air Act requires EPA to determine whether any state implementation plan
6 or plan revision is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this
7 determination “no later than 6 months after the date, if any, by which a State is required to submit
8 the plan or revision.” *Id.*

9 25. If a state completely fails to submit a required state implementation plan by the
10 deadline, then there is no submittal that may be deemed administratively complete, and EPA
11 therefore must make a determination—and publish notice of that determination in the *Federal*
12 *Register*—stating that the state failed to submit an administratively complete state implementation
13 plan. 42 U.S.C. § 7410(k)(1)(B). Such a determination is commonly referred to as a “finding of
14 failure to submit.” *See, e.g.*, 83 Fed. Reg. 14,759 (Apr. 6, 2018) (stating “[t]hese findings of failure
15 to submit apply to states with overdue [state implementation plan] revisions”).

16 26. Upon issuing a finding of failure to submit, the Clean Air Act establishes a two-year
17 deadline for EPA either to approve a state implementation plan (subsequently submitted by state
18 authorities to address the deficiency) or to promulgate a federal implementation plan. 42 U.S.C.
19 § 7410(c)(1). When a state implementation plan is required to address nonattainment of an air
20 quality standard, a finding of failure to submit also starts the clock on mandatory sanctions intended
21 to induce states to develop and submit their plan. More specifically, 18 months after the finding, all
22 proposed new pollution sources within the nonattainment area become subject to a heightened
23 permitting requirement. *Id.* § 7509(a), (b)(2); 40 C.F.R. § 52.31(c), (d). And 24 months after the
24 finding, a moratorium on federal highway funds also is imposed, with an exemption for safety and
25 mass transit projects. 42 U.S.C. § 7509(b)(1); 40 C.F.R. § 52.31(d).

26 27. If EPA fails to take a non-discretionary action, such as acting on a nonattainment
27 state implementation plan submittal or failing to issue a “finding of failure to submit,” citizens are
28 empowered to seek a court order to compel prompt action. 42 U.S.C. § 7604(a)(2).

1 **STATEMENT OF FACTS**

2 28. This case involves EPA’s failure to timely implement the National Ambient Air
3 Quality Standards (“NAAQS”) for PM_{2.5}. PM_{2.5} particles are fine inhalable particles, with diameters
4 of 2.5 micrometers and smaller, that are capable of penetrating deep into the lung and even into the
5 bloodstream.

6 29. PM_{2.5} is “produced chiefly by combustion processes and by atmospheric reactions of
7 various gaseous pollutants.” 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006). The main sources of fine
8 particles include “motor vehicles, power generation, combustion sources at industrial facilities, and
9 residential fuel burning.” *Id.*

10 30. The effects of PM_{2.5} on human health are significant. For example, exposure has
11 been associated “with an array of health effects, notably premature mortality, increased respiratory
12 symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” 62 Fed.
13 Reg. 38,652, 38,668 (July 18, 1997). It is therefore vital that EPA timely implement Clean Air Act
14 requirements for PM_{2.5} to protect public health and welfare.

15 **1997 PM_{2.5} Standards—Reclassification to Serious Nonattainment**

16 31. EPA first established annual and 24-hour PM_{2.5} NAAQS in 1997 after reviewing
17 scientific data and public comment suggesting that separate standards for coarse (PM₁₀) and fine
18 (PM_{2.5}) particulate matter would lead to increased public health and welfare. 62 Fed. Reg. 38,652
19 (July 18, 1997).

20 32. EPA published initial air quality designations for the 1997 annual and 24-hour PM_{2.5}
21 NAAQS in 2005, effective April 5, 2005. 70 Fed. Reg. 944 (Jan. 5, 2005). At that time, EPA
22 designated the San Joaquin Valley as nonattainment for both the 1997 annual PM_{2.5} standard and the
23 1997 24-hour PM_{2.5} standard. *Id.* at 956.

24 33. Effective May 7, 2015, EPA reclassified the San Joaquin Valley from a Moderate to
25 Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS. 80 Fed. Reg. 18,528
26 (Apr. 7, 2015). As a result, EPA declared that “California is required to submit additional [state
27 implementation plan] revisions to satisfy the statutory requirements that apply to Serious areas. . . .”
28 *Id.* at 18,531. These plan revisions, which the Clean Air Act specifies must include provisions to

1 ensure that best available control measures are implemented to reduce PM_{2.5} and PM_{2.5} precursor
2 emissions, were due to EPA within 18 months of reclassification. 42 U.S.C. §§ 7513a(b)(1)(B),
3 (b)(2); 80 Fed. Reg. at 18,531. Based on the effective date of reclassification (i.e., May 7, 2015),
4 California should have submitted a revised Serious area PM_{2.5} plan for the 1997 standards to EPA by
5 November 7, 2016 (i.e., within 18 months). To date, California has failed to make the required
6 submission.

7 34. Because California has neglected to submit a plan to address the San Joaquin Valley’s
8 reclassification from a Moderate to Serious nonattainment area for the 1997 annual and 24-hour
9 PM_{2.5} NAAQS, EPA was required to issue a finding of failure to submit no later than six months
10 after the submission deadline—i.e., no later than May 7, 2017. 42 U.S.C. § 7410(k)(1)(B).

11 35. To date, EPA has failed to make the statutorily required finding of failure to submit.

12 **1997 PM_{2.5} Standards—Failure to Attain by Deadline**

13 36. Owing to EPA’s 2005 reclassification of the San Joaquin Valley from a Moderate to
14 Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS, the Clean Air Act
15 specifies that the Valley was required to achieve attainment “no later than the end of the tenth
16 calendar year beginning after the area’s designation as nonattainment”—i.e., by December 31,
17 2015. 42 U.S.C. § 7513(c)(2); *accord* 80 Fed. Reg. at 18,530 (“[A]s a result of our reclassification
18 of the SJV area as a Serious nonattainment area, the latest permissible attainment date under section
19 188(c)(2) of the Act, for purposes of the 1997 PM_{2.5} standards in this area, is December 31, 2015.”).

20 37. On November 23, 2016, EPA found that the San Joaquin Valley failed to attain the
21 1997 annual and 24-hour PM_{2.5} standards by December 31, 2015, as required by law. 81 Fed. Reg.
22 84,481 (Nov. 23, 2016). This failure triggered a statutory obligation for California to submit within
23 12 months (i.e., by December 31, 2016) a revised state implementation plan that provides for annual
24 reductions “of not less than 5 percent of the amount of such emissions as reported in the most recent
25 inventory prepared for such area.” 42 U.S.C. § 7513a(d); *accord* 81 Fed. Reg. at 84,481–82. To
26 date, California has failed to make this required submission.

27 38. Because California has neglected to submit a plan to address the San Joaquin Valley’s
28 failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS, EPA was required to issue a finding of

1 failure to submit no later than six months after the submission deadline—i.e., no later than June 30,
2 2017. 42 U.S.C. § 7410(k)(1)(B).

3 39. To date, EPA has failed to make the statutorily required finding of failure to submit.

4 **2006 24-hour PM_{2.5} Standard—Reclassification to Serious**

5 40. In 2006, EPA strengthened the 24-hour PM_{2.5} standard, revising the maximum
6 allowed 24-hour average concentration of PM_{2.5} from 65 micrograms per cubic meter (µg/m³) to 35
7 µg/m³. 71 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. § 50.13).

8 41. EPA issued nonattainment designations for the 2006 24-hour PM_{2.5} NAAQS on
9 November 13, 2009. 74 Fed. Reg. 58,688 (Nov. 13, 2009). In that rule, effective on December 14,
10 2009, EPA designated the San Joaquin Valley as a nonattainment area. *Id.* at 58,696, 58,711.

11 42. Effective February 19, 2016, EPA reclassified the San Joaquin Valley from a
12 Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS. 81 Fed. Reg. 2,993
13 (Jan. 20, 2016). This reclassification for the 2006 24-hour PM_{2.5} NAAQS triggered a requirement
14 for California to submit a revised plan that included provisions to implement “best available control
15 measures” by August 19, 2017 (i.e., within 18 months of reclassification for the 2006 standard). 42
16 U.S.C. §§ 7513a(b)(1)(B), (b)(2); *accord* 81 Fed. Reg. at 2,993 (“As a consequence of this
17 reclassification, California must submit, no later than 18 months from the effective date of this
18 reclassification, a Serious area attainment plan . . .”). To date, California has failed to make the
19 required submission.

20 43. Because California has neglected to submit a plan to address the San Joaquin Valley’s
21 reclassification from a Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS,
22 EPA was required to issue a finding of failure to submit no later than six months after the submission
23 deadline—i.e., no later than February 19, 2018. 42 U.S.C. § 7410(k)(1)(B).

24 44. To date, EPA has failed to make the statutorily required finding of failure to submit.

25 **2012 Annual PM_{2.5} Standard**

26 45. EPA lowered the annual PM_{2.5} standard in 2012, “lowering the level from 15.0 to
27 12.0 µg/m³ so as to provide increased protection against health effects associated with long-and
28 short-term exposures.” 78 Fed. Reg. 3,086, 3,088 (Jan. 15, 2013) (codified at 40 C.F.R. § 50.13).

1 46. Effective April 15, 2015, EPA classified the San Joaquin Valley as a Moderate
2 nonattainment area for the 2012 annual PM_{2.5} NAAQS. 80 Fed. Reg. 2,206, 2,217-18 (Jan. 15,
3 2015). California therefore was required to submit a plan addressing this nonattainment of the 2012
4 annual PM_{2.5} NAAQS within 18 months—i.e., by October 15, 2016. 42 U.S.C. § 7513a(a)(1)(C),
5 (2)(B). To date, California has failed to make the required submission.

6 47. Because California has neglected to submit a plan to address the San Joaquin Valley’s
7 classification as a Moderate nonattainment area for the 2012 annual PM_{2.5} NAAQS, EPA was
8 required to issue a finding of failure to submit no later than six months after the submission
9 deadline—i.e., no later than April 15, 2017. 42 U.S.C. § 7410(k)(1)(B).

10 48. To date, EPA has failed to make the statutorily required finding of failure to submit.

11 **FIRST CLAIM**

12 **(Failure to make required finding of failure to submit Serious Area**
13 **nonattainment plan for 1997 annual and 24-hour PM_{2.5} NAAQS)**

14 49. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
15 fully set forth herein.

16 50. As a consequence of EPA’s reclassification of the San Joaquin Valley from a
17 Moderate to Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS, the
18 deadline for California to submit to EPA a revised PM_{2.5} plan that meets heightened statutory
19 requirements—including implementation of best available control measures—was November 7,
20 2016.

21 51. To date, the State of California has not submitted a revised nonattainment state
22 implementation plan to address reclassification of the San Joaquin Valley as a Serious Area for its
23 failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS.

24 52. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
25 of failure to submit within six months of the submission deadline and no later than May 7, 2017.

26 53. EPA has failed to perform this mandatory duty.

27 54. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
28 § 7410(k)(1)(B), since May 8, 2017, or earlier.

1 55. This Clean Air Act violation constitutes “a failure of the Administrator to perform
2 any act or duty under this chapter which is not discretionary with the Administrator,” within the
3 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
4 ongoing.

5 **SECOND CLAIM**

6 **(Failure to make required finding of failure to submit revised plan to address**
7 **nonattainment of the 1997 annual and 24-hour PM_{2.5} NAAQS by the attainment deadline)**

8 56. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
9 fully set forth herein.

10 57. Because the San Joaquin Valley failed to attain the 1997 annual and 24-hour PM_{2.5}
11 standards by the Serious Area deadline of December 31, 2015, the deadline for California to submit
12 to EPA a revised PM_{2.5} plan that meets heightened statutory requirements—including the
13 requirement to reduce PM_{2.5} emissions by five percent annually—was December 31, 2016.

14 58. To date, the State of California has not submitted a revised nonattainment state
15 implementation plan to address its failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS by
16 the Serious Area deadline.

17 59. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
18 of failure to submit within six months of the submission deadline and no later than June 30, 2017.

19 60. EPA has failed to perform this mandatory duty.

20 61. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
21 § 7410(k)(1)(B), since July 1, 2017, or earlier.

22 62. This Clean Air Act violation constitutes “a failure of the Administrator to perform
23 any act or duty under this chapter which is not discretionary with the Administrator,” within the
24 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
25 ongoing.

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1 **THIRD CLAIM**

2 **(Failure to make required finding of failure to submit Serious Area**
3 **nonattainment plan for the 2006 24-hour PM_{2.5} NAAQS)**

4 63. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
5 fully set forth herein.

6 64. As a consequence of EPA’s reclassification of the San Joaquin Valley from a
7 Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS, the deadline for
8 California to submit to EPA a revised PM_{2.5} plan that meets heightened statutory requirements for
9 the 2006 standard—including implementation of best available control measures—was August 19,
10 2017.

11 65. To date, the State of California has not submitted a revised nonattainment state
12 implementation plan to address reclassification of the San Joaquin Valley as a Serious Area for its
13 failure to attain the 2006 24-hour PM_{2.5} NAAQS.

14 66. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
15 of failure to submit within six months of the submission deadline and no later than February 19,
16 2018.

17 67. EPA has failed to perform this mandatory duty.

18 68. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
19 § 7410(k)(1)(B), since February 20, 2018, or earlier.

20 69. This Clean Air Act violation constitutes “a failure of the Administrator to perform
21 any act or duty under this chapter which is not discretionary with the Administrator,” within the
22 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
23 ongoing.

24 **FOURTH CLAIM**

25 **(Failure to make required finding of failure to submit Moderate Area**
26 **nonattainment plan for the 2012 annual PM_{2.5} NAAQS)**

27 70. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
28 fully set forth herein.

1 71. As a consequence of EPA's classification of the San Joaquin Valley as a Moderate
2 nonattainment area for the 2012 annual PM_{2.5} NAAQS, the deadline for California to submit to EPA
3 a nonattainment plan to achieve the 2012 standard was October 15, 2016.

4 72. To date, the State of California has not submitted a state implementation plan to
5 address classification of the San Joaquin Valley as a Moderate Area for its failure to attain the 2012
6 annual PM_{2.5} NAAQS.

7 73. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
8 of failure to submit within six months of the submission deadline and no later than April 15, 2017.

9 74. EPA has failed to perform this mandatory duty.

10 75. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
11 § 7410(k)(1)(B), since April 16, 2017, or earlier.

12 76. This Clean Air Act violation constitutes "a failure of the Administrator to perform
13 any act or duty under this chapter which is not discretionary with the Administrator," within the
14 meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
15 ongoing.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiffs respectfully request that the Court:

18 77. Declare that the Administrator is in violation of the Clean Air Act with regard to his
19 mandatory, nondiscretionary duty under 42 U.S.C. § 7410(k)(1)(B) to make findings that the State of
20 California has failed to submit nonattainment state implementation plans or revisions addressing:

- 21 a. reclassification of the San Joaquin Valley from a Moderate to Serious nonattainment area
22 for the 1997 annual and 24-hour PM_{2.5} NAAQS;
- 23 b. the failure of the San Joaquin Valley to attain the 1997 annual and 24-hour PM_{2.5}
24 NAAQS prior to the statutory deadline for Serious Areas;
- 25 c. reclassification of the San Joaquin Valley from a Moderate to Serious nonattainment area
26 for the 2006 24-hour PM_{2.5} NAAQS; and
- 27 d. classification of the San Joaquin Valley as a Moderate nonattainment area with respect to
28 the 2012 annual PM_{2.5} NAAQS.

1 78. Issue an injunction requiring the Administrator to make and publish in the *Federal*
2 *Register* within 30 days the overdue findings of failure to submit;

3 79. Retain jurisdiction of this matter until such time as EPA has complied with its non-
4 discretionary duties under the Clean Air Act;

5 80. Award to Plaintiffs their reasonable costs of litigation, including attorneys' fees; and

6 81. Grant such further relief as the Court deems just and proper.

7
8 Dated: September 18, 2018

Respectfully submitted,

9 /s/ Colin O'Brien

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