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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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|----|-----------------------------------------------|--|---|----------------------------------------------|
| 14 | _____ | |) | |
| 15 | | |) | |
| 16 | | |) | |
| 17 | SIERRA CLUB, | |) | |
| 18 | | |) | Civ. No. |
| 19 | Plaintiff, | |) | |
| 20 | | |) | |
| 21 | v. | |) | COMPLAINT FOR INJUNCTIVE |
| 22 | | |) | AND DECLARATORY RELIEF |
| 23 | | |) | |
| 24 | GINA MCCARTHY, | |) | (Clean Air Act, 42 U.S.C. §§ 7401 <i>et.</i> |
| 25 | | |) | <i>seq.</i>) |
| 26 | in her official capacity as | |) | |
| 27 | Administrator | |) | |
| 28 | United States Environmental Protection Agency | |) | |
| 29 | | |) | |
| 30 | Defendant. | |) | |
| 31 | _____ | |) | |
| 32 | | |) | |

33 **INTRODUCTION**

34 1. Particulate matter less than 2.5 microns in diameter (PM2.5), sometimes referred to as
35 fine particulate, is a major cause of serious adverse public health and welfare impacts in the
36 United States. Exposure to PM2.5 causes death of innocent people, as well as numerous
37 respiratory problems, including decreased lung function, asthma and bronchitis, and is also

1 associated with hospital admissions, cardiopulmonary disease and lung cancer. The detrimental
2 effects of PM2.5 are not limited to human health; PM2.5 also contributes to regional haze,
3 thereby contributing to the visibility range limitations in some of our Nation's most treasured
4 natural areas.

5 2. To better protect the public from the damage caused by PM2.5, the United States
6 Environmental Protection Agency (EPA) promulgated a revised PM2.5 National Ambient Air
7 Quality Standard in 2006. Under the Clean Air Act, each state is required to submit a Prevention
8 of Significant Deterioration (PSD) program which addresses emissions of PM2.5 and its
9 precursors from construction or major modification of major stationary sources of this air
10 pollution. Part of the PM2.5 PSD is PM2.5 increments, which are site specific ambient air
11 quality standards designed to ensure that areas that EPA has designated as attainment do not
12 experience significant deterioration of ambient PM2.5 levels. States were required to submit
13 amendments to their PSD PM2.5 programs to add in PM2.5 increments by July 20, 2012.

14 3. Although it has been almost a year and a half since this deadline passed, the following
15 states or air districts have failed to submit a plan amendment with this lifesaving requirement:
16 Pinal County, Arizona, Arkansas, North Coast Unified Air Quality Management District,
17 California, Clark County, Nevada, Ohio, Vermont, and Wisconsin.

18 4. If a state fails to submit its state implementation plan amendment by the required date,
19 EPA is required to issue a finding stating so, known as a "finding of failure to submit." EPA has
20 failed to make such a finding for the states and air districts listed above. Accordingly, Plaintiff
21 SIERRA CLUB brings this action against Defendant GINA MCCARTHY, in her official
22 capacity as EPA Administrator, to compel her to perform her mandatory duties with respect to
23 these PM2.5 increment plan amendments.

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JURISDICTION

5. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a) (Clean Air Act citizen suits).

6. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

NOTICE

7. Sierra Club mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. EPA received the notice letter by no later than October 21, 2013. More than sixty days have passed since EPA received this notice letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists between the parties.

VENUE

8. Defendant EPA resides in this judicial district. This civil action is brought against an officer of the United States acting in her official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. One of the claims in this Complaint concerns EPA’s failure to perform mandatory duties with regard to Arizona, California, and Nevada. EPA Region 9, which is responsible for Arizona, California and Nevada, is headquartered in San Francisco. Thus, several of the events and

1 omissions at issue in this action occurred at EPA's Region 9 headquarters in San Francisco. In
2 addition, Plaintiff Sierra Club is headquartered in San Francisco. Accordingly, venue is proper
3 in this Court pursuant to 28 U.S.C. § 1391(e).

4
5 **INTRADISTRICT ASSIGNMENT**

6 9. A substantial part of the events and omissions giving rise to the claims in this case
7 occurred in the County of San Francisco. Accordingly, assignment to the San Francisco Division
8 or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

9
10 **PARTIES**

11 10. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization
12 formed in 1892. Sierra Club's purpose includes practicing and promoting the responsible use of
13 earth's ecosystems, and protecting and restoring the quality of the natural and human
14 environment.

15 11. Sierra Club has over 600,000 members nationally. Members and staff of Sierra Club
16 live, work, recreate, and travel throughout the areas at issue in this case and will continue to do
17 so on a regular basis. PM2.5 and precursors from sources in the affected states threaten, and will
18 continue to threaten, the health and welfare of the Sierra Club's staff and members. Sierra Club
19 staff's and members' ability to enjoy the aesthetic qualities and recreational opportunities as well
20 as their economic wellbeing is diminished in the affected areas due to impacts from PM2.5
21 pollution.

22 12. EPA's failure to timely perform the mandatory duties described herein also adversely
23 affects Sierra Club, as well as its staff and members, by depriving it of procedural protection and

1 opportunities as well as information which Sierra Club is entitled to under the Clean Air Act.

2 The failure of EPA to perform the mandatory duties also creates uncertainty for Sierra Club's
3 staff and members as to whether they are exposed to excess air pollution.

4 13. The above injuries will continue until the Court grants the relief requested herein.

5 14. Defendant GINA MCCARTHY is the Administrator of the United States Environmental
6 Protection Agency. In that role Administrator McCarthy has been charged by Congress with the
7 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

8
9 **LEGAL BACKGROUND AND FACTS**

10 15. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against
11 air pollution in the United States with a view to assuring that the air we breathe throughout the
12 Nation is wholesome once again." H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code
13 Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National
14 Ambient Air Quality Standards for certain pollutants, including PM2.5. National Ambient Air
15 Quality Standards establish maximum allowable concentrations in the air of these pollutants.

16 16. Each National Ambient Air Quality Standard must be stringent enough to protect public
17 health and welfare. Effects on welfare include, but are not limited to, effects on soils, water,
18 vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property,
19 economic impacts and effects on personal comfort and well-being.

20 17. On October 20, 2010, EPA published the final rule on the "Prevention of Significant
21 Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5)—Increments,
22 Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" 75 Fed.
23 Reg. 64,864(Oct. 20, 2010)(2010 NSR Rule). This rule established several components for

1 making PSD permitting determinations for PM2.5, including a system of “increments” which is
 2 a site specific ambient air quality standard used to prevent significant deterioration of ambient air
 3 quality for a pollutant.

4 18. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are
 5 included in the table below.

6 PM2.5 INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER
 7 CUBIC METER
 8

| | <u>Annual</u> | <u>24-hour max</u> |
|-----------------|---------------|--------------------|
| Class I | 1 | 2 |
| Class II | 4 | 9 |
| Class III | 8 | 18 |

9
 10 19. EPA required that states submit a SIP amendment including these PM2.5 increments by
 11 July 20, 2012. 75 Fed. Reg. at 64,898. *See also* 40 C.F.R. § 51.166(a)(6)(i).

12 20. The Clean Air Act requires EPA to determine whether any state implementation plan
 13 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B). If a state fails to submit
 14 any required state implementation plan, there is no submittal that may be deemed
 15 administratively complete and EPA must make a determination stating that the state failed to
 16 submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is referred to as
 17 a “finding of failure to submit.”

18 21. As of the date of the filing of this complaint the following states have not submitted plan
 19 amendments to add PM2.5 increment to their PSD programs: Pinal County, Arizona, Arkansas,
 20 North Coast Unified Air Quality Management District, California, Clark County, Nevada, Ohio,
 21 Vermont, and Wisconsin.

1 22. Also as of the date of the filing of this complaint, EPA has failed to make a finding of
2 failure to submit a plan amendment to add PM2.5 increments to their PSD programs for the
3 states and air districts listed in the preceding paragraph.

4
5 **CLAIM FOR RELIEF**

6 23. Plaintiff incorporates by reference paragraphs 1 through 22.

7 24. Pursuant to the Clean Air Act, each state must submit a SIP amendment including these
8 PM2.5 increments by July 20, 2012. 75 Fed. Reg. at 64,898. *See also* 40 C.F.R. §
9 51.166(a)(6)(i).

10 25. The Clean Air Act requires EPA to determine whether a state implementation plan
11 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

12 26. If a state fails to submit any required state implementation plan, there is no submittal that
13 may be deemed administratively complete and EPA must make a determination stating that the
14 state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B).
15 This is referred to as a “finding of failure to submit.”

16 27. Thus, if a state does not submit a state implementation plan, a finding of failure to submit
17 must be made no later than six months after the date by which the state implementation plan
18 submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).

19 28. The following states have not submitted plan amendments to add PM2.5 increment to
20 their PSD programs: Pinal County, Arizona, Arkansas, North Coast Unified Air Quality
21 Management District, California, Clark County, Nevada, Ohio, Vermont, and Wisconsin.

22 29. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
23 finding of failure to submit for the states listed above regarding the PM2.5 increment by no later
24 than January 20, 2013.

25 30. EPA has failed, and continues to fail, to make these findings of failure to submit for the
26 states listed above.

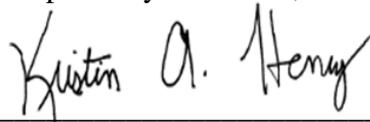
1 31. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B)
2 to issue a finding of failure to submit sufficient PM2.5 increment state implementation plans
3 amendments.

4
5 **REQUEST FOR RELIEF**

6 WHEREFORE, Sierra Club respectfully request that the Court:

- 7 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her
8 failure to perform each mandatory duty listed above;
- 9 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory
10 duties by certain dates;
- 11 C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's
12 order;
- 13 D. Grant Sierra Club its reasonable costs of litigation, including attorneys' and expert fees;
14 and
- 15 E. Grant such further relief as the Court deems just and proper.

16
17 Respectfully submitted,

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19
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27 Counsel for Sierra Club

28 Dated: March 3, 2014

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and sub-categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

120FKKHQPNC'CUH PO GPV*EklN0f05/4+

(Place an "X" in One Box Only) () SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.