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# LAW OFFICES OF BRENT J. NEWELL

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January 12, 2018

*By Certified Mail, Return Receipt Requested*

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
Mail Code ORA-1  
San Francisco, CA 94105

**Re: Notice of Intent to Sue for Failure to Take Action on the San Joaquin Valley  
2016 Plan for the 2008 8-Hour Ozone Standard (“2016 Ozone Plan”).**

Dear Administrator Pruitt and Acting Regional Administrator Strauss:

The Association of Irrigated Residents (“AIR”) gives notice to the Environmental Protection Agency, Scott Pruitt, and Alexis Strauss (collectively “EPA”) of AIR’s intent to sue EPA for its failure to fulfill its mandatory duty to take final action to approve, disapprove, or partially approve/disapprove the San Joaquin Valley 2016 Plan for the 2008 8-Hour Ozone Standard (“2016 Ozone Plan”). AIR sends this notice pursuant to section 304(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3. At the conclusion of the 60-day notice period, AIR intends to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA’s failure to perform a non-discretionary duty.

EPA shall act on the 2016 Ozone Plan, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that EPA shall make a completeness finding within 60 days of the date that EPA receives a plan or plan revision. A plan or plan revision shall be

deemed complete by operation of law if EPA fails to make a completeness finding within 6 months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

On June 16, 2016, the San Joaquin Valley Unified Air Pollution Control District adopted the Plan. On July 21, 2016, the California Air Resources Board approved the Plan as a revision to the California State Implementation Plan. The Board submitted the plan to EPA on August 24, 2016. EPA found the Plan complete on December 19, 2016.

Ozone pollution remains a public health crisis in the San Joaquin Valley, which ranks among the worst ozone polluted air basins in the United States and is designated an extreme ozone nonattainment area for the 2008 8-hour ozone standard. Ozone pollution causes premature death, exacerbates respiratory disease such as asthma, and increases the risk of cardiovascular disease.<sup>1</sup> Long-term exposure increases the risk of the onset of asthma and premature death.<sup>2</sup> According to the American Lung Association, Kern, Fresno, Tulare, Madera, and Kings counties are the fourth, fifth, sixth, seventh, and eighth most ozone-polluted counties in the United States.<sup>3</sup> The cities of Bakersfield, Fresno-Madera, Visalia-Porterville-Hanford, and Modesto-Merced are the second, third, fourth, and sixth most ozone-polluted cities in the United States.<sup>4</sup>

EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the 2016 Ozone Plan no later than December 19, 2017. To date, EPA has failed to take such action. EPA's failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), violates the Act.

### **Identity of Noticing Parties and their Attorneys**

Association of Irrigated Residents (AIR)	Attorney for AIR
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<sup>1</sup> AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2017 at 33-34, available on the internet at <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/state-of-the-air-2017.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 20.

<sup>4</sup> *Id.* at 17.

## Conclusion

Following the 60-day period, AIR will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to AIR's attorney.

Sincerely,



Brent Newell

cc: Governor Jerry Brown (By Certified Mail, Return Receipt Requested)  
State Capitol Building  
Sacramento, CA 95814

Mary Nichols, Chair (By Certified Mail, Return Receipt Requested)  
California Air Resources Board  
P.O. Box 2815  
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Richard Corey, Executive Officer (By Certified Mail, Return Receipt Requested)  
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