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## LAW OFFICES OF BRENT J. NEWELL

November 12, 2020

*By Certified Mail, Return Receipt Requested*

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

John Busernd, Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
Mail Code ORA-I  
San Francisco, CA 94105

**Re: Clean Air Act Notice of Intent to Sue for Failure to Take Action on the 2018 Plan for the 1997, 2006, and 2012 PM2.5 Standards and the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan.**

Dear Administrator Wheeler and Regional Administrator Busernd:

The Association of Irrigated Residents ("AIR") gives notice to the Environmental Protection Agency, Andrew Wheeler, and John Busernd (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 2018 Plan for the 1997, 2006, and 2012 PM2.5 Standards and the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan (collectively "2018 PM2.5 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.

PM2.5 pollution remains a public health crisis in the San Joaquin Valley, which ranks among the worst PM2.5 polluted air basins in the United States. The Valley is classified as a

serious area for the 1997 National Ambient Air Quality Standards and 2006 PM2.5 standard, and moderate for the 2012 PM2.5 standard. Short-term exposure to PM2.5 pollution causes premature death, decreased lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions.<sup>1</sup> Long-term exposure causes development of asthma in children, decreased lung function growth in children, increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.<sup>2</sup> According to the American Lung Association, Fresno, Kings, Kern, Stanislaus, San Joaquin, Merced, and Madera counties are the first, second, third, fourth, sixth, eighth, and eleventh most polluted counties in the United States with respect to short-term exposure to PM2.5.<sup>3</sup> The counties of Kern, Kings, Tulare, Stanislaus, San Joaquin, Merced, and Madera are the first, second, third, fourth, sixth, seventh, ninth, tenth, and fourteenth most polluted with respect to long-term exposure to PM2.5.<sup>4</sup> The cities of Fresno-Madera-Hanford and Bakersfield are the first and second most polluted with respect to short-term exposure to PM2.5.<sup>5</sup> The cities of Bakersfield, Fresno-Madera-Hanford, and Visalia are the first, second, and third most polluted with respect to long-term exposure to PM2.5.<sup>6</sup>

EPA shall act on the 2018 PM2.5 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 October 25, 2018, the California Air Resources Board adopted the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan.

On November 15, 2018, the San Joaquin Valley Unified Air Pollution Control District adopted the 2018 Plan for the 1997, 2006, and 2012 PM2.5 Standards. On January 19, 2019, the California Air Resources Board approved the Plan as a revision to the California State Implementation Plan.

On December 11, 2018, the California Air Resources Board submitted contingency measures for the 1997, 2006, and 2012 PM2.5 standards to EPA. On May 10, 2019, the California Air Resources Board submitted the 2018 PM2.5 plan to EPA. The 2018 PM2.5 Plan became complete by operation of law on November 20, 2019.

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<sup>1</sup> AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2020 at 37-38, available on the internet at <https://www.stateoftheair.org/assets/SOTA-2020.pdf>.

<sup>2</sup> *Id.* at 38-39.

<sup>3</sup> *Id.* at 23.

<sup>4</sup> *Id.* at 24.

<sup>5</sup> *Id.* at 20.

<sup>6</sup> *Id.* at 21.

Effective August 21, 2020, EPA took final action to approve the 2018 PM2.5 Plan with respect to the 2006 24-hour PM2.5 standard, except the EPA did not take final action with respect to contingency measures for the 2006 24-hour PM2.5 standard. 85 Fed. Reg. 44192, 44204-44205 (July 22, 2020).

To date, EPA has failed to take action on the 2018 PM2.5 Plan with respect to (1) the 1997 and 2012 PM2.5 standards; and (2) contingency measures for the 1997, 2006, and 2012 PM2.5 standards. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the 2018 PM2.5 Plan no later than November 10, 2020. EPA has a non-discretionary duty to act on the contingency measures no later than June 11, 2020. 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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### **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 Gavin Newsom (By Certified Mail, Return Receipt Requested)  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Mary Nichols, Chair (By Certified Mail, Return Receipt Requested)  
California Air Resources Board  
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