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Association of Irrigated Residents

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ASSOCIATION OF IRRIGATED
RESIDENTS, a nonprofit corporation,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, SCOTT PRUITT, in
his official capacity as Administrator of the
United States Environmental Protection
Agency, and ALEXIS STRAUSS, in her
official capacity as Acting Regional
Administrator for Region 9 of the United States
Environmental Protection Agency,

Defendants.

) Case No.

) **COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1
2 1. Plaintiff Association of Irrigated Residents (“AIR”) files this Clean Air Act citizen suit to
3 compel Defendants United States Environmental Protection Agency, Scott Pruitt, and Alexis Strauss
4 (collectively “EPA”) to approve, disapprove, or partially approve/disapprove the San Joaquin Valley
5 Unified Air Pollution Control District’s 2016 Plan for the 2008 8-Hour Ozone Standard (“2016 Ozone
6 Plan”).

7 2. Ozone air pollution in the San Joaquin Valley of California constitutes a public health
8 crisis. According to the American Lung Association’s State of the Air 2017 report, the San Joaquin
9 Valley counties of Kern, Fresno, Tulare, Madera, and Kings rank as the fourth, fifth, sixth, seventh, and
10 eighth most ozone-polluted counties in the United States, respectively.

11 3. EPA promulgated the 2008 8-hour ozone National Ambient Air Quality Standard (“2008
12 Standard”) “to provide increased protection for children and other ‘at risk’ populations against an array
13 of [ozone]-related adverse health effects that range from decreased lung function and increased
14 respiratory symptoms to serious indicators of respiratory morbidity including emergency department
15 visits and hospital admissions for respiratory causes, and possibly cardiovascular-related morbidity as
16 well as total nonaccidental and cardiorespiratory mortality.” 73 Fed. Reg. 16436 (March 27, 2008).

17 4. To implement the 2008 Standard, the EPA designated the San Joaquin Valley as
18 “extreme” – the worst ozone nonattainment area designation possible – under the Clean Air Act.

19 5. The Clean Air Act is a model of cooperative federalism, whereby the EPA sets health-
20 based National Ambient Air Quality Standards and the states develop the plan and strategies to achieve
21 those standards. States submit their plans and strategies to EPA for review and approval. EPA shall
22 approve the submission if it meets the Act’s minimum requirements. EPA and citizens may enforce the
23 EPA-approved State Implementation Plan as a matter of federal law to hold states and regulated entities
24 accountable.

25 6. The San Joaquin Valley Air Pollution Control District (“District”) adopted the 2016
26 Ozone Plan, and the California Air Resources Board (“Board”) submitted the Plan to the EPA for review
27 and approval as part of the State Implementation Plan.

1 California. Members of ASSOCIATION OF IRRITATED RESIDENTS reside in Fresno, Kern, Kings,
2 Stanislaus, and Tulare counties and in the San Joaquin Valley Air Basin.

3 15. Plaintiff ASSOCIATION OF IRRITATED RESIDENTS is a person within the meaning
4 of section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and may commence a civil action under
5 section 304(a) of the Act, 42 U.S.C. § 7604(a).

6 16. Members of AIR live, raise their families, work, and recreate in the San Joaquin Valley.
7 They are adversely affected by exposure to levels of ozone air pollution that exceed the health-based
8 2008 8-hour ozone National Ambient Air Quality Standard. The adverse effects of such pollution
9 include actual or threatened harm to their health, their families' health, their professional, educational,
10 and economic interests, and their aesthetic and recreational enjoyment of the environment in the San
11 Joaquin Valley.

12 17. The Clean Air Act violation alleged in this Complaint also deprives AIR members of
13 certain procedural rights associated with EPA's required action on the 2016 Ozone Plan, including
14 notice and opportunity to comment.

15 18. The Clean Air Act violation alleged in this Complaint has injured and continues to injure
16 the interests of AIR members. Granting the relief requested in this lawsuit would redress these injuries
17 by compelling EPA action that Congress required as an integral part of the regulatory scheme for
18 improving air quality in areas violating the National Ambient Air Quality Standards.

19 19. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the
20 federal agency Congress charged with implementation and enforcement of the Clean Air Act. As
21 described below, the Act assigns to UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
22 certain nondiscretionary duties.

23 20. Defendant SCOTT PRUITT is sued in his official capacity as Administrator of the United
24 States Environmental Protection Agency. He is charged in that role with taking various actions to
25 implement and enforce the Clean Air Act, including the actions sought in this Complaint.

26 21. Defendant ALEXIS STRAUSS is sued in her official capacity as Acting Regional
27 Administrator for Region 9 of the United States Environmental Protection Agency. She is responsible
28

1 for implementing and enforcing the Clean Air Act in Region 9, which includes California and the San
2 Joaquin Valley.

3 STATUTORY FRAMEWORK

4 22. The Clean Air Act establishes a partnership between EPA and the states for the
5 attainment and maintenance of National Ambient Air Quality Standards (“NAAQS”). See 42 U.S.C. §§
6 7401-7515. Under the Act, EPA has set health-based NAAQS for six pollutants, including ozone.
7 States must adopt a State Implementation Plan (“SIP”) that contains enforceable emissions limitations
8 necessary to attain the NAAQS and meet applicable requirements of the Act. 42 U.S.C. §§ 7401(a)(1),
9 (a)(2)(A); 7502(c)(6). States must submit all such plans and plan revisions to the EPA. 42 U.S.C. §
10 7410(a)(1).

11 23. Within 60 days of EPA’s receipt of a proposed SIP revision, the Clean Air Act requires
12 EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA
13 for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make this “completeness” finding, the
14 proposed SIP revision becomes complete by operation of law six months after a state submits the
15 revision. If EPA determines that the proposed SIP revision does not meet the minimum criteria, the
16 state is considered to have not made the submission. 42 U.S.C. 7410(k)(1)(C).

17 24. Within twelve months of an EPA finding that a proposed SIP revision is complete (or
18 deemed complete by operation of law), EPA must act to approve, disapprove, or approve in part and
19 disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

20 25. If EPA disapproves the revision, in whole or in part, then the Clean Air Act requires EPA
21 to impose sanctions against the offending state or region, including increased offsets for new and
22 modified major stationary sources or a prohibition on the used of federal highway funds, unless the state
23 submits revisions within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and
24 highway funding sanctions within 24 months unless the state has corrected the deficiency. *Id.*
25 Moreover, the Act requires EPA to promulgate a Federal Implementation Plan within 24 months of
26 disapproval unless the state has corrected the deficiency and EPA has approved the revision. 42 U.S.C.
27 § 7410(c).

1 hour ozone standard and held that EPA did not consider and address the implications of new emissions
2 inventory data on whether the plan would attain the standard by the deadline. *Sierra Club v. EPA*, 671
3 F.3d 955, 958, 968 (9th Cir. 2012). The San Joaquin Valley attained the standard in 2016, six years
4 after the deadline. 81 Fed. Reg. 46608 (July 18, 2016).

5 34. Effective June 15, 2004, EPA designated the San Joaquin Valley air basin as a serious
6 nonattainment area for the 1997 8-hour ozone NAAQS. 69 Fed. Reg. 23858 (April 30, 2004). EPA
7 granted the California Air Resources Board's request to reclassify the Valley as an extreme ozone
8 nonattainment area, extending the attainment deadline for the 1997 8-hour ozone standard to June 15,
9 2024. 74 Fed. Reg. 43654 (Aug. 27, 2009).

10 35. EPA later approved the attainment plan for the 1997 8-hour ozone standard. 77 Fed. Reg.
11 12652 (March 1, 2012). The Ninth Circuit Court of Appeals reviewed EPA's approval and held that
12 EPA had improperly allowed emissions reductions from mobile source rules that EPA had not approved
13 as part of the State Implementation Plan. *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir.
14 2015).

15 36. In 2008, EPA completed a review of the 8-hour ozone standard and found it necessary to
16 lower the ambient concentration of ozone to 0.075 parts per million as the 2008 Standard. 73 Fed. Reg.
17 16436 (March. 27, 2008). The EPA based this decision on its findings that "(1) the strong body of
18 clinical evidence in healthy people at exposure levels of 0.080 and above of lung function decrements,
19 respiratory symptoms, pulmonary inflammation, and other medically significant airway responses, as
20 well as some indication of lung function decrements and respiratory symptoms at lower levels; (2) the
21 substantial body of clinical and epidemiological evidence indicating that people with asthma are likely
22 to experience larger and more serious effects than healthy people; and (3) the body of epidemiological
23 evidence indicating associations are observed for a wide range of serious health effects, including
24 respiratory emergency department visits, hospital admissions, and premature mortality, at and below
25 0.080 ppm." 73 Fed. Reg. at 16476.

26 37. After EPA promulgated the 2008 Standard, it revoked the 1997 8-hour ozone standard
27 and promulgated anti-backsliding requirements that retain the Valley's rules and plan designed to attain
28

1 the 1997 standard to ensure progress towards attainment of the 2008 Standard. *See* 40 C.F.R. §
2 51.1105(a)(1); 80 Fed. Reg. 12644 (March 6, 2015).

3 38. EPA designated the San Joaquin Valley as an extreme nonattainment area for the 2008
4 Standard. 40 C.F.R. § 51.1103(d). As an extreme nonattainment area, the Valley has until July 20, 2032
5 – the maximum allowable time – to attain the standard. 40 C.F.R. § 51.1103(a); 80 Fed. Reg. 12264,
6 12268 (March 6, 2015).

7
8 **FIRST CLAIM FOR RELIEF**

9 **Failure to Perform a Non-Discretionary Duty to Act on the 2016 Ozone Plan**
10 **(42 U.S.C. § 7410(k)(2))**

11 39. AIR re-alleges and incorporates by reference the allegations set forth in paragraphs 1-38.

12 40. On June 16, 2016, the San Joaquin Valley Air Pollution Control District adopted the 2016
13 Plan for the 2008 8-hour Ozone Standard (“2016 Ozone Plan”).

14 41. Only July 21, 2016, the California Air Resources Board approved the 2016 Ozone Plan as
15 a revision to the California State Implementation Plan.

16 42. On August 24, 2016, the California Air Resources Board submitted the 2016 Ozone Plan
17 to the EPA.

18 43. On December 19, 2016, EPA found the 2016 Ozone Plan complete.

19 44. EPA has a mandatory duty to act on the 2016 Ozone Plan no later than December 19,
20 2017. 42 U.S.C. § 7410(k)(2).

21 45. By failing to act on the 2016 Ozone Plan to date, EPA has violated and continues to
22 violate its nondiscretionary duty to act on the 2016 Ozone Plan pursuant to Clean Air Act section
23 110(k)(2), 42 U.S.C. § 7410(k)(2).

24 46. This Clean Air Act violation constitutes a “failure of the Administrator to perform any act
25 or duty under this chapter which is not discretionary with the Administrator” within the meaning of the
26 Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation of the Act is ongoing and will
27 continue unless remedied by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief:

- A. DECLARE that the EPA violated the Clean Air Act by failing to act on the 2016 Ozone Plan;
- B. ISSUE preliminary and permanent injunctions directing EPA to finalize action on the 2016 Ozone Plan;
- C. RETAIN jurisdiction over this matter until such time as EPA has complied with its nondiscretionary duty under the Clean Air Act;
- D. AWARD to plaintiff its costs of litigation, including reasonable attorney and expert witness fees; and
- E. GRANT such additional relief as the Court may deem just and proper.

Dated: March 14, 2018

Respectfully Submitted,

LAW OFFICES OF BRENT J. NEWELL

By: /s/ Brent J. Newell

Brent J. Newell
Attorney for Plaintiff
ASSOCIATION OF IRRITATED
RESIDENT

LAW OFFICES OF BRENT J. NEWELL

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.¹ Long-term exposure increases the risk of the onset of asthma and premature death.² 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.³ 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.⁴

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
Tom Frantz, President	Brent Newell
Association of Irrigated Residents	Law Offices of Brent J. Newell
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¹ 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>.

² *Id.*

³ *Id.* at 20.

⁴ *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
Sacramento, CA 95812

Richard Corey, Executive Officer (By Certified Mail, Return Receipt Requested)
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Syed Sedredin, Air Pollution Control Officer
San Joaquin Valley Unified APCD
1990 E. Gettysburg Ave.
Fresno, CA 93726

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Association of Irrigated Residents

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Brent Newell, Law Offices of Brent J. Newell 245 Kentucky Street, Suite A-4, Petaluma, CA 94952 (661) 586-3724

DEFENDANTS

U.S. Environmental Protection Agency, Scott Pruitt, in his official capacity as EPA Administrator, and Alexis Strauss, in her official capacity as Acting Regional Administrator

County of Residence of First Listed Defendant San Francisco (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 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. section 7604(a)(2).

Brief description of cause: Clean Air Act citizen suit to compel a non-discretionary duty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

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

DATE 03/14/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brent J. Newell