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12 OUR CHILDREN’S EARTH FOUNDATION

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 OUR CHILDREN’S EARTH FOUNDATION, a
17 non-profit corporation,

18 Plaintiff,

19 v.

20 MICHAEL S. REGAN, in his official capacity
21 as ADMINISTRATOR, UNITED STATES
22 ENVIRONMENTAL PROTECTION
23 AGENCY

24 Defendant.

Civil Case No. 23-CV-4955

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 Plaintiff Our Children’s Earth Foundation alleges as follows:

2 **INTRODUCTION**

3 1. The Clean Air Act is a model of cooperative federalism, whereby the Administrator
4 (“Administrator” or “Administrator Regan”) of the Environmental Protection Agency (“EPA”) sets
5 National Ambient Air Quality Standards (“NAAQS”) and the states develop specific plans to achieve
6 these standards. States submit these State Implementation Plans, and revisions to the State
7 Implementation Plans (collectively “SIPs”), to the Administrator, who reviews the SIPs to ensure they
8 meet the requirements of the Clean Air Act.

9 2. The Clean Air Act mandates that the Administrator fully or partially approve or
10 disapprove SIPs submitted by states no later than 18 months after he receives them.

11 3. The Administrator has violated his mandatory 18-month deadline to take action on
12 certain SIPs submitted by the States of Arizona, Colorado, New Mexico, and Utah (states that make up
13 what is known as the “Four Corners” area in the southwestern United States).

14 4. Plaintiff Our Children’s Earth Foundation brings this Clean Air Act citizen suit to compel
15 Defendant Michael S. Regan, the current Administrator, to perform his non-discretionary duty to review
16 and take action on the Arizona, Colorado, New Mexico, and Utah SIP submissions at issue in this case.
17 The timely review of these SIP submissions is necessary to ensure adequate protection of air quality and
18 public health.

19 **JURISDICTION**

20 5. This is an action against the Administrator where there is alleged a failure of the
21 Administrator to perform any act or duty under the Clean Air Act which is not discretionary with the
22 Administrator. Thus, this Court has jurisdiction pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit
23 provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question).

24 6. The requested declaratory relief is authorized by 28 U.S.C. § 2201(a) and 42 U.S.C. §
25 7604(a). The requested injunctive relief is authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 7604(a).

26 7. This Court has personal jurisdiction over EPA and its officials, including Administrator
27 Regan, because EPA is an agency of the federal government operating within the United States.

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1 **NOTICE**

2 8. By letter dated July 18, 2023, Our Children’s Earth Foundation provided the
3 Administrator with written notice of the claims concerning the Arizona, Colorado, New Mexico, and
4 Utah SIP submissions in this action. Our Children’s Earth Foundation provided this notice pursuant to
5 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2, 54.3. Although more than 60 days have elapsed since Our
6 Children’s Earth Foundation gave notice, Administrator Regan remains in violation of the law.

7 9. As Administrator Regan has failed to redress the Clean Air Act violations set forth in Our
8 Children’s Earth Foundation’s notice letter referenced in paragraph 8, there exists now between the
9 parties an actual, justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C.
10 § 2201.

11 **VENUE**

12 10. Venue in the United States District Court for the Northern District of California is proper
13 under 28 U.S.C. § 1391(e) because at least one defendant resides in the judicial district, a substantial
14 part of the events giving rise to this litigation occurred within this judicial district, Our Children’s Earth
15 Foundation resides within this judicial district, and there is no real property involved in the action.

16 **INTRADISTRICT ASSIGNMENT**

17 11. Intradistrict assignment of this matter to the San Francisco Division of the Court is
18 appropriate pursuant to Civil Local Rules 3-2(c) and (d) because Our Children’s Earth Foundation’s
19 principal place of business is located in Napa, California; Our Children’s Earth Foundation’s principal
20 counsel resides in San Francisco County, California; EPA resides in this judicial district and maintains a
21 major regional office, responsible for the Arizona SIP submissions at issue, in San Francisco, California;
22 and a substantial part of the events or omissions giving rise to Our Children’s Earth Foundation’s claims
23 occur in EPA’s San Francisco, California office.

24 **THE PARTIES**

25 12. Plaintiff OUR CHILDREN’S EARTH FOUNDATION is a non-profit corporation based
26 in Napa, California dedicated to protecting the environment. Our Children’s Earth Foundation promotes
27 public awareness of domestic and international environmental impacts through information
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1 dissemination, education, and private enforcement of environmental protection statutes. Our Children’s
2 Earth Foundation enforcement cases aim to achieve public access to government information, ensure
3 proper implementation of environmental statutes and permitting, and enjoin violations of environmental
4 and government transparency laws. Our Children’s Earth Foundation has an active membership of
5 people from all over the United States with significant membership in Arizona, Colorado, New Mexico,
6 and Utah.

7 13. Our Children’s Earth Foundation is a non-profit corporation. Therefore, Our Children’s
8 Earth Foundation is a “person” within the meaning of 42 U.S.C. § 7602(e). As such, Our Children’s
9 Earth Foundation may commence a civil action under 42 U.S.C. § 7604(a).

10 14. Our Children’s Earth Foundation brings this action on its own behalf and on behalf of its
11 adversely affected members and staff. Our Children’s Earth Foundation’s members and staff live, work,
12 bike, recreate, and/or conduct educational, research, advocacy, and other activities in Arizona, Colorado,
13 New Mexico, and Utah in areas where air pollution, which should be regulated under the SIP
14 submissions at issue in this case, harms their participation in and enjoyment of these activities. The air
15 pollution that should be regulated by these SIPs also causes Our Children’s Earth Foundation’s members
16 and staff to experience chronic and acute harms to their health, which could be lessened or eliminated if
17 the Administrator took the required actions to regulate air pollution through the SIP submissions at issue
18 in this case. Our Children’s Earth Foundation’s members and staff have concrete plans to continue living
19 in and/or visiting Arizona, Colorado, New Mexico, and Utah and engaging in these activities. The air
20 pollution that should be regulated by the SIP submissions at issue in this lawsuit adversely affects the
21 interests of Our Children’s Earth Foundation and its members and staff. The Administrator’s failure to
22 act on the SIP submissions at issue in this case also creates doubt and concern for Our Children’s Earth
23 Foundation and its members and staff as to whether they are exposed to illegal levels of air pollution, or
24 whether a Federal Implementation Plan (“FIP”) is necessary to ensure compliance with the law. The
25 interests of Our Children’s Earth Foundation and its members and staff have been, are being, and will
26 continue to be irreparably harmed by the Administrator’s failure to act on the SIP submissions at issue in
27 this case.

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1 15. The violations alleged in this Complaint deprive Our Children's Earth Foundation and its
2 members and staff of certain procedural rights associated with the Administrator's required action on the
3 SIP submissions, including notice and opportunity to comment. The violations alleged in this Complaint
4 also deprive Our Children's Earth Foundation and its members and staff of certain information
5 associated with the Administrator's required action on the SIP submissions. These procedural,
6 informational, and other injuries are directly tied to the other harms Our Children's Earth Foundation
7 and its members and staff are experiencing.

8 16. Furthermore, if the Administrator were to partially or fully disapprove of the SIP
9 revisions at issue in this Complaint, the Administrator would be obligated to promulgate a FIP to correct
10 any deficiencies within two years of any disapproval. Ultimately, the Administrator's failure to act in
11 compliance with his mandatory duties deprives Our Children's Earth Foundation and its members and
12 staff of certainty that air quality is being maintained and improved in Arizona, Colorado, New Mexico,
13 and Utah and of the health and other benefits of that clean air.

14 17. The violations alleged in this Complaint have injured and continue to injure the interests
15 of Our Children's Earth Foundation and its members and staff. These injuries are traceable to the
16 Administrator's failure to act. Granting the requested relief would redress these injuries by compelling
17 the Administrator to act in compliance with what Congress has determined is an integral part of the
18 regulatory scheme for attaining and maintaining NAAQS.

19 18. Defendant MICHAEL S. REGAN is the Administrator of EPA. Mr. Regan is sued in his
20 official capacity. The Administrator is charged with implementation and enforcement of the Clean Air
21 Act. As described below, the Clean Air Act assigns the Administrator certain non-discretionary duties,
22 and Administrator Regan has failed to comply with these duties.

23 **LEGAL BACKGROUND**

24 19. The Clean Air Act establishes a partnership between EPA and the states for the
25 attainment and maintenance of NAAQS. *See* 42 U.S.C. §§ 7401-7515. This system is intended to "speed
26 up, expand, and intensify the war against air pollution in the United States with a view to assuring that
27 the air we breathe throughout the Nation is wholesome once again." H.R. Rep. No. 91-1146, at 1 (1970),
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1 *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356. Towards this end, EPA has set NAAQS for seven
2 pollutants. *See* 40 C.F.R. §§ 50.4-50.17.

3 20. States, or regions within a state, must adopt a pollution control plan that contains
4 enforceable emissions limitations necessary to attain NAAQS and meet applicable requirements of the
5 Clean Air Act, including ensuring attainment, maintenance, and enforcement of NAAQS. *See, e.g.*, 42
6 U.S.C. § 7410(a)(1), (a)(2)(A). All such plans must be submitted to and approved by the Administrator.
7 42 U.S.C. § 7410(a)(1), (k).

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

15 22. Within 12 months of finding that a proposed SIP or SIP revision is complete (or deemed
16 complete by operation of law), the Administrator must act to approve, disapprove, or approve in part and
17 disapprove in part, the submission. *See* 42 U.S.C. § 7410(k)(2). At most then, the Administrator has a
18 maximum of 18 months to take action on a SIP after it has been submitted.

19 23. Once the Administrator approves a SIP or SIP revision, polluters must comply with all
20 emission standards and limitations contained in the SIP, and all such standards and limitations become
21 federal law and are enforceable by the Administrator and citizens in federal courts. *See* 42 U.S.C. §§
22 7413, 7604(a).

23 24. If the Administrator finds that a State has failed to make a complete SIP submission or
24 disapproves a SIP submission in whole or in part, the Clean Air Act requires the Administrator to
25 promulgate a FIP within two years of that finding. 42 U.S.C. § 7410(c)(1)(A), (B).

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1 32. As Exhibit 1 shows, the dates by which the Administrator was required to take final
2 action on all of the SIPs at issue in this lawsuit were between April 16, 1991 and June 16, 2023.

3 33. Each one of the Four Corners SIP submissions at issue in this lawsuit, listed in Exhibit 1,
4 is still before the Administrator and is awaiting final action in accordance with the Clean Air Act. As of
5 the filing of this Complaint, the Administrator has not granted and published final full or partial
6 approval or disapproval to the Arizona, Colorado, New Mexico, and Utah SIP submissions referenced in
7 Exhibit 1.

8 **FIRST CLAIM FOR RELIEF**
9 **Failure to Perform a Non-Discretionary Duty to Act**
10 **on the Arizona, Colorado, New Mexico, and Utah SIP Submittals**

11 34. Our Children's Earth Foundation repeats and incorporates by reference the allegations in
12 the above paragraphs and all paragraphs of this Complaint.

13 35. The Administrator received at least the 32 SIP submissions at issue in this Complaint
14 from the States of Arizona, Colorado, New Mexico, and Utah between October 16, 1989 and December
15 17, 2021.

16 36. The Administrator determined by no later than six months after Arizona, Colorado, New
17 Mexico, and Utah submitted these SIPs, either in fact or by operation of law, that the SIP submissions
18 meet the minimum criteria for SIP submittals and are administratively complete. *See* 42 U.S.C. §
19 7410(k)(1)(A).

20 37. Therefore, the Administrator had, and continues to have, a mandatory duty to fully or
21 partially approve or disapprove the Arizona, Colorado, New Mexico, and Utah SIP submissions by no
22 later than 18 months after their submission, 12 months from their administrative completion date. *See* 42
23 U.S.C. § 7410(k)(2), (3).

24 38. The Administrator's determinations whether to fully or partially approve or disapprove of
25 the Arizona, Colorado, New Mexico, and Utah SIP submissions were due between April 16, 1991 and
26 June 16, 2023.

27 39. The Administrator has not fully or partially approved or disapproved the Arizona,
28 Colorado, New Mexico, and Utah SIP submissions.

