

1 **INTRODUCTION**

2 1. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY challenges the failure of
3 Defendant LISA P. JACKSON, Administrator of the United States Environmental Protection
4 Agency (“EPA”) to perform mandatory duties required by three provisions of the Clean Air Act
5 (the “Act”), 42 U.S.C. §§ 7401-7671q. First, EPA has a mandatory duty to make a
6 determination whether 13 nonattainment areas in Alaska, Arizona, Idaho, Montana, and Nevada
7 have attained the National Ambient Air Quality Standard for particulate matter less than 10
8 microns in diameter (“PM-10”). Second, EPA has a mandatory duty to impose sanctions and
9 create a Federal Implementation Plan for PM-10 for two areas in Arizona where EPA has already
10 made a finding of a failure to submit a sufficient State Implementation Plan. Third, EPA has a
11 mandatory duty to issue a determination that Montana has failed to submit a sufficient State
12 Implementation Plan for two PM-10 nonattainment areas in Montana because the state failed to
13 submit a State Implementation Plan by the date it was required to do so. EPA has failed to
14 complete all these duties. The Center for Biological Diversity thus brings this action to prevent
15 direct and irreparable harm to the interests of its staff and members resulting from PM-10
16 pollution.

17 **JURISDICTION**

18 2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction
19 over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. §
20 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air
21 Act). The relief sought is authorized by 28 U.S.C. § 2201 (declaratory judgment) and 28 U.S.C.
22 § 2202 (injunctive relief).

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INTRADISTRICT ASSIGNMENT

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

VENUE

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because defendant EPA resides in this judicial district. Venue also is proper in this court pursuant to 28 U.S.C. § 1391(e) because this civil action is brought against an officer of the United States acting in her official capacity and under the color of legal authority and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. Several of the claims at issue in this action involve EPA’s failure to perform mandatory duties related to air quality standards and planning in Arizona and Nevada. EPA Region 9, whose jurisdiction includes Arizona and Nevada, is headquartered in San Francisco. Thus several of the events and omissions at issue in this action occurred at EPA’s Region 9 headquarters in San Francisco.

NOTICE

5. To the degree such notice may be required by law, the Center for Biological Diversity has provided notice under the Clean Air Act, *see* 42 U.S.C. § 7604(b)(2), by sending EPA written notice of intent to sue regarding the violations alleged in this Complaint. Notice was provided by certified mail, return receipt requested, on February 5, 2010. More than sixty days have passed since the Center for Biological Diversity mailed this notice of intent to sue letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and

1 actual controversy exists between Defendants and the Center for Biological Diversity pursuant to
2 the Clean Air Act.

3 **PARTIES**

4 6. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a non-
5 profit 501(c)(3) corporation incorporated in New Mexico with its primary offices in Tucson,
6 Arizona and San Francisco, California. The Center has over 40,000 active members throughout
7 the United States and the world. The Center is actively involved in species and habitat
8 protection issues throughout the United States, including the areas of Arizona, Nevada, Montana,
9 Idaho, and Alaska at issue in this action.

10 7. The Center and its members and staff include individuals with varying interests in
11 wildlife species and their habitat ranging from scientific, professional, and educational to
12 recreational, aesthetic, moral, and spiritual interests. Further, the Center’s members and staff
13 enjoy, on an on-going basis, the biological, scientific, research, educational, conservation,
14 recreational and aesthetic values of the regions inhabited by these species, including the regions
15 of Alaska, Arizona, Idaho, Montana, and Nevada at issue in this action. The Center’s staff and
16 members observe and study native species and their habitat, and derive professional, scientific,
17 educational, recreational, aesthetic, inspirational, and other benefits from these activities and
18 have an interest in preserving the possibility of such activities in the future. The Center and its
19 members and staff have participated in efforts to protect and preserve natural areas, including the
20 habitat essential to the continued survival of native species, and to address threats to the
21 continued existence of these species, including the threats posed by air pollution and other
22 contaminants.

1 8. Members and staff of the Center live, work, recreate and travel throughout the
2 PM-10 nonattainment areas at issue in this case in Alaska, Arizona, Idaho, Montana, and
3 Nevada, and areas impacted by the pollution from these nonattainment areas, and they will
4 continue to do so on a regular basis. PM-10 pollution can be inhaled deeply into the lungs,
5 causing or exacerbating health problems including respiratory symptoms, decreased lung
6 capacity, aggravated asthma, chronic bronchitis, irregular heartbeat, nonfatal heart attacks, and
7 premature death in people with heart and lung disease. PM-10 pollution also is transported by
8 winds over long distances and deposited in natural areas, resulting in damage to waters, soils,
9 sensitive forests, and ecosystems as well as acid rain. PM-10 pollution also causes regional haze
10 that limits visibility in the natural areas. The natural areas affected by PM-10 pollution include
11 areas at issue in this case, and areas affected by pollution emanating from the areas at issue in
12 this case, where the Center's staff and members travel and expect to travel in the course of using
13 and enjoying native wildlife species and their natural habitats. The Center's staff and members,
14 as well as the public, also may be forced to breathe air in these areas that is below the minimum
15 quality required under the Act. As a result, EPA's failure to ensure that these areas are in
16 compliance with PM-10 standards under the Act directly threatens both the health, welfare, and
17 economic interests of the Center's staff and members and their use and enjoyment of wildlife
18 species and the natural areas that provide their habitat. EPA's failure to perform the mandatory
19 duties at issue in this action directly and irreparably injures the interests of the Center and its
20 members and staff.

21 9. The Center has also suffered informational and procedural injuries from the
22 EPA's failure to comply with the Act's mandatory requirements. These injuries are connected to
23 the Center's substantive conservation, recreational, scientific, and aesthetic interests. The

1 Center's members and staff rely on EPA's compliance with the Act in order to achieve
2 organizational purposes, including monitoring of the environment and management of wildlife
3 and natural areas throughout the western United States; monitoring compliance with the law
4 concerning native species; educating staff, members, and the public about threats to wildlife
5 species and their habitat; and advocating policies that protect wildlife in its natural habitat.
6 EPA's failure to determine whether areas at issue in this case are complying with air quality
7 standards under the Act, and its failure to ensure that areas at issue in this case are subject to
8 enforceable plans for achieving compliance with air quality standards, deprives the Center and
9 its staff and members of information germane to the Center's efforts to conserve and protect
10 wildlife and their habitat as well as information relevant to the use and enjoyment of wildlife in
11 natural areas by the Center's staff and members. EPA's failure to comply with mandatory duties
12 under the Act also has deprived the Center, its staff, and its members of the opportunity to
13 review and comment upon state and federal plans to ensure compliance with air quality
14 standards.

15 10. EPA's failure to timely perform the mandatory duties described herein adversely
16 affects the Center and its staff and members, and deprives them of health, welfare, and
17 procedural protection and opportunities as well as information to which they are entitled to under
18 the Act. Those injuries will continue unless the Court grants the relief requested herein. The
19 Center brings this action on its own behalf and on behalf of its adversely affected members and
20 staff.

21 11. Defendant LISA P. JACKSON is the Administrator of the United States
22 Environmental Protection Agency. In that role Administrator Jackson has been charged by
23

1 Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue
2 in this case. Administrator Jackson is sued in her official capacity.

3 12. Defendant the ENVIRONMENTAL PROTECTION AGENCY is the federal
4 agency charged with implementing the Act and ensuring that the states comply with their
5 responsibilities under the Act.

6 **GENERAL ALLEGATIONS**

7 13. The Clean Air Act aims to “protect and enhance the quality of the Nation’s air
8 resources....” 42 U.S.C. § 7401(b)(1). To promote this, the Act requires the Administrator to
9 set National Ambient Air Quality Standards (“NAAQS”) for certain pollutants, including PM-
10 10. National Ambient Air Quality Standards establish maximum allowable concentrations in the
11 air of these pollutants.

12 14. Each National Ambient Air Quality Standard must be stringent enough to prevent
13 adverse effects on public health and welfare. Effects on welfare include, but are not limited to,
14 effects on soils, water, vegetation, manmade materials, wildlife, visibility (i.e., haze), climate,
15 damage to property, economic impacts, and effects on personal comfort and well-being.

16 15. EPA adopted National Ambient Air Quality Standards for PM-10 in 1987
17 pursuant to the Act. The adopted standards include limitations on the concentration of PM-10 in
18 the ambient air. PM-10 National Ambient Air Quality Standards were intended to protect public
19 health and welfare.

20 16. Eagle River, Alaska was designated by operation of law as a “nonattainment
21 area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed.
22 Reg. 11101, 11103 (March 15, 1991).

1 17. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), Eagle River was
2 classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102 (March 15, 1991) (“[A]ll
3 of the areas designated as nonattainment for PM-10 by operation of law upon enactment of the
4 [1990] Amendments were classified as moderate nonattainment areas at that time.”). Its
5 attainment date for the PM-10 National Ambient Air Quality Standard is December 31, 1994. 58
6 Fed. Reg. 13572, 13574 (March 12, 1993) (proposed rule); 58 Fed. Reg. 43084, 43084 (Aug. 13,
7 1993) (final rule).

8 18. Mendenhall Valley, Alaska was designated by operation of law as a
9 “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C. §
10 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

11 19. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), Mendenhall Valley
12 was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102 (March 15, 1991)
13 (“[A]ll of the areas designated as nonattainment for PM-10 by operation of law upon enactment
14 of the [1990] Amendments were classified as moderate nonattainment areas at that time.”). Its
15 attainment date for the PM-10 National Ambient Air Quality Standard was December 31, 1994.
16 59 Fed. Reg. 13884, 13885 (March 24, 1994). EPA extended this date to December 31, 1995.
17 60 Fed. Reg. 47276, 47277-78 (Sept. 12, 1995).

18 20. The Paul Spur and Douglas planning areas of Cochise County, Arizona, were
19 designated by operation of law as “nonattainment areas” for PM-10 pursuant to section
20 107(d)(4)(B) of the Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15,
21 1991).

22 21. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Paul Spur and
23 Douglas planning areas of Cochise County were classified as “moderate” PM-10 nonattainment

1 areas. *See* 56 Fed. Reg. 11101, 11102 (March 15, 1991) (“[A]ll of the areas designated as
2 nonattainment for PM-10 by operation of law upon enactment of the [1990] Amendments were
3 classified as moderate nonattainment areas at that time.”). These areas’ attainment date for the
4 PM-10 National Ambient Air Quality Standard is December 31, 1994. 42 U.S.C. § 7513(c)(1).

5 22. The Nogales area in Santa Cruz County, Arizona was designated by operation of
6 law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C.
7 § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

8 23. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Nogales area was
9 classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102 (March 15, 1991) (“[A]ll
10 of the areas designated as nonattainment for PM-10 by operation of law upon enactment of the
11 [1990] Amendments were classified as moderate nonattainment areas at that time.”). Its
12 attainment date for the PM-10 National Ambient Air Quality Standard is December 31, 1994. 42
13 U.S.C. § 7513(c)(1).

14 24. The Hayden planning area in Arizona was designated by operation of law as a
15 “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C. §
16 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

17 25. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Hayden planning
18 area was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102 (March 15,
19 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation of law upon
20 enactment of the [1990] Amendments were classified as moderate nonattainment areas at that
21 time.”). Its attainment date for the PM-10 National Ambient Air Quality Standard is December
22 31, 1994. *See* 72 Fed. Reg. 14422, 14424 (March 28, 2007).

1 26. Bonner County, Idaho, which contains the Sandpoint area, was designated by
2 operation of law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the
3 Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

4 27. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), Bonner County, which
5 contains the Sandpoint area, was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg.
6 11101, 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by
7 operation of law upon enactment of the [1990] Amendments were classified as moderate
8 nonattainment areas at that time.”). Its attainment date for the PM-10 National Ambient Air
9 Quality Standard was December 31, 1994. 60 Fed. Reg. 44452, 44456 (Aug. 28, 1995). EPA
10 extended this date to December 31, 1995. 61 Fed. Reg. 20730, 20731 (May 8, 1996).

11 28. Power-Bannock Counties, Idaho were designated by operation of law as a
12 “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C. §
13 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

14 29. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), Power-Bannock
15 Counties were classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102 (March
16 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation of law upon
17 enactment of the [1990] Amendments were classified as moderate nonattainment areas at that
18 time.”). Their attainment date for the PM-10 National Ambient Air Quality Standard was
19 December 31, 1994. 60 Fed. Reg. 44452, 44454 (Aug. 28, 1995). EPA extended this date twice:
20 first to December 31, 1995, 61 Fed. Reg. 20730, 20731 (May 8, 1996), and then again to
21 December 31, 1996. 61 Fed. Reg. 66602, 66604 (Dec. 18, 1996). In 1998, EPA separated the
22 Fort Hall Indian Reservation nonattainment area from state lands within the Power-Bannock
23 nonattainment area, with both areas retaining the moderate nonattainment area designation

1 previously applicable to the entire Power-Bannock area. 63 Fed. Reg. 59722, 59729 (Nov. 5,
2 1998).

3 30. The Columbia Falls area in Flathead County, Montana was designated by
4 operation of law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the
5 Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

6 31. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Columbia Falls
7 area in Flathead County was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101,
8 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation
9 of law upon enactment of the [1990] Amendments were classified as moderate nonattainment
10 areas at that time.”). Its attainment date for the PM-10 National Ambient Air Quality Standard is
11 December 31, 1994. 42 U.S.C. § 7513(c)(1).

12 32. The Ronan and Polson areas in Lake County, Montana were designated by
13 operation of law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the
14 Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

15 33. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Ronan and Polson
16 areas in Lake County were classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101,
17 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation
18 of law upon enactment of the [1990] Amendments were classified as moderate nonattainment
19 areas at that time.”). Their attainment date for the PM-10 National Ambient Air Quality
20 Standard is December 31, 1994. 42 U.S.C. § 7513(c)(1).

21 34. The Libby and vicinity areas of Lincoln County, Montana were designated by
22 operation of law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the
23 Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

1 35. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Libby and vicinity
2 areas of Lincoln County were classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101,
3 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation
4 of law upon enactment of the [1990] Amendments were classified as moderate nonattainment
5 areas at that time.”). Their attainment date for the PM-10 National Ambient Air Quality
6 Standard is December 31, 1994. 42 U.S.C. § 7513(c)(1).

7 36. The Lame Deer area in Rosebud County, Montana was designated by operation of
8 law as a “nonattainment area” for PM-10 pursuant to section 107(d)(4)(B) of the Act, 42 U.S.C.
9 § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15, 1991).

10 37. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Lame Deer area in
11 Rosebud County was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101, 11102
12 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation of law
13 upon enactment of the [1990] Amendments were classified as moderate nonattainment areas at
14 that time.”). Its attainment date for the PM-10 National Ambient Air Quality Standard is
15 December 31, 1994. 42 U.S.C. § 7513(c)(1).

16 38. The Reno planning area (hydrographic area 87) of Washoe County, Nevada was
17 designated by operation of law as a “nonattainment area” for PM-10 pursuant to section
18 107(d)(4)(B) of the Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15,
19 1991).

20 39. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Reno planning
21 area of Washoe County was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg. 11101,
22 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by operation
23 of law upon enactment of the [1990] Amendments were classified as moderate nonattainment

1 areas at that time.”). Its attainment date for the PM-10 National Ambient Air Quality Standard
2 was December 31, 1994. 66 Fed. Reg. 1268, 1268 (Jan. 8, 2001).

3 40. EPA determined pursuant to section 188(b)(2) of the Act, 42 U.S.C. § 7513(b)(2),
4 that the Reno planning area of Washoe County failed to attain the 24-hour PM-10 standard by
5 the Clean Air Act mandated attainment date for moderate PM-10 nonattainment areas and it was
6 reclassified to serious nonattainment status, effective Feb. 7, 2001, by operation of law. 66 Fed.
7 Reg. 1268, 1269 (Jan. 8, 2001). Pursuant to section 188(c)(2) of the Act, 42 U.S.C. §
8 7513(c)(2), the Reno planning area’s attainment date for the PM-10 National Ambient Air
9 Quality Standard is December 31, 2001. 66 Fed. Reg. 1268, 1269 (Jan. 8, 2001).

10 41. The Las Vegas planning area (hydrographic area 212) of Clark County, Nevada
11 was designated by operation of law as a “nonattainment area” for PM-10 pursuant to section
12 107(d)(4)(B) of the Act, 42 U.S.C. § 7407(d)(4)(B). 56 Fed. Reg. 11101, 11103 (March 15,
13 1991).

14 42. Pursuant to section 188(a) of the Act, 42 U.S.C. § 7513(a), the Las Vegas
15 planning area of Clark County was classified as a “moderate” PM-10 area. *See* 56 Fed. Reg.
16 11101, 11102 (March 15, 1991) (“[A]ll of the areas designated as nonattainment for PM-10 by
17 operation of law upon enactment of the [1990] Amendments were classified as moderate
18 nonattainment areas at that time.”). Its attainment date for the PM-10 National Ambient Air
19 Quality Standard was December 31, 1994. 69 Fed. Reg. 32273, 32274 (June 9, 2004).

20 43. In 1993, pursuant to section 188(b)(1) of the Act, 42 U.S.C. § 7513(b)(1), EPA
21 determined that the Las Vegas planning area could not practicably attain the PM-10 standard by
22 the Clean Air Act mandated attainment demonstration date for moderate PM-10 nonattainment
23 areas and reclassified the area to serious nonattainment status. 58 Fed. Reg. 3334, 3337 (January

1 8, 1993). Pursuant to section 188(c)(2) of the Act, 42 U.S.C. § 7513(c)(2), the Las Vegas
2 planning area's attainment date for the PM-10 National Ambient Air Quality Standard then
3 became December 31, 2001. 69 Fed. Reg. 32273, 32274 (June 9, 2004). In 2004, EPA, pursuant
4 to section 188(e) of the Act, 42 U.S.C. § 7513(e), extended the attainment date for the Las Vegas
5 planning area to December 31, 2006. 69 Fed. Reg. 32273, 32274 (June 9, 2004).

6 44. Pursuant to section 189(a)(2)(A) of the Act, 42 U.S.C. § 7513a(a)(2)(A), states in
7 which all or part of a "moderate area" designated nonattainment under 42 U.S.C. § 7407(d)(4)
8 are located were required to submit State Implementation Plans by November 15, 1991 except
9 for provisions regarding permits for new and modified major stationary sources required under
10 42 U.S.C. § 7513a(a)(1)(A), which were due by no later than June 30, 1992.

11 45. EPA is required to make a finding as to whether a State Implementation Plan
12 submittal complies with the requirements of section 110(a)(2), 42 U.S.C. § 7410(a)(2), within six
13 months of the submittal deadline, known as the completeness finding. 42 U.S.C. §
14 7410(k)(1)(B). If EPA does not determine that a State Implementation Plan submittal fails to
15 "meet the minimum criteria" required by the Act within six months, the submittal is deemed
16 administratively complete by operation of law. *Id.*

17 46. Pursuant to section 110(k)(2) and (3), 42 U.S.C. § 7410(k)(2) and (3), EPA must
18 then take final action on the State Implementation Plan submittal by approving in full,
19 disapproving in full, or approving in part and disapproving in part within 12 months of the
20 completeness finding.

21 47. Montana was required to submit its moderate PM-10 nonattainment State
22 Implementation Plan for the Ronan and Polson areas, except for any provision regarding permits
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1 for new and modified major stationary sources, by November 15, 1991. 42 U.S.C. §
2 7513a(a)(2). Montana failed to do so.

3 48. Montana was required to submit its moderate PM-10 nonattainment State
4 Implementation Plan for the Lame Deer area, except for any provision regarding permits for new
5 and modified major stationary sources, by November 15, 1991. 42 U.S.C. § 7513a(a)(2).
6 Montana failed to do so.

7 49. If EPA determines a state has failed to submit a sufficient State Implementation
8 Plan, and the deficiency is not corrected within 18 months, EPA has a mandatory duty to impose
9 one of two categories of sanctions on the state. *See* 42 U.S.C. § 7509(a). If one set of sanctions
10 has been imposed and the deficiency remains uncorrected for another six months, EPA must
11 impose the second set of sanctions. *Id.* EPA also has a mandatory duty to promulgate a Federal
12 Implementation Plan (“FIP”) if EPA finds that a state has failed to submit an adequate State
13 Implementation Plan within two years after the deadline. 42 U.S.C. § 7410(c)(1).

14 50. On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that
15 the Douglas area in Cochise County, Arizona failed to submit a sufficient moderate PM-10 State
16 Implementation Plan by the November 15, 1991 deadline. 57 Fed. Reg. 19906, 19907 (May 8,
17 1992).

18 51. On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that
19 the Nogales area in Santa Cruz County, Arizona failed to submit a sufficient moderate PM-10
20 State Implementation Plan by the November 15, 1991 deadline. 57 Fed. Reg. 19906, 19907
21 (May 8, 1992).

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1 **CLAIMS FOR RELIEF**

2 **CLAIM ONE**

3 (EPA’s Failure to Determine Whether 12 Nonattainment Areas Have Attained)

4 52. Plaintiff incorporates by reference paragraphs 1 through 51.

5 53. Pursuant to sections 179(c)(1) and 188(b)(2), 42 U.S.C §§ 7509(c)(1) and
6 7513(b)(2), EPA has a mandatory duty to determine “not later than 6 months after [the
7 applicable attainment date]” whether a moderate or serious PM-10 nonattainment area has
8 attained the National Ambient Air Quality Standards (“NAAQS”) by the applicable attainment
9 date.

10 54. EPA also has a mandatory duty to publish notice in the Federal Register of its
11 determination as to whether an area has attained pursuant to sections 179(c)(2) and 188(b)(2), 42
12 U.S.C. §§ 7509(c)(2) and 7513(b)(2)(B).

13 55. EPA was required to determine by June 30, 1995 whether Eagle River, Alaska
14 attained the PM-10 NAAQS.

15 56. EPA was required to determine by June 30, 1996 whether Mendenhall Valley,
16 Alaska attained the PM-10 NAAQS.

17 57. EPA was required to determine by June 30, 1995 whether Cochise County (Paul
18 Spur and Douglas areas), Arizona attained the PM-10 NAAQS.

19 58. EPA was required to determine by June 30, 1995 whether the Nogales area of
20 Santa Cruz County, Arizona attained the PM-10 NAAQS.

21 59. EPA was required to determine by June 30, 1995 whether the Hayden planning
22 area in Arizona attained the PM-10 NAAQS.

1 60. EPA was required to determine by June 30, 1996 whether the Sandpoint area in
2 Bonner County, Idaho attained the PM-10 NAAQS.

3 61. EPA was required to determine by June 30, 1995 whether the Columbia Falls area
4 in Flathead County, Montana attained the PM-10 NAAQS.

5 62. EPA was required to determine by June 30, 1995 whether the Ronan and Polson
6 areas of Lake County, Montana attained the PM-10 NAAQS.

7 63. EPA was required to determine by June 30, 1995 whether the Libby and vicinity
8 areas of Lincoln County, Montana attained the PM-10 NAAQS.

9 64. EPA was required to determine by June 30, 1995 whether the Lame Deer area of
10 Rosebud County, Montana attained the PM-10 NAAQS.

11 65. EPA was required to determine by June 30, 1997 whether the moderate
12 nonattainment area of Fort Hall Indian Reservation in Idaho attained the PM-10 NAAQS.

13 66. EPA was required to determine by June 30, 2002 whether the serious
14 nonattainment area of the Reno planning area in Washoe County, Nevada attained the PM-10
15 NAAQS.

16 67. EPA failed to make any determination as to whether each of the areas listed in
17 paragraphs 55-66 attained the PM-10 NAAQS. EPA also failed to publish notice of its findings
18 as to whether each of the areas listed in paragraphs 55-66 attained the NAAQS by the applicable
19 date.

20 68. Thus, EPA is in violation of its mandatory duty under sections 179(c)(1) and
21 188(b)(2) to make attainment determinations and its mandatory duty under sections 179(c)(2)
22 and 188(b)(2) to publish notice of the findings.

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CLAIM TWO
(EPA’s Failure to Determine Whether the Las Vegas Planning Area of Clark County, Nevada
Has Attained)

69. Plaintiff incorporates by reference paragraphs 1 through 68.

70. Pursuant to sections 179(c)(1) and 188(b)(2), 42 U.S.C §§ 7509(c)(1) and 7513(b)(2), EPA has a mandatory duty to determine no “later than 6 months after [the applicable attainment date]” whether an area in nonattainment has attained the NAAQS by the applicable attainment date.

71. EPA also has a mandatory duty to publish notice of a determination of whether an area has attained pursuant to sections 179(c)(2) and 188(b)(2), 42 U.S.C. §§ 7509(c)(2) and 7513(b)(2).

72. EPA was required to determine by June 30, 2007 whether the Las Vegas planning area of Clark County, Nevada has attained the PM-10 NAAQS.

73. EPA failed to make any determination as to whether the Las Vegas planning area of Clark County, Nevada has attained the PM-10 NAAQS. EPA also failed to publish notice of any determination as to whether the area attained the NAAQS by the applicable date.

74. Thus, EPA is in violation of its mandatory duty under sections 179(c)(1) and 188(b)(2) to make attainment determinations and its mandatory duty under sections 179(c)(2) and 188(b)(2) to publish notice of its findings.

CLAIM THREE
(Claim for Failure to Promulgate a Federal Implementation Plan under 42 U.S.C. § 7410(c)(1)
and Failure to Impose Sanctions under 42 U.S.C. § 7509(a))

75. Plaintiff incorporates by reference paragraphs 1 through 74.

76. On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that the following two areas in Arizona failed to submit a sufficient moderate PM-10 State

1 Implementation Plan by the November 15, 1991 deadline: the Douglas area in Cochise County,
2 and the Nogales area in Santa Cruz County. 57 Fed. Reg. 19906, 19907-08 (May 8, 1992).

3 77. Arizona still has not submitted the submittals referenced in paragraph 76.

4 78. This finding triggered an 18-month and 24-month clock for sanctions under
5 section 109(a), 42 U.S.C. § 7509(a), and a 24-month clock for promulgation of a FIP pursuant to
6 section 110(c)(1), 42 U.S.C. § 7410(c)(1).

7 79. Thus, EPA has a mandatory duty to impose 18-month sanctions by June 16, 1993
8 and the 24-month sanctions and FIP by December 16, 1993, 42 U.S.C. § 7509(a).

9 80. EPA has failed to approve any SIP for the Douglas area or the Nogales area.

10 81. Therefore, EPA is in violation of the mandatory duty to promulgate a Federal
11 Implementation Plan as required by section 110(c)(1)(A), 42 U.S.C. § 7410(c)(1)(A). EPA is
12 also in violation of the mandatory duty to impose sanctions under sections 179(b)(1) and (2), 42
13 U.S.C. §§ 7509(b)(1) & (2), on the Douglas area and the Nogales area.

14 CLAIM FOUR

15 (EPA Violated its Mandatory Duty to Find No SIP was Submitted Pursuant to 42 U.S.C. §
16 7410(k)(1)(B))

17 82. Plaintiff incorporates by reference paragraphs 1 through 81.

18 83. EPA is required to determine no later than six months after the date “by which a
19 State is required to submit the plan or revision” whether the minimum criteria set pursuant to 42
20 U.S.C. § 7410(k)(1)(A) have been met.

21 84. If there is no submittal, the minimum criteria could not have been met and EPA
22 must make a determination stating so.

23 85. Montana was required to submit its moderate PM-10 nonattainment State
Implementation Plan for the Ronan and Polson areas of Lake County and the Lame Deer area of

1 Rosebud County, except for any provision regarding permits for new and modified major
2 stationary sources, by November 15, 1991. Montana failed to submit these State Implementation
3 Plan submittals.

4 86. EPA was required to determine whether the minimum criteria for the Ronan and
5 Polson areas of Lake County were met by May 15, 1992.

6 87. EPA was required to determine whether the minimum criteria for the Lame Deer
7 area of Rosebud County were met by May 15, 1992.

8 88. EPA has not determined whether Montana submitted its moderate PM-10
9 nonattainment State Implementation Plan for the Lame Deer area in Rosebud County and Ronan
10 and Polson areas in Lake County.

11 89. Therefore, EPA is in violation of the mandatory duty under section 110(k)(1)(B),
12 42 U.S.C. § 7410(k)(1)(B), to make a determination as to whether Montana failed to submit a
13 moderate PM-10 State Implementation Plan for the Lame Deer area in Rosebud County and
14 Ronan and Polson areas in Lake County.

15 **REQUEST FOR RELIEF**

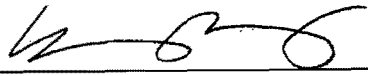
16 WHEREFORE, the Center respectfully requests that the Court:

- 17 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her
18 failure to perform each mandatory duty listed above;
- 19 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory
20 duties by certain dates;
- 21 C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's
22 order;
- 23

- 1 D. Grant the Center its reasonable costs of litigation, including attorneys' and expert fees;
2 and
3 E. Grant such further relief as the Court deems just and proper.
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6 Dated: April 29, 2010

Respectfully submitted,

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10 Kevin P. Bundy
11 Attorney for Plaintiff
12 Center for Biological Diversity

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