	Case 2:20-cv-00725-SMB Document 1	Filed 04/14/20 Page 1 of 10	
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8	IN THE UNITED STAT	ES DISTRICT COURT	
9	FOR THE DISTRI	CT OF ARIZONA	
10	SIERRA CLUB,	Case No:	
11	Plaintiff,		
12	VS.	COMPLAINT FOR INJUNCTIVE AND	
13	ANDREW R. WHEELER, in his official	DECLARATORY RELIEF	
14 15	capacity as Administrator of the United States Environmental Protection Agency,	(Clean Air Act, 42 U.S.C. §§ 7401 et seq.)	
16	Defendant.		
17			
18	INTROD	UCTION	
19	1. Plaintiff Sierra Club brings this	Clean Air Act ("CAA" or "Act") citizen	
20	suit against Defendant Andrew Wheeler for h	nis failure to perform nondiscretionary	
21	duties under the Act.		
22	2. Wheeler, in his capacity as Administrator of the United States		
23	Environmental Protection Agency ("EPA" or "the Agency"), failed to meet his statutory		
24	deadline for taking final action on an Arizona state implementation plan ("SIP")		
25	submittal for the West Pinal County PM ₁₀ Nonattainment Area ("West Pinal NAA").		
26	The West Pinal County PM ₁₀ Nonattainment Area Plan ("West Pinal Plan") was		
27	submitted by the Arizona Department of Environmental Quality ("ADEQ") in December		
28	of 2015. It purported to address dangerously high levels of pollution from airborne		

particles with a diameter of 10 micrometers or smaller ("PM₁₀") that have been recorded
 in West Pinal County, Arizona for nearly two decades.

- 3 3. In addition, the Administrator failed to meet his statutory deadline for
 4 determining whether the West Pinal NAA attained the National Ambient Air Quality
 5 Standard ("NAAQS") for PM₁₀ by the applicable attainment date.
- 4. PM₁₀ pollution poses a serious threat to human health. These tiny particles 6 7 can get trapped in the lungs and cause lung tissue damage, leading to chronic respiratory 8 disease, cancer, and even premature death. 52 Fed. Reg. 24634, 24639, 24644 (July 1, 9 1987). Children, the elderly, and people with chronic lung disease, influenza, or asthma 10 are particularly vulnerable to the effects of PM₁₀. [U.S. EPA Fact Sheet—West Pinal 11 County, Arizona Redesignation to Nonattainment for the 1987 24-hour PM10 National 12 Ambient Air Quality Standard (May 22, 2012) ("Fact Sheet") at 1, attached to Notice of 13 Intent to Sue Letter (Feb. 4, 2020), Ex. 1 hereto.]
- The Administrator's continuous failure to perform his nondiscretionary
 duties under the Act poses a significant health risk to Pinal County residents, including
 Plaintiff's members. For the reasons below, the Court should grant declaratory and
 injunctive relief and award Plaintiff its attorneys' fees and costs.
- 18

JURISDICTION, NOTICE, AND VENUE

19 6. This action seeks to compel the Administrator to perform nondiscretionary 20 duties under the Act. See 42 U.S.C. §§ 7410(k)(2) (requiring Administrator to take final 21 action on plan submission within 12 months of completeness determination), 7509(c) 22 (requiring Administrator to determine whether nonattainment area attained standard 23 within six months of applicable attainment date), 7513(b)(2) (requiring Administrator to 24 determine whether PM₁₀ nonattainment area attained standard by applicable attainment 25 date). This Court therefore has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1361 and 42 26 U.S.C. § 7604(a). The Court may grant declaratory and injunctive relief pursuant to 42 27 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 1361, 2201(a), & 2202.

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7. Plaintiff sent the Administrator written notice of its intent to sue by
 certified mail, return receipt requested, as required by 42 U.S.C. § 7604(b)(2) and 40
 CFR Part 54. [Ex. 1.] The Administrator received the notice letter on or before February
 10, 2020. More than 60 days have since passed but the Administrator has not remedied
 the violations alleged in this Complaint. *See* 42 U.S.C. § 7604(b)(2) (plaintiff may file
 suit 60 days after giving notice to Administrator).

- 8. Venue is proper in this district under 28 U.S.C. § 1391(e) because it is
 where a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

Plaintiff Sierra Club, a non-profit corporation, is the oldest and largest 9. 10 11 grassroots environmental organization in the United States. It is incorporated under the 12 laws of the State of California with its headquarters in Oakland, California. Sierra Club 13 has local chapters throughout the U.S., including the Grand Canyon Chapter in Arizona. 14 Its mission is to explore, enjoy, and protect the wild places of the earth; to practice and 15 promote the responsible use of the earth's ecosystems and resources; to educate and 16 enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. 17

18 10. Sierra Club has members living, working, and engaging in outdoor19 recreation in the West Pinal NAA.

20 11. Defendant Andrew Wheeler is the Administrator of EPA. In that role, he
21 has been charged by Congress with the duty to uphold and administer the Clean Air Act,
22 including the nondiscretionary duties at issue in this case.

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FACTUAL BACKGROUND: PM₁₀ Pollution

Particulate matter refers to a broad class of chemically and physically
diverse substances that exist as discrete particles (either liquid droplets or solids). 52
Fed. Reg. at 24635. The size of the particulate matter directly correlates to potential
health problems, since smaller particles can penetrate the furthest into the respiratory
tract and reach the deepest portion of the lung. 52 Fed. Reg. at 24639.

1	13. The Act requires EPA to set NAAQS for certain ambient air pollutants at			
2	levels required to protect public health and welfare. See 42 U.S.C. § 7409. On July 1,			
3	1987, EPA revised the NAAQS for particulate matter, replacing standards for "total			
4	suspended particulates" with new standards for PM_{10} . 52 Fed. Reg. 24634.			
5	14. PM_{10} is particularly hazardous to human health. 52 Fed. Reg. at 24639;			
6	[Fact Sheet at 1, Ex. 1.] When PM_{10} gets trapped in the lungs, it can cause lung tissue			
7	damage leading to chronic respiratory disease, cancer, and even premature death. 52 Fed.			
8	Reg. at 24644. Children, the elderly, and people with chronic lung disease, influenza, or			
9	asthma are particularly vulnerable to the effects of PM_{10} pollution. [Fact Sheet at 1, Ex.			
10	1.]			
11	15. In 1987, EPA set the NAAQS for PM_{10} at 150 micrograms per cubic meter,			
12	with the concentration averaged over a 24-hour period. 40 C.F.R. § 50.6(a). ¹ In order to			
13	attain the NAAQS for 24-hour PM ₁₀ , each air quality monitoring site must not measure			
14	levels of PM_{10} greater than 150 micrograms per cubic meter more than once per year on			
15	average over a consecutive three-year period. 40 C.F.R. § 50.6(a) & 40 C.F.R. Pt. 50,			
16	App. K § 2.1; 75 Fed. Reg. 60680, 60681 (Proposed Oct. 1, 2010).			
17 18	FACTUAL BACKGROUND: Administrator's Failure to Take Final Action on SIP Revision and Failure to Make Attainment Determination			
19	16. Most of Pinal County, including the West Pinal NAA, was designated			
20	"unclassifiable" for PM_{10} by operation of law upon enactment of the 1990 amendments to			
21	the Act. 75 Fed. Reg. 60680; see 42 U.S.C § 7407(d)(4)(B)(iii).			
22	17. The Act grants EPA the authority to change the designation of, or			
23	"redesignate," areas (or portions thereof) based on air quality data, planning and control			
24	considerations, or any other air quality-related considerations. 42 U.S.C. § 7407(d)(3). In			
25	2009, EPA notified the Governor of Arizona that air quality monitoring data in portions			
26				
27	$\frac{1}{1}$ The 1987 PM ₁₀ standard also included an annual standard of 50 micrograms per cubic			
28	meter but EPA revoked the annual standard in 2006. <i>See</i> 71 Fed. Reg. 61144 (Oct. 17, 2006).			
	4			

of West Pinal County from 2006 to 2008 was in violation of the PM₁₀ NAAQS. EPA
 then began the redesignation process.

3 18. On May 31, 2012, EPA formally redesignated West Pinal County from
4 "unclassifiable" to "nonattainment" for the PM₁₀ NAAQS. 77 Fed. Reg. 32024 (May 31,
5 2012).

Pinal County is the third-most populous county in Arizona. The West Pinal
NAA includes the cities of Casa Grande, Coolidge, Eloy, and Maricopa, as well as the
Town of Florence, which is the Pinal County seat. [Fact Sheet at 4, Ex. 1.]

9 20. EPA stated that its decision to redesignate West Pinal County to 10 nonattainment was based on data from air quality monitoring stations in the area that 11 showed "widespread, frequent, and in some instances, severe, violations of the PM_{10} 12 standard." 77 Fed. Reg. at 32025. Indeed, PM₁₀ levels in the West Pinal NAA are among 13 the worst in the nation. [Fact Sheet at 1, Ex. 1.] For example, a monitoring station east of 14 Casa Grande predicted over fourteen PM_{10} exceedances per year for the years 2009 15 through 2011. [Fact Sheet at 1, Ex. 1.] Again, more than one exceedance per year 16 violates the NAAQS.

17 21. Monitoring stations routinely recorded concentrations of two to three times
18 the level of the standard, with several monitors approaching or exceeding 600
19 micrograms per cubic meter. In 2011, the Maricopa monitor measured 2,318 micrograms
20 per cubic meter—15 times more than the health-based standard of 150 micrograms per
21 cubic meter. The Casa Grande monitor measured 2,040 micrograms per cubic meter.
22 [Fact Sheet at 1, Ex. 1.]

- 23 22. More recent monitoring data for the three-year period from 2016 to 2018
 24 shows the PM₁₀ pollution problem in the West Pinal NAA has not improved. 85 Fed.
 25 Reg. 19408, 19410 (Proposed April 7, 2020); EPA 2018 PM₁₀ Design Value Report,
 26 *available at* https://www.epa.gov/air-trends/air-quality-design-values.
- 27 23. ADEQ submitted a revision to the Arizona SIP on December 20, 2013 to
 28 meet statutory obligations for PM₁₀ nonattainment areas. This revision did not contain all

of the required elements for the nonattainment area SIP, and ADEQ withdrew the plan
 from consideration on February 18, 2014. ADEQ finally submitted the West Pinal Plan
 on December 21, 2015.

4 24. Under the Act, EPA (through the Administrator) must determine whether a
5 nonattainment area plan satisfies the minimum "completeness" criteria within 60 days
6 after the plan is submitted. 42 U.S.C. § 7401(k)(1)(A)-(B). If the Administrator has not
7 determined the completeness or incompleteness of a plan within six months of submittal,
8 the plan is deemed to be administratively complete by operation of law on that date. 42
9 U.S.C. § 7401(k)(1)(B). The West Pinal Plan was deemed administratively "complete"
10 on June 21, 2016 due to the lack of timely determination by EPA.

11 25. The Act requires the Administrator to take final action on an
12 administratively complete plan by approving it in full, disapproving it in full, or
13 approving it in part and disapproving it in part within 12 months of the completeness
14 determination. 42 U.S.C. § 7410(k)(2). Thus, the Administrator was required to take
15 final action on the West Pinal Plan by June 21, 2017. He failed to perform this duty
16 however.

17 26. The Act also requires the Administrator to determine whether a 18 nonattainment area attained the NAAQS by the applicable attainment date and, if the 19 area fails to attain, to take certain steps to remedy it. The applicable attainment date for 20 the West Pinal NAA was December 31, 2018, which is "no later than the end of the sixth 21 calendar year after the area's designation as nonattainment." See 42 U.S.C. § 7513(c)(1). 22 The Administrator had six months from the attainment date (or until June 30, 2019) to 23 determine whether the West Pinal NAA actually attained the standard and, if it failed to 24 attain, to publish notice in the Federal Register. 42 U.S.C. §§ 7509(c), 7513(b)(2). 25 27. On April 7, 2020 (nearly 60 days after Plaintiff sent the Administrator 26 notice of its intent to sue), the Administrator published a notice in the Federal Register

- 27 proposing to determine that the West Pinal NAA failed to attain the PM_{10} NAAQS by
- 28

the attainment date. 85 Fed. Reg. 19408 (Proposed Apr. 7, 2020). However, that
 determination is not yet final.

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PLAINTIFF'S INJURIES

4 28. Plaintiff's members include people who live, work, travel, and engage in
5 recreational activities in the West Pinal NAA.

6 29. The acts and omissions of the Administrator alleged here harm Plaintiff's
7 members by prolonging poor air quality conditions that adversely affect or threaten their
8 health, and by nullifying or delaying measures and procedures mandated by the Act to
9 protect their health from PM₁₀ pollution in places where they live, work, travel, and
10 recreate. PM₁₀ levels that exceed the NAAQS can exacerbate Plaintiff's members'
11 respiratory health problems and force them to limit outdoor activities they would
12 otherwise be able to enjoy.

30. The acts and omissions of the Administrator alleged here also harm
Plaintiff's members because their reasonable concerns about the health effects of their
PM₁₀ exposure diminish their enjoyment of activities they previously enjoyed and would
like to continue to engage in, and of areas they previously enjoyed and would like to
continue to use.

18 31. Even Plaintiff's members in other areas that are downwind of the West
19 Pinal NAA are injured by the Administrator's failure to perform his nondiscretionary
20 duties. By delaying enhanced controls on PM₁₀ pollution in the West Pinal NAA, the
21 Administrator prolongs and exacerbates PM₁₀ levels downwind that harm Plaintiff's
22 members in those areas.

32. The acts and omissions of the Administrator alleged here further deprive
Plaintiff and its members of procedural rights and protections to which they would
otherwise be entitled, including but not limited to, the right to participate in proceedings
to determine whether their communities (or upwind communities) meet the PM₁₀
NAAQS or must increase protections against PM₁₀ pollution, the right to judicially
challenge final attainment determinations adversely affecting their members, the right to

enforce requirements of the Act for preparation and implementation of a SIP to remedy
 and prevent violations of the PM₁₀ NAAQS, and the right to comment on and judicially
 challenge such plans.

33. The Administrator's acts and omissions alleged here further injure Plaintiff 4 5 and its members by depriving them of information to which they are entitled by law, including but not limited to the Administrator's published identification of the West 6 Pinal NAA's attainment status. If Plaintiff had access to such information, it could use it 7 8 to, among other things, educate its members and the public about PM_{10} pollution in the 9 West Pinal NAA and advocate for the adoption of adequate measures to bring it into compliance with the PM₁₀ NAAQS. Such information would also assist Plaintiff's 10 11 members in determining whether they are exposed to PM₁₀ levels that violate the health 12 standard and to better protect themselves and their families from PM₁₀ pollution. The 13 acts and omissions complained of here deprive Plaintiff and its members of the benefits 14 of this information and thus cause them injury.

15 34. The Administrator's acts and omissions also hamper Plaintiff's ability to
16 perform certain programmatic functions essential to its mission, such as (1) ensuring that
17 the State of Arizona puts in place the public health and environmental protections that
18 accompany more stringent nonattainment classifications and (2) educating the public
19 about these protections.

35. Accordingly, the health, recreational, aesthetic, procedural, informational,
and organizational interests of Plaintiff and its members have been and continue to be
adversely affected by the acts and omissions of the Administrator alleged here.

36. A court order requiring the Administrator to take final action on the West
Pinal Plan, to make a final determination whether the West Pinal NAA met the PM₁₀
NAAQS by the applicable attainment date, and to publish both in the Federal Register,
as the law requires would redress the injuries of Plaintiff and its members.

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1	CLAIMS FOR RELIF		
2	(Claim One—Violation of the Clean Air Act by failing to take final action on SIP submittal by deadline)		
3	37. Plaintiff incorporates by reference all paragraphs listed above.		
4	38. The Administrator's deadline for taking final action on the West Pinal Plan		
5	was June 21, 2017.		
6	39. The Administrator failed to meet this deadline and, to date, has not taken		
7	any final action on the West Pinal Plan.		
8	40. Accordingly, the Administrator has failed to perform his mandatory duty		
9	under 42 U.S.C. § 7410(k)(2) to take final action on a SIP submittal within 12 months of		
10	it being administratively complete. This constitutes "a failure of the Administrator to		
11	perform any act or duty under this chapter which is not discretionary" within the		
12	meaning of the Clean Air Act, 42 U.S.C. § 7604(a)(2), and thus is a violation of the Act.		
13	The Administrator's violations are ongoing.		
14 15	(Claim Two—Violation of the Clean Air Act by failing to determine whether nonattainment area met PM ₁₀ NAAQS by applicable attainment date)		
16	41. Plaintiff incorporates by reference all paragraphs listed above.		
17	42. The applicable attainment date for the West Pinal NAA was December 31,		
18	2018. The Administrator had six months from that date to determine whether the area		
19	actually attained the PM_{10} NAAQS and, if it did not, to publish his final determination in		
20	the Federal Register.		
21	43. The Administrator failed to meet this deadline and, although he has now		
22	proposed to determine the West Pinal NAA failed to meet the PM_{10} NAAQS by the		
23	attainment date, he has not yet published a final determination.		
24	44. Accordingly, the Administrator has failed to perform his mandatory duty		
25	under 42 U.S.C. §§ 7509(c) & 7513(b)(2) to make a final attainment determination for		
26	the West Pinal NAA. This constitutes "a failure of the Administrator to perform any act		
27	or duty under this chapter which is not discretionary" within the meaning of the Clean		
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		1	

1	Air Act, 42 U.S.C. § 7604(a)(2), and thus is a violation of the Act. The Administrator's		
2	violations are ongoing.		
3	REQUEST FOR RELIEF		
4	WHEREFORE, Plaintiffs respectfully request that the Court:		
5	(1)	Declare that the Administrator is in violation of the Clean Air Act with	
6		regard to his failure to perform the nondiscretionary duties listed above;	
7	(2)	Issue an injunction requiring the Administrator to perform his	
8		nondiscretionary duties by certain dates;	
9	(3)	Retain jurisdiction to ensure compliance with the Court's decree;	
10	(4)	Award Plaintiff the costs of this action, including attorneys' fees pursuant	
11		to 42 U.S.C. § 7604(d); and,	
12	(5)	Grant such other relief as the Court deems just and proper.	
13		DATED this 13th day of April, 2020.	
14		ARIZONA CENTER FOR LAW	
15		IN THE PUBLIC INTEREST	
16		(s/ Isomifan D. Andonson	
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