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February 4, 2021

BY CERTIFIED MAIL

Jane Nishida
Acting Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Re: Notice of Intent to File Suit Under the Clean Air Act, Failure to Find that Colorado Failed to Make Required State Implementation Plan Submission

Dear Acting Administrator Nishida:

Pursuant to Section 304 of the Clean Air Act, this letter is to inform you that WildEarth Guardians intends to sue you and the Environmental Protection Agency ("EPA") over the failure to find that the State of Colorado has failed to submit a State Implementation Plan ("SIP") revision to meet to meet planning requirements for the Denver Metro/North Front Range serious ozone nonattainment area in accordance with under Section 182 of the Clean Air Act.

Colorado was required to submit a SIP revision to meet serious ozone nonattainment area requirements for the Denver Metro/North Front Range region by August 3, 2020. In accordance with Section 110(k)(1)(B) of the Clean Air Act, EPA is required to make findings that states have failed to submit required SIPs no later than six months after the deadline for submitting such SIPs. Here, EPA was required to make a finding that Colorado failed to submit its SIP revision by February 3, 2021. The EPA has failed to make such a finding, in violation of a nondiscretionary duty set forth under the Clean Air Act.

We intend to file suit under the Clean Air Act, 42 U.S.C. § 7604(a)(2), after 60 days from the date of this letter over your failure to perform a nondiscretionary duty set forth under 42 U.S.C. § 7410(k)(1)(B). The suit will seek injunctive relief, declaratory relief, the cost of litigation, and other relief as may be necessary.

WildEarth Guardians is an American West-based nonprofit organization dedicated to protecting and restoring wildlife, wild places, wild rivers, and health in the American West. Guardians has members who are harmed by the failure of the Administrator and the EPA to

follow through with its duty under the Clean Air Act to ensure that SIPs are timely submitted and acted upon to ensure adequate protection of air quality and public health and welfare.

Clean Air Act Requirements

On March 12, 2008, the EPA announced revisions to the national ambient air quality standards (“NAAQS”), revising the former 8-hour standard from 0.08 parts per million to 0.075 parts per million. *See* 73 Fed. Reg. 16,435 (March 27, 2008). At the time, several monitors in the Denver Metro/North Front Range region were violating the NAAQS and had been violating the NAAQS for years earlier.

Under the Clean Air Act, the EPA was required to designate areas violating the 2008 ozone NAAQS as nonattainment within two years of promulgating the new standard. *See* 42 U.S.C. § 7407(d)(1)(B). Nonattainment designations trigger the deployment of more stringent air quality safeguards and oversight, providing heightened protection for public health.

The EPA made nonattainment designations for the 2008 ozone NAAQS in May 2012. *See* 77 Fed. Reg. 30,088 (May 21, 2012). At this time, the Denver Metro Area/North Front Range region was still violating the 2008 NAAQS and so it was designated a marginal nonattainment area.

Under the Clean Air Act, Colorado was required to attain the 2008 ozone NAAQS within three years of its nonattainment designation, so by 2015. *See* 40 C.F.R. § 51.1103(a). After the applicable attainment date, the Denver Metro Area/North Front Range region was still violating the 2008 ozone NAAQS. In August 2015, the EPA issued a finding that the area had failed to attain the NAAQS and reclassified the region as a moderate nonattainment area. *See* 80 Fed. Reg. 51,992 (Aug. 27, 2015).

Colorado was required to attain the NAAQS in the Denver Metro/North Front Range moderate ozone nonattainment area “as expeditiously as practicable,” but no later than July 20, 2018. 80 Fed. Reg. 51,992, 51,994 (Aug. 27, 2015).

July 20, 2018 passed and the Denver Metro/North Front Range region was still violating the 2008 ozone NAAQS. In December 2019, the EPA issued a finding that the area had failed to attain the NAAQS and reclassified the region as a serious nonattainment area. *See* 84 Fed. Reg. 70,897 (Dec. 26, 2019).

Under the serious classification, Colorado was required to submit a SIP revision to the EPA by August 3, 2020 that demonstrates attainment by July 20, 2021. *See* 84 Fed. Reg. 70,897, 70,900. As of the date of this letter, Colorado has not submitted a SIP revision to the EPA that satisfies serious ozone nonattainment planning requirements and that demonstrates attainment by July 20, 2021.

The Administrator’s Failure to Perform a Nondiscretionary Duty

In this case, Colorado has failed to submit a SIP revision by August 3, 2020 to meet the serious ozone nonattainment planning requirements under the Clean Air Act for the Denver Metro/North Front Range 8-hour ozone nonattainment area.

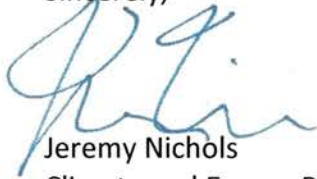
In accordance with Section 110(k)(1)(B) of the Clean Air Act, the Administrator of the EPA was required to make a finding by February 3, 2021 that Colorado had failed to submit its legally required SIP revision. *See* 42 U.S.C. § 7410(k)(1)(B). Such a finding has not been made, in violation of a nondiscretionary duty under the Clean Air Act.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is:

WildEarth Guardians
3798 Marshall St., Ste. 8
Wheat Ridge, CO 80033

WildEarth Guardians would prefer to resolve this matter without the need for litigation. For purposes of discussing this matter, please contact me at the information below. Thank you.

Sincerely,



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cc: Jill H. Ryan
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