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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

SIERRA CLUB AND WILDEARTH  
GUARDIANS,

Plaintiffs,

v.

GINA McCARTHY, in her official capacity  
as Administrator of the United States  
Environmental Protection Agency,

Defendant.

**[PROPOSED] ORDER AND  
JUDGMENT**

Case No. 4:14-cv-05091-YGR and Case  
No. 4:14-cv-3198-YGR (consolidated)

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SIERRA CLUB,

Plaintiff,

v.

GINA McCARTHY, in her official capacity  
as the Administrator of the United States  
Environmental Protection Agency,

Defendant.

Judgment on Claim 1 in Case No. 4:14-cv-3198-YGR and all claims in 4:14-cv-05091-YGR is entered in part for Plaintiffs<sup>1</sup> and in part for Defendant Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (hereinafter "EPA") as set forth in the Court's May 7, 2015 Order [Dk.#51].

Further, the terms of the proposed Partial Consent Decree between Sierra Club and EPA

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<sup>1</sup> Sierra Club is a plaintiff in both Case No. 4:14-cv-3198-YGR and 4:14-cv-05091-YGR. Wildearth Guardians is a plaintiff in only 4:14-cv-5091-YGR.

1 as to Claim 2 in Case No. 4:14-cv-3198-YGR are incorporated into this Order (Dkt. No.  
2 49-1).

3 It is **ORDERED** that by **June 30, 2015** the appropriate EPA official shall sign a  
4 notice issuing its failure to submit findings for Alabama, Arkansas, California,  
5 Connecticut, Florida, Georgia, Iowa, Illinois, Kansas, Massachusetts, Maine, Michigan,  
6 Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina,  
7 Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia,  
8 Washington, and West Virginia that have failed to include a Good Neighbor provision for  
9 the 2008 ozone NAAQS in their SIP submittals.  
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11 If any of the above States make a complete SIP submittal addressing Good  
12 Neighbor provision for the 2008 ozone NAAQS before that deadline, then EPA's  
13 obligation to take the action required above as to that State is automatically terminated.  
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15 It is further **ORDERED** that the appropriate EPA official shall sign a notice of  
16 final rulemaking to approve, disapprove, conditionally approve, or approve in part and  
17 conditionally approve or disapprove in part, certain plans pursuant to sections 110(k)(2)-  
18 (4) of the CAA, 42 U.S.C. §§ 7410(k)(2)-(4), no later than the date indicated below for  
19 the following states and elements of section 110(a)(2), 42 U.S.C. §§ 7410(a)(2) for the  
20 2008 ozone NAAQS:  
21

	<b>STATE</b>	<b>SIP ELEMENT(S)</b>	<b>DATE</b>	
22	a.	Alabama	110(a)(2)(J) (visibility portion)	October 31, 2015
23	b.	Alabama	110(a)(2)(D)(i)(II) (prong 4)	May 31, 2016
24	c.	Arizona	110(a)(C), (D)(i)(II) (prong 3 only), (J)-(K) except for elements 110(a)(2)(C), (J), and (D)(i)(II) to the extent these elements refer to the Prevention	June 30, 2015
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	STATE	SIP ELEMENT(S)	DATE
		of Significant Deterioration (PSD) requirements in Maricopa County, Pima County, and Pinal County, 110(a)(2)(D)(ii) to the extent it refers to notification to other states for sources in these three counties, and element 110(a)(2)(K) for these three counties	
d.	Arizona	110(a)(2)(D)(i)(I) (prongs 1 and 2) and (II) (prong 4)	June 7, 2016
e.	Colorado	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	October 31, 2015
f.	Colorado	110(a)(2)(D)(i)(I) (prongs 1 and 2)	January 29, 2016
g.	Connecticut	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	December 31, 2015
h.	Georgia	110(a)(2)(A)-(C), (E)-(H), (J)-(M) (excluding 110(a)(2)(C) (PSD portion) and (J) (PSD portion))	October 31, 2015
i.	Georgia	110(a)(2)(D)(i)(II) (prong 4)	May 31, 2016
j.	Idaho	110(a)(2)(D)(i)(I) (prongs 1 and 2)	January 29, 2016
k.	Illinois	110(a)(2)(A)	May 30, 2015
l.	Illinois	110(a)(2)(E)(ii) and (J) (visibility portion)	August 31, 2015
m.	Indiana	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4 and (J) (visibility portion))	May 31, 2015
n.	Indiana	110(a)(2)(J) (visibility portion)	August 31, 2015
o.	Indiana	110(a)(2)(D)(i)(I) (prongs 1 and 2) and (D)(i)(II) (prong 4)	June 7, 2016
p.	Iowa	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	September 30, 2016
q.	Kansas	110(a)(2)(J) (visibility portion)	November 30, 2015
r.	Maryland	110(a)(2)(D)(i)(I) (prongs 1 and 2)	June 7, 2016

	<b>STATE</b>	<b>SIP ELEMENT(S)</b>	<b>DATE</b>	
1				
2	s.	Mississippi	110(a)(2)(J) ( visibility portion)	October 31, 2015
3	t.	Mississippi	110(a)(2)(D)(i)(II) (prong 4)	May 31, 2016
4	u.	Montana	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	March 31, 2016
5	v.	Nebraska	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	September 30, 2015
6	w.	Nebraska	110(a)(2)(D)(i)(I) (prongs 1 and 2)	January 29, 2016
7	x.	New Hampshire	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	December 31, 2015
8	y.	North Carolina	110(a)(2)(A)-(C), (D)(ii)-(H), (J)-(M) (excluding 110(a)(2)(C) (PSD portion), E(ii), and (J) (PSD portion))	October 31, 2015
9	z.	North Carolina	110(a)(2)(C) (PSD portion), (D)(i)(II) (prongs 3 and 4), (E)(ii), and (J) (PSD portion)	May 31, 2016
10	aa.	North Dakota	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4)	December 17, 2015
11	bb.	North Dakota	110(a)(2)(D)(i)(I) (prongs 1 and 2) and (II) (prong 4)	January 29, 2016
12	cc.	Ohio	110(a)(2)(J) (visibility portion)	August 31, 2015
13	dd.	Ohio	110(a)(2)(D)(i)(I)(prongs 1 and 2) and (II) (prong 4)	June 7, 2016
14	ee.	Oregon	110(a)(2)(D)(i)(I) (prongs 1 and 2)	January 29, 2016
15	ff.	Rhode Island	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M)	December 31, 2015
16	gg.	South Carolina	110(a)(2)(J) (visibility portion)	October 31, 2015
17	hh.	South Carolina	110(a)(2)(D)(i)(II) (prong 4)	May 31, 2016
18	ii.	Texas	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4)	August 31, 2016
19	jj.	Texas	110(a)(2)(D)(i)(II) (prong 4)	September 4, 2015
20	kk.	Texas	110(a)(2)(D)(i)(I) (prongs 1 and 2)	June 7, 2016
21	ll.	Utah	110(a)(2)(A)-(C), (D)(i)(II)-(H), (J)-(M) (excluding prong 4)	June 30, 2016
22	mm.	Utah	110(a)(2)(D)(i)(I)(prongs 1 and 2) and (II) (prong 4)	June 7, 2016
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1 If any State withdraws an above-listed submittal, then EPA's obligation to take  
2 the action required above with respect to that submittal is automatically terminated.

3 EPA shall, within 15 days of signature, send the rulemaking package for each  
4 action taken pursuant to this Judgment and Order to the Office of the Federal Register for  
5 review and publication.  
6

7 The deadlines established by this Judgment and Order may be extended (a) by  
8 written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon  
9 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure  
10 and upon consideration of any response by Plaintiff and any reply by EPA. Any other  
11 provision of this Judgment may be modified by the Court following motion of a party for  
12 good cause shown pursuant to the Federal Rules of Civil Procedure and upon  
13 consideration of any response by a non-moving party and any reply.  
14

15 If a lapse in EPA appropriations occurs within one hundred and twenty (120) days  
16 prior to a deadline the above table in this Judgment, that deadline shall be extended  
17 automatically one day for each day of the lapse in appropriations.  
18

19 In the event of a dispute between Plaintiffs and EPA concerning the interpretation  
20 or implementation of any aspect of this Judgment and Order, the disputing party shall  
21 provide the other party with a written notice outlining the nature of the dispute and  
22 requesting informal negotiations. These parties shall meet and confer in order to attempt  
23 to resolve the dispute. If these parties are unable to resolve the dispute within ten (10)  
24 business days after receipt of the notice, either party may petition the Court to resolve the  
25 dispute.  
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1 No motion or other proceeding seeking to enforce this Judgment and Order or for  
2 contempt of Court shall be properly filed unless the procedure set forth above has been  
3 followed, and the moving party has provided the other party with written notice received  
4 at least ten (10) business days before the filing of such motion or proceeding.  
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6 These consolidated cases are dismissed with prejudice. However, this Court shall  
7 retain jurisdiction over this matter to enforce the terms of this Judgment and Order and to  
8 consider any requests for costs of litigation, including attorney fees.

9 Nothing in the terms of this Judgment and Order shall be construed (a) to confer  
10 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction  
11 of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. §  
12 7607(b)(1), including final action take pursuant to section 110(k) of the CAA, 42 U.S.C.  
13 § 7410(k), approving, disapproving, or approving in part and disapproving in part a SIP  
14 submittal, or (b) to waive any claims, remedies, or defenses that the parties may have  
15 under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).  
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18 Nothing in this Judgment and Order shall be construed to limit or modify any  
19 discretion accorded EPA by the Clean Air Act or by general principles of administrative  
20 law in taking the actions which are the subject of this Judgment, including the discretion  
21 to alter, amend, or revise any final actions promulgated pursuant to this Judgment.  
22

23 EPA's obligation to perform each action specified in this Judgment does not constitute a  
24 limitation or modification of EPA's discretion within the meaning of this paragraph.

25 Plaintiffs' time to file a motion for costs of litigation, including attorneys' and  
26 expert witness fees, and taxation of costs, is extended for 90 days from the date of this  
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1 judgment, to allow the parties time to attempt to resolve this issue without judicial  
2 intervention.

3 Plaintiffs reserve the right to seek additional costs of litigation, including  
4 reasonable attorney fees, incurred subsequent to entry of this Judgment. EPA reserves  
5 the right to oppose any such request for additional costs of litigation, including attorney  
6 fees.  
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8 EPA and Plaintiffs recognize and acknowledge that the obligations imposed upon  
9 EPA under this Judgment can only be undertaken using appropriated funds legally  
10 available for such purpose. No provision of this Judgment and Order shall be interpreted  
11 as or constitute a commitment or requirement that the United States obligate or pay funds  
12 in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable  
13 provision of law.  
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17 SO ORDERED.

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20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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YVONNE GONZALEZ ROGERS  
24 UNITED STATES DISTRICT JUDGE  
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