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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22 **SAN FRANCISCO DIVISION**

23 CENTER FOR BIOLOGICAL DIVERSITY *et*  
24 *al.*,

25 *Plaintiffs,*

26 v.

27 ANDREW R. WHEELER,<sup>1</sup> Administrator,  
28 United States Environmental Protection Agency,  
in his official capacity,

*Defendant.*

Case No. 3:16-cv-3796-VC

**JOINT NOTICE OF AUTOMATIC  
DEADLINE EXTENSION IN LIGHT  
OF LAPSE IN APPROPRIATIONS**

<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Defendant Scott Pruitt's successor, Andrew R. Wheeler, Acting Administrator of the U.S. Environmental Protection Agency, is automatically substituted as the Defendant in this case.

1 Defendant Andrew R. Wheeler, in his official capacity as the Acting Administrator of  
2 the United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and  
3 Plaintiffs Center for Biological Diversity and Center for Environmental Health (collectively, the  
4 “Parties”) hereby notify the Court that as a result of a lapse in appropriations to EPA, the  
5 deadline set forth in Paragraph 1.e of the Consent Decree is automatically extended from  
6 January 28, 2019 to February 25, 2019.

7 1. On April 28, 2017, the Court entered a Consent Decree requiring, in relevant  
8 part, the appropriate EPA official to:

9 sign a notice of final rulemaking setting forth its final decision pursuant to 42  
10 U.S.C. § 7409(d)(1) concerning its review of the primary NAAQS for SO<sub>x</sub> and  
11 including such revisions to these NAAQS and/or such new primary NAAQS for  
12 SO<sub>x</sub> as may be appropriate in accordance with 42 U.S.C. §§ 7408 and 7409(b) no  
later than *January 28, 2019*.

13 Consent Decree, ¶ 1.e (Dkt. No. 37) (emphasis added).

14 2. EPA states that the continuing resolution that had been providing EPA’s  
15 appropriations for fiscal year 2019 lapsed on December 21, 2018. However, due to the  
16 availability of sufficient unexpired fiscal year 2018 funds, EPA was able to continue working in  
17 furtherance of meeting the requirements of the Consent Decree through December 28, 2018.  
18 On that date, EPA’s appropriations for work in furtherance of meeting the requirements of the  
19 Consent Decree lapsed.

20 3. The Consent Decree provides that “[i]f a lapse in EPA appropriations occurs  
21 within one hundred twenty (120) days prior to a deadline in Paragraph 1 or 2 in this Decree, that  
22 deadline shall be extended automatically one day for each day of the lapse in appropriations.”  
23 *Id.* ¶ 5.

24 4. Due to the lapse in appropriations, EPA states that it did not have sufficient  
25 funds to conduct work in furtherance of meeting the requirements of the Consent Decree for 28  
26 days, from December 29, 2018 through January 25, 2019, when the Further Additional  
27 Continuing Appropriations Act, 2019, Pub. L. 116-5, was enacted.  
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