

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-00897-JLK

WILDEARTH GUARDIANS,

Plaintiff,

v.

ANDREW WHEELER, in his official capacity as Administrator
Of the United States Environmental Protection Agency,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON LIABILITY (ECF NO. 8)**

Kane, J.

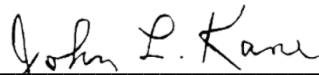
Before me is Plaintiff WildEarth Guardians' Motion for Partial Summary Judgment on Liability (ECF No. 8) against Defendant Andrew Wheeler, Administrator of the U.S. Environmental Protection Agency. Defendant does not oppose Plaintiff's Motion as to liability only, and "admits that he has a nondiscretionary duty, pursuant to the Clean Air Act, 42 U.S.C. § 7511(b)(2)(A), to determine by January 20, 2019, whether the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado ozone nonattainment area, also known as the Denver Metro/North Front Range nonattainment area ("Denver Area") attained the 2008 Ozone National Ambient Air Quality standards ("2008 Ozone NAAQS"), and that he has not yet made that determination." (Def.'s Resp. at 1, ECF No. 11).

Defendant does not object to entry of a partial summary judgment that he did not perform a nondiscretionary duty to make an attainment determination for the Denver Area regarding the

2008 Ozone NAAQS by January 20, 2019. (*Id.* at 2). Defendant notes, however, that Plaintiff's Motion is limited to a request for a declaratory judgment on liability, not on remedy, and he expressly "reserves the right to make argument and raise defenses regarding the appropriate remedy in the event the issue is not mooted, or the parties do not reach an agreement." (*Id.* 3).

Accordingly, Plaintiff's Motion for Partial Summary Judgment on Liability (ECF No. 8) is GRANTED. The Court finds that Defendant Andrew Wheeler, Administrator of the United States Environmental Protection Agency, failed to perform a nondiscretionary duty to make an attainment determination for the Denver Area regarding the 2008 Ozone NAAQS by January 20, 2019.

DATED this 22nd day of July, 2019.



JOHN L. KANE
SENIOR U.S. DISTRICT JUDGE