

ORAL ARGUMENT NOT YET SET

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA and NATIONAL
AUTOMOBILE DEALERS ASSOCIATION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and LISA P.
JACKSON, Administrator, U. S. Environmental
Protection Agency,

Respondents.

Docket No. 09-1237

Petition for Review of Decision of the
United States Environmental Protection Agency

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S
UNOPPOSED MOTION FOR LEAVE TO INTERVENE ON BEHALF OF
RESPONDENT**

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District*

The South Coast Air Quality Management District, a political subdivision of the State of California (“SCAQMD”), hereby moves to intervene in this action as party-respondent pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 15(b). SCAQMD has a direct and substantial interest in the outcome of this petition. Further, no other party can adequately represent the interest of SCAQMD. For the reasons set forth below, SCAQMD respectfully urges this court to allow its intervention.

1. On September 8, 2009, Petitioners filed this action seeking review of a decision by the United States Environmental Protection Agency (EPA) granting a waiver of preemption under Clean Air Act § 209(b), 42 U.S.C. § 7543 (b), for California’s greenhouse gas emission standards for new motor vehicles. *See California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California’s 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles*, Part III, 74 Fed. Reg. 32,744 (July 8, 2009).

2. The SCAQMD seeks to intervene in this action as a matter of right because it has a “substantial interest” in the outcome of the action; justifying intervention under Rule 15(d) of the Federal Rules of Appellate Procedure (FRAP). *See New Mexico Dep’t of Human Services v. HCFA*, 4 F.3d 882, 884 n.2 (10th Cir. 1993). Petitioners’ counsel have stated that they take no position on this

motion. Counsel for respondent U. S. Environmental Protection Agency (“EPA”) and counsel for proposed intervenor State of California have stated that they do not oppose this motion.

3. Courts have held that intervention as of right depends on the same factors described in Federal Rules of Civil Procedure 24(a). *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). These factors are (1) timeliness, (2) whether the intervenor claims an interest in the subject of the action, (3) whether the disposition of the action may as a practical matter impair the applicant’s ability to protect that interest, and (4) whether the applicant’s interest is adequately represented by existing parties. *Id.* These factors are satisfied here.

4. The SCAQMD has a substantial interest in defending EPA’s action granting California’s waiver request because the SCAQMD is the local agency with the responsibility for comprehensive air pollution control within the South Coast Air Basin (Cal. Health & Safety Code § 40412) and is required under state law to adopt and enforce rules as necessary to attain state and federal ambient air quality standards. (Cal. Health & Safety Code §40001(a).) As such, SCAQMD has the responsibility to adopt rules and regulations to attain the national ambient air quality standards for criteria air pollutants, including ozone and particulate matter (PM). EPA has recognized the link between global warming and increases in ozone and PM levels. (See EPA, *Climate Change, Health and Environmental*

Effects, at <http://www.epa.gov/climatechange/effects/health.html> (last visited October 6, 2009).) Moreover, global warming is likely to result in the increased frequency and severity of wildfires. (See A.L. Westerling et al., *Warming and Earlier Spring Increase Western U.S. Forest Wildfire Activity*, 313 *Science* 940 (2006), available at <http://www.sciencemag.org/cgi/content/full/313/5789/940> (last visited October 6, 2009).) Significant adverse health effects are certain to result from the PM emissions caused by these wildfires. (See Nino Künzli et al., *Health Effects of the 2003 Southern California Wildfires on Children*, 174 *Am. J. Respir. Crit. Care Med.* 1221 (2006), available at <http://ajrccm.atsjournals.org/cgi/content/short/174/11/1221> (last visited October 6, 2009)). As a result, SCAQMD's mission to protect public health from the adverse effects of ozone and PM, and to attain the state and national ambient air quality standards for these pollutants, will be adversely affected by global warming. SCAQMD thus has a significant interest in reducing global warming, through measures such as CARB's greenhouse gas regulations for motor vehicles.

BACKGROUND

5. Section 209(a) of the Clean Air Act ("CAA") generally prohibits states from adopting standards relating to the control of emissions from new motor vehicles. (42 U.S.C. § 7543(a).) However, the CAA authorizes California, alone among the states, to adopt and enforce standards relating to the control of

emissions from new motor vehicles provided that EPA has granted a waiver of preemption for such standards. (CAA §209(b), 42 U.S.C. §7543(b).)

6. Recognizing that motor vehicles are the second largest source of greenhouse gas emissions in California, and pursuant to state law requirements (Cal. Health & Safety Code § 43018.5), CARB approved regulations in September 2004 that limit the amount of greenhouse gases that may be emitted by light- and medium-duty passenger vehicles sold in California. (Cal. Code Regs. tit. 13, § 1961.1.)

7. On December 21, 2005, pursuant to section 209(b) of the CAA, California requested a waiver of preemption from EPA for these motor vehicle emission standards.

8. By letter dated December 19, 2007 to Governor Arnold Schwarzenegger, EPA Administrator Johnson denied California's request for a waiver. This denial was further explained at 73 Fed. Reg. 12,156 (Mar. 6, 2008). California petitioned this Court for review of that decision. *California v. EPA*, Case No. 08-1178 (D.C. Cir. filed May 5, 2008, and dismissed Sept. 3 2009). The SCAQMD intervened on behalf of California in that action.

9. On February 12, 2009, EPA announced that it was reconsidering its denial of the waiver. 74 Fed. Reg. 32,747 (July 8, 2009).

10. On June 30, 2009, EPA granted a waiver of preemption for California's greenhouse gas emission standards for new motor vehicles. 74 Fed. Reg. 32,744 (July 8, 2009).

SCAQMD Has a Direct and Substantial Interest in the Action

11. The SCAQMD has primary responsibility for the control of air pollution in the South Coast air basin. (Cal. Health & Safety Code § 40412.) The South Coast Air Basin includes all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. In addition, the SCAQMD includes portions of the Mojave Desert air basin and the Salton Sea air basin in Riverside County, including the Palm Springs area. The SCAQMD encompasses over 10,000 square miles and includes over 16 million people (about 5% of the nation's population). (Declaration of Elaine Chang, DrPH, in Support of South Coast Air Quality Management District's Motion for Leave to Intervene on Behalf of Respondent, ¶ 3 (hereinafter "Chang Decl.")). The SCAQMD has the duty to adopt rules to attain the national and state ambient air quality standards. Cal. Health & Safety Code § 40001.

12. The SCAQMD has primary responsibility under state law to control air pollution from nonvehicular sources. (Cal. Health & Safety Code § 40000.) The term "air pollutant" under state law means any discharge into the atmosphere and includes smoke, dust, soot, gases, carbon, particulate matter, etc. (Cal. Health

& Safety Code § 39013). This term is certainly broad enough to cover global warming pollutants.

13. In 1990, the SCAQMD Governing Board adopted its “Policy on Global Warming and Stratospheric Ozone Depletion,” which acknowledged that global warming will increase concentrations of ground-level ozone and impact the region’s ability to attain state and federal ozone standards. The Global Warming Policy directed staff to include in the 1991 Air Quality Management Plan measures to reduce CO₂, including measures to further energy conservation, energy efficiency, use of alternative fuels, and reduction of vehicle miles traveled. The 1991 Plan and all subsequent plans have incorporated measures which reduce criteria pollutants and climate change pollutants. Thus, SCAQMD has an interest in reducing global warming pollutants. (Chang Decl. ¶ 14.)

14. Despite enormous progress, the SCAQMD still has the worst air quality in the nation, recently experiencing maximum ozone levels at 171% of the national ambient air quality standard and maximum PM_{2.5} levels at twice the daily standard. (Chang Decl. ¶ 5.) CARB has calculated that the South Coast Basin experiences over 50% of the nation’s population-weighted exposure to PM_{2.5} levels over the national standard,¹ and 25% of the nation’s population-weighted

¹ CARB has also calculated that over 80% of the population-weighted exposure to PM_{2.5} levels exceeding federal standards in the state occurs in the South Coast basin. (Chang Decl., ¶ 7.)

exposure to ozone levels over the national standard. (Chang Decl., ¶¶ 8. 9.)

15. Both ozone and PM_{2.5} cause significant adverse health effects.

Breathing ozone causes a variety of health problems including chest pain, coughing, throat irritation and congestion. It worsens bronchitis, emphysema and asthma. Repeated exposure may permanently scar lung tissue. (EPA, *Ozone-Good up High, Bad Nearby*, available at

<http://www.epa.gov/air/ozonepollution/pdfs/ozonegb.pdf> (last visited October 6,

2009).) Particulates have been linked to increased respiratory symptoms, aggravated asthma, heart attacks, and premature death in people with heart or lung disease. (See EPA, *Particle Pollution and Your Health*, available at

<http://www.epa.gov/oar/particlepollution/pdfs/pm-color.pdf> (last visited October 6,

2009).) By increasing ozone and PM 2.5 levels, global warming will make

SCAQMD's mission to clean the air and attain the national ambient air quality standards even more difficult.

16. Preventing or reducing global warming will aid SCAQMD in its mission to reach the state and federal ambient air quality standards and protect the public health from adverse effects of ozone and PM_{2.5}. The International Panel on Climate Change (IPCC), which recently won the Nobel Prize for its work in this area, has stated "[t]here is high agreement and much evidence that mitigation actions [to reduce global warming] can result in near-term co-benefits (e.g.

improved health due to reduced air pollution) that may offset a substantial fraction of mitigation costs.” (IPCC, *Climate Change 2007: Synthesis Report – Summary for Policymakers* 18, available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf (last visited October 6, 2009).)

17. A recent Stanford University study estimated the health impacts of air pollution attributed to climate change. Because warmer temperatures speed the formation of ozone and increase particulate, each 1.8 additional degrees Fahrenheit (1°Celsius) rise in temperatures results in an estimated 1,000 additional deaths nationwide each year. (Mark Z. Jacobson, *On the Causal Link between Carbon Dioxide and Air Pollution Mortality*, 35 *Geophysical Research Letters* L03809 (2008), available at <http://www.stanford.edu/group/efmh/jacobson/2007GL031101.pdf> (last visited October 6, 2009).) According to the study’s author, these effects are most significant where pollution is already severe. (Louis Bergeron, *Study Links Carbon Dioxide Emissions to Increased Deaths*, Stanford Report, Jan. 3, 2008, available at <http://news-service.stanford.edu/news/2008/january9/co-010908.html>. (last visited October 6, 2009).) Since the South Coast Air Basin experiences one-fourth of the nation’s population-weighted exposure to excess ozone levels, and one-half the nation’s population-weighted exposure to excess PM2.5 (Chang Decl. ¶¶ 8, 9), it will incur a large share of these excess deaths.

18. Global warming is also likely to result in the increased frequency and severity of wildfires, which in turn would likely increase particulate pollution. (See Westerling et al., *supra*; Künzli et al., *supra*.) Recently, Southern California experienced its worst wildfires in history. These wildfires caused monitored PM_{2.5} levels to increase up to 600 micrograms per cubic meter on an hourly basis and up to 250 micrograms per cubic meter on a daily basis. These measurements are *over seven times* the newly-promulgated daily national ambient air quality standard (NAAQS) for PM_{2.5} of 35 micrograms per cubic meter. PM₁₀ values reached over 500 micrograms per cubic meter on a daily average basis – *over three times* the NAAQS of 150 micrograms per cubic meter. (Chang Decl. ¶¶ 10, 11.)

19. PM emissions from wildfires result in significant adverse effects on public health, including “very substantial effects of wildfire smoke exposure on eyes as well as upper and lower respiratory symptoms...” (Künzli et al., *supra* at 1225.) Wildfires are also associated with increases in hospitalizations for respiratory illnesses, and there is some evidence suggestive of an association with increased hospitalizations for cardiovascular disease and in some cases with increased mortality. (Ralph Delfino et al., *The Relationship of Cardiovascular and Respiratory Hospital Admissions and Mortality to the Southern California Fires of 2003*, Report to SCAQMD, Dec. 31, 2006, at 30) (Chang Decl. ¶ 12).

20. Based on the foregoing, SCAQMD clearly has a direct and substantial interest in reducing or avoiding global warming, because it increases ozone and PM levels and, indirectly as a result of wildfires, increases PM_{2.5} and PM₁₀ levels. Global warming will interfere with SCAQMD's mission to reduce the adverse health effects of air pollution and to attain the state and federal ambient air quality standards.

21. Under state law, the California Air Resources Board is the agency primarily responsible for reducing pollution from motor vehicles. (Cal. Health & Safety Code §§ 39002, 40000). Accordingly, if global warming pollutants from motor vehicles are to be reduced in California, CARB must do so.

22. CARB has calculated that greenhouse gas emission reductions will be far greater in California from the CARB motor vehicle regulations that are the subject of the waiver denial challenged in this action (referred to as the Pavley rules after the legislator whose bill required their adoption) than will result from the corporate average fuel economy (CAFE) standards resulting from the 2007 adoption of the "Energy Independence and Security Act," referred to in Administrator Johnson's December 19, 2007 letter denying California's waiver request. (See CARB, Executive Summary to *Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and CARB Greenhouse Gas Regulations* (2008), available at

http://www.arb.ca.gov/cc/ccms/reports/pavleycafe_reportfeb25_08.pdf (last visited October 6, 2009).)

23. In calendar year 2016, the Pavley rules will result in the reduction of greenhouse gas emissions in California by 16.4 million metric tons (MMT) of CO₂ equivalents, which is more than double the 7.5 MMT reduction expected under the federal CAFE rules. (*Id.*) The cumulative benefits of the Pavley rules over the years 2009 through 2016 will prevent emissions of 55 MMTs of CO₂ equivalents in California, which is more than twice the 22 MMTs prevented if only the federal CAFE standards were implemented. (*Id.*) Finally, by 2020, the Pavley rules would prevent emissions of 158 MMT of CO₂ equivalents in California, more than double the 79 MMTs reductions of CO₂ equivalents expected if only the federal standards are implemented in California. (*Id.*)

24. Because greenhouse gas emissions anywhere on earth can affect global warming, the SCAQMD also has an interest in the expected CO₂ equivalent reductions from the implementation of California standards in other states that have adopted the California standards, as authorized by section 177 of the Clean Air Act. As of the time the CARB report was written twelve states had adopted those standards, but they cannot implement them without EPA approval of California's request for waiver of preemption. The California standards will reduce cumulative GHG emissions in California and those twelve states by 434

MMT of CO₂ equivalents by 2020, which is an 89% improvement over the federal standards. (*Id.*)

ARGUMENT

A. SCAQMD's Interests Justify Intervention

25. Rule 15(d) of the Federal Rules of Appellate Procedure (FRAP) requires that a party seeking to intervene must explain its interest in the proceeding and move to intervene within 30 days after the petition for review is filed.

Intervention under Rule 15(d) is permitted where the intervener has a “substantial interest” in the outcome of the action. (*New Mexico Dep't of Human Services v. HCFA*, 4 F. 3d 882, 884 n. 2 (10th Cir. 1993); *Bales v. NLRB*, 914 F. 2d 92, 94 (6th Cir. 1990).)

26. SCAQMD has a direct and substantial interest in the outcome of this action because CARB's regulations would assist in the process of reducing the greenhouse gas emissions that cause global warming, both due to their effects within California and their potential effects in other states that adopt the CARB regulations. It is not necessary that the regulations would completely solve the problem all at once. (*Massachusetts v. EPA*, 549 U.S. 497, 523-526 (2007).) Reducing greenhouse gas emissions, thus furthering the process of reducing global warming, is of substantial interest to SCAQMD because it will contribute to reducing the ozone and particulate levels in the South Coast basin that would

otherwise result from global warming, and would greatly assist the District in its mission to reach the state and federal ambient air quality standards and protect the public health from the adverse effects of ozone and PM.

B. The Liberal Intervention Policies of Rule 24 of the Federal Rules of Civil Procedure Support Granting Intervention in This Case

27. The Supreme Court has recognized that “the policies underlying intervention [in the district courts] may be applicable in the appellate courts,” although they are not controlling. (*International Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965).) Rule 24(a) of the Federal Rules of Civil Procedure (FRCP) governs intervention as of right. Rule 24(a) provides in part:

On timely motion, the court must permit anyone to intervene who: . . .
(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Rule 24(a) is construed liberally in favor of granting intervention and doubts resolved in favor of the proposed intervener. (*Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000); *United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995); *Southwest Ctr. for Biological Diversity v. Berg*, 268 F. 3d 810, 818 (9th Cir. 2001); *Fed. Savings & Loan v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993).)

i. SCAQMD has a substantial interest in the subject of this action

28. As discussed above, SCAQMD has a substantial interest in the subject matter of this action. It has a duty and responsibility to reduce air pollution within its jurisdiction and to protect the residents of the district from the adverse health effects of air pollution, which include meeting the state and federal ambient air quality standards. CARB's regulations will reduce greenhouse gas emissions, thus helping reduce global warming. Global warming causes increased ozone and particulate levels, which adversely affect public health in the South Coast region. Thus, reducing global warming will greatly aid SCAQMD in its mission to attain the state and federal ambient air quality standards and protect the public health from adverse effects of ozone and PM.

ii. Absent intervention, SCAQMD's interest will be impaired or impeded

29. The disposition of this action may, as a practical matter, impair or impede the SCAQMD's ability to protect its interest in reducing global warming pollutants since this case will resolve whether or not California and the numerous states that have adopted California's rules are allowed to enforce their regulations reducing greenhouse gases from motor vehicles. Since the SCAQMD, if absent from this case, "would be substantially affected in a practical sense by the

determination made” in this action, it “should, as a general rule, be entitled to intervene.” (*Southwest Ctr. For Biological Diversity*, 268 F.3d at 822, quoting FRCP Rule 24 advisory committee notes.)

30. Further, this court in *West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004) recognized that where a state is suing on its own behalf to challenge an EPA action which threatens the success of the state’s air pollution control program, standing is clear. In this case, SCAQMD is suing to protect its interests in cleaning the air and administering its air pollution control program as required by state and federal law, just as was the case in *West Virginia*. Thus, SCAQMD’s standing in the matter before this court is clear. Constitutional standing is sufficient to show the interest required under Rule 24(a) for intervention as of right. *Mova Pharm. Corp. v. Shalala*, 140 F. 3d 1060, 1076 (D.C. Cir. 1998). Because SCAQMD has standing, and its interests may be affected as a practical matter, the court should allow SCAQMD to intervene.

iii. EPA, and California as Intervenor, May Not Adequately Represent SCAQMD’s Interests

31. A proposed intervenor need only show that representation of his interests *may* be inadequate, not that representation will in fact be inadequate. (*Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972); *Diamond v. District of Columbia*, 792 F. 2d 179, 192 (D.C. Cir. 1986).) Moreover, “[a]

governmental party that enters a lawsuit solely to represent the interests of its citizens...differs from other parties, public or private, that assert their own interests, even when these interests coincide.” (*United States v. Hooker Chems. & Plastics Corp.* 749 F. 2d 968, 992 n. 21 (2d. Cir. 1984).) Courts have previously recognized that the interests of a higher level of government may not be the same as those of a lower level of government. (*See Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995) (finding that the interests of the State of Arizona and Apache County not necessarily represented by the U.S. Forest Service); *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1000-01 (8th Cir. 1993) (finding that County’s local interests were not shared by the general state citizenry, and thus the state would not adequately represent those interests).)

32. While EPA, California and SCAQMD all seek to uphold EPA’s waiver for California’s greenhouse gas emission standards for motor vehicles, it is possible that EPA and California may defend or settle this action in a manner that does not agree with the interests of SCAQMD. For example, SCAQMD, as discussed above, has a substantial interest in the expected CO₂ equivalent reductions from other states’ implementation of the California standards as authorized under section 177 of the CAA. However, California may, as it has in the past, seek to resolve this litigation by entering into a memorandum of

agreement with automobile manufacturers, which would prevent other states who have adopted California's regulations from enforcing their motor vehicle greenhouse gas rules and reduce the overall climate benefits, and thus air pollution benefits, of the California regulations. (*See Assoc. of Int'l Auto Mfrs v. Comm'r., Mass. Dept. of Env. Prot.*, 208 F. 3d 1, 7-8 (1st Cir. 2000).) EPA's interest in defending the California standards is also potentially less compelling, since an adverse decision would not impair EPA's authority.

iv. SCAQMD's Motion to Intervene is Timely

33. In the Courts of Appeals, a motion to intervene is timely if it is filed within thirty days after the petition for review of agency action is filed. (FRAP Rule 15(d).) This Motion for Leave to Intervene is being filed on or before the 30th day after Petitioners' petition for review was filed, i.e. by October 8, 2009, and is therefore timely.

C. If Intervention as of Right Is Not Granted, This Court Should Grant SCAQMD Permissive Intervention

34. Even if SCAQMD were not entitled to intervene as of right, this Court should grant its motion to intervene under the rules applicable to permissive intervention. Under FRCP Rule 24(b), a federal court has discretion to allow intervention where the proposed intervener makes a timely application showing that it has a "claim or defense that shares with the main action a common question

of law or fact.” In exercising such discretion, courts shall “consider whether the intervention will unduly delay or prejudice the rights of the original parties.” (*Id.*)

35. As already discussed above, SCAQMD’s motion is timely made. Further, there is no reason to conclude that SCAQMD’s participation as an intervener in this case would unduly delay or prejudice the rights of existing parties. SCAQMD cannot envision any way in which its participation would prejudice existing parties.

36. No party opposes this motion, as set forth in the accompanying Declaration of Barbara Baird.

CONCLUSION

WHEREFORE, for the foregoing reasons, the South Coast Air Quality Management District respectfully requests that this Court grant its motion to intervene as a respondent.

Dated: October 7, 2009

Respectfully submitted,

KURT R. WIESE, General Counsel
BARBARA BAIRD, District Counsel

/s/

By Barbara Baird
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ADDENDUM

**(Certificate of Parties
and
Disclosure Statement Pursuant to Rule 26.1)**

ORAL ARGUMENT NOT YET SET

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF THE UNITED
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AUTOMOBILE DEALERS ASSOCIATION,

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CERTIFICATE OF PARTIES

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Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certify as follows:

I. PARTIES

A. Petitioners

The following parties appear in this case as petitioners:

Chamber of Commerce of the United States of America, and
National Automobile Dealers Association

B. Respondents

The United States Environmental Protection Agency (EPA) and
Lisa P. Jackson, EPA Administrator.

C. Proposed Intervenors for Respondent

State of California by and through Governor Arnold Schwarzenegger, the
California Air Resources Board, and Attorney General Edmund G. Brown Jr., and
the South Coast Air Quality Management District.

Dated: October 7, 2009

Respectfully submitted,

KURT R. WIESE, District Counsel

/s/

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**UNITED STATES COURT OF APPEALS
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DISCLOSURE STATEMENT PURSUANT TO RULE 26.1

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District*

Pursuant to Circuit Rule 26.1, the undersigned counsel of record certify as follows:

The South Coast Air Quality Management District is a regional governmental agency created by California State law with the responsibility for comprehensive air pollution control in the South Coast Air Basin (Cal. Health & Safety §§ 40400, et seq.) and does not have any parent corporation nor does any publicly-held company have a 10% or greater ownership interest, or any ownership interest.

Dated: October 7, 2009

Respectfully submitted,

KURT R. WIESE, District Counsel

/s/

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CHAMBER OF COMMERCE OF THE UNITED
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DOCKET NO. 09-1237

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**DECLARATION OF BARBARA BAIRD IN SUPPORT OF SOUTH
COAST AIR QUALITY MANAGEMENT DISTRICT'S UNOPPOSED
MOTION FOR LEAVE TO INTERVENE ON BEHALF OF
RESPONDENT**

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CERTIFICATE OF SERVICE

Case Name: **Chamber of Commerce of United States of America, et al.
v. U.S. Environmental Protection Agency, et al.**

Case No. **09-1237**

I hereby certify that on October 8, 2009, as authorized agent of Barbara Baird, attorney for the South Coast Air Quality Management District, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF BARBARA BAIRD IN SUPPORT OF SOUTH COAST
AIR QUALITY MANAGEMENT DISTRICT'S *UNOPPOSED* MOTION
FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT**

The following participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Attorney Name
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I further certify that some of the participants in the case are not registered CM/ECF users. On **October 8, 2009**, I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **October 8, 2009**, at Diamond Bar, CA.

/s/
Patricia M. Anderson, Declarant

ORAL ARGUMENT NOT YET SET

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DOCKET NO. 09-1237

CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA and NATIONAL
AUTOMOBILE DEALERS ASSOCIATION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and LISA P.
JACKSON, Administrator, U. S. Environmental
Protection Agency,

Respondents.

Petition for Review of Decision of the
United States Environmental Protection Agency

**DECLARATION OF ELAINE CHANG DrPH IN SUPPORT OF
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S
UNOPPOSED MOTION FOR LEAVE TO INTERVENE ON BEHALF
OF RESPONDENT**

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DISTRICT
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*Attorneys for Intervenor South Coast Air Quality
Management District*

I, Elaine Chang, DrPH, declare:

1. I am the Deputy Executive Officer for Planning, Rule Development and Area Sources for the South Coast Air Quality Management District (“District”). My primary duties include overseeing the process of developing new air pollution rules and regulations, revising existing rules and regulations, developing and maintaining a legally adequate Air Quality Management Plan ("AQMP") for the District, and the general development of air pollution control policies. I have performed these duties for the District since 1997. Before then, I was a Planning Manager for the District for six years. I know the matters stated in this Declaration from my own personal knowledge and could and would competently testify to them if called to testify.

2. I received a Doctorate in Public Health from Columbia University in 1991 and a Master’s degree in Health Education from New York University in 1981.

3. The District, along with the California Air Resources Board (CARB), is charged with assuring that the air in its jurisdiction meets federal air quality standards. The District has specific jurisdiction over an area of approximately 10,743 square miles, consisting of the four-county South Coast Air Basin (Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino counties), and the Riverside County portions of the Salton Sea Air Basin and Mojave Desert Air Basin, including the Coachella Valley and the Palm Springs area. This area is home to approximately 16 million people, almost half the population of California, and approximately 5% of the population of the United States.

4. As a direct result of the District's and CARB's efforts, the air quality in the South Coast Basin has improved significantly over the past three decades. The District has attained the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide, nitrogen dioxide, and carbon monoxide. However, the air quality in the South Coast District still does not meet certain federal air quality standards and, in fact, is the worst in the nation. The South Coast District is not in compliance with federal standards for ozone (smog) or for PM_{2.5} (particulate matter less than 2.5 microns in diameter). [The District's statutory deadline to achieve the annual PM_{2.5} standard is 2015 and the deadline for ozone is 2021.]

5. In 2005, the South Coast Air Basin experienced maximum 8-hour average ozone levels at 171% of the federal ambient air quality standard, and annual average PM_{2.5} maximum levels of 139% of the federal standard. (Final 2007 AQMP, p. 2-5.) In 2006, EPA adopted new NAAQS for daily PM_{2.5} levels, cutting allowable limits almost in half. (*Id.* at p. 6-8.) With this new standard, which the District must attain by 2019 or 2020, the Basin in 2005 exceeded twice this new daily NAAQS for PM_{2.5}.

6. The California Air Resources Board has estimated that over 5,400 people die prematurely each year in the South Coast Air Basin because the air quality is worse than state PM 2.5 standards.

7. According to CARB, over 80% of the population-weighted exposure to PM_{2.5} levels exceeding federal standards in the state occurs in the South Coast Basin.

8. CARB has calculated that over 50% of total population-weighted exposure to PM_{2.5} levels exceeding federal standards in the entire

nation occurs in the South Coast Air Basin. In comparison, the Basin has only about 5% of the nation's total population.

9. CARB has further calculated that approximately one fourth of the nation's population weighted exposure to ozone levels exceeding the federal standard occurs in the South Coast Basin.

10. I am aware that global warming has been linked to increased wildfires, which result in increased particulate pollution. (A.L. Westerling et al., *Warming and Earlier Spring Increase Western U.S. Forest Wildfires Activity*, 313 *Science* 940 (2006).) Global warming has also been linked to increases in ozone and PM. See e.g. 74 Fed. Reg. at 32764 n. 117. Warmer temperatures speed the formation of ozone and increases particulate mater, such that each 10 celsius increase in temperature (1.8 degrees Fahrenheit) results in an estimated 1,000 additional deaths from air pollution nationwide each year. Mark Z. Jacobson, *On the Causal Link Between Carbon Dioxide and Air Pollution Mortality*, 35 *Geophysical Research Letters* L03809 (2008), available at <http://www.stanford.edu/group/efmh/jacobson/2007GL031101.pdf>.

11. In 2009, the South Coast Basin experienced some of its worst air quality due to wildfires to date. These wildfires caused monitored PM2.5 levels to increase to over 800 micrograms per cubic meter on an hourly basis and over 300 micrograms per cubic meter on a daily basis. These measurements are over eight times the newly-promulgated daily national ambient air quality standard (NAAQS) for PM2.5 of 35 micrograms per cubic meter.

12. Following the wildfires of 2003, the SCAQMD commissioned a study of the effects of particulate pollution from wildfires on children. That

study reported that wildfires are associated with increases in hospitalizations for respiratory illnesses, and there is some evidence suggestive of an association with increased hospitalizations for cardiovascular disease and in some cases with increased mortality. (Ralph Delfino et al., *The Relationship of Cardiovascular and Respiratory Hospital Admissions and Mortality to the Southern California Fires of 2003*, Report to SCAQMD, Dec. 31, 2006, at 30.)

13. SCAQMD has a direct and strong interest in reducing or avoiding global warming, because it increases ozone and PM levels and, especially as a result of wildfires, increases PM2.5 and PM10 levels. Global warming will interfere with SCAQMD's mission to reduce the adverse health effects of air pollution and to attain the state and federal ambient air quality standards.

14. In 1990, the SCAQMD Governing Board adopted its "Policy on Global Warming and Stratospheric Ozone Depletion," which acknowledged that global warming will increase concentrations of ground-level ozone and impact the region's ability to attain state and federal ozone standards. The Global Warming Policy directed staff to include in the 1991 Air Quality Management Plan measures to reduce global warming pollutants. The 1991 Plan and all subsequent plans have incorporated measures (including measures to further energy conservation, energy efficiency, use of alternative fuels, and reduction of vehicle miles traveled), which reduce criteria pollutants and climate change pollutants. Thus, SCAQMD has a substantial interest in reducing global warming pollutants.

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CERTIFICATE OF SERVICE

Case Name: **Chamber of Commerce of United States of America, et al.
v. U.S. Environmental Protection Agency, et al.**

Case No. **09-1237**

I hereby certify that on October 8, 2009, as authorized agent of Barbara Baird, attorney for the South Coast Air Quality Management District, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF ELAINE CHANG, DrPH IN SUPPORT OF SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S *UNOPPOSED* MOTION FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT

The following participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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I further certify that some of the participants in the case are not registered CM/ECF users. On **October 8, 2009**, I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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/s/
Patricia M. Anderson, Declarant