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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION,

Plaintiff,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, et al.,

Defendants,

and

STATE OF CALIFORNIA and CALIFORNIA AIR RESOURCES BOARD,

State Intervenor-Applicants.

Case No. 2:21-cv-6341-JAK-MRW

MEMORANDUM IN SUPPORT OF STATE INTERVENOR-APPLICANTS' UNOPPOSED MOTION TO INTERVENE AS DEFENDANTS

Hon. John A. Kronstadt
Date: January 24, 2022
Time: 8:30 a.m.

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INTRODUCTION

The State of California, by and through the California Department of Justice and the California Air Resources Board (CARB) (collectively "State Intervenor-Applicants"), seek to intervene in this action because they both have significant protectable interests in defending South Coast Air Quality Management District (the "District") Rules 2305 and 316 (collectively "Warehouse Indirect Source Rule"). The Warehouse Indirect Source Rule will deliver emissions reductions necessary to help meet state and federal air quality standards that, once achieved, will result in hundreds of millions to billions of dollars in public health benefits. The California Trucking Association's (CTA) challenge to the Warehouse Indirect Source Rule threatens these critical emissions reductions. The CTA also urges this Court to adopt improper interpretations of state and federal law that, if adopted, could inappropriately circumscribe state regulatory authority.

State Intervenor-Applicants satisfy each of Federal Rule of Civil Procedure 24(a)'s requirements and are therefore entitled to intervene as of right as defendants in this action. First, State Intervenor-Applicants' Motion to Intervene is timely and will not unduly delay or prejudice the rights of any other party. Second, State Intervenor-Applicants have significant interests in (1) upholding their unique obligations to protect the environment, public health, and welfare in California; (2) improving air quality in the South Coast Air Basin to meet state and federal air quality standards; and (3) preserving appropriate interpretations of the state constitution, state statutes, and federal preemption of state authority in their unique roles as California's Chief Law Enforcement Officer and statewide regulator of California's air quality. Third, given that CTA seeks to set aside the Warehouse

Indirect Source Rule, State Intervenor-Applicants' interests may be impaired because of this litigation. Finally, State Intervenor-Applicants' interests are not adequately represented by the existing defendants because State Intervenor-Applicants are best positioned to respond to the complaint's misrepresentations of State Intervenor-Applicants' views, and State Intervenor-Applicants have a broader focus and mission than the District. Thus, intervention as of right is warranted. Alternatively, State Intervenor-Applicants request that the Court grant permissive intervention.

FACTUAL AND PROCEDURAL BACKGROUND

On May 7, 2021, the District passed the Warehouse Indirect Source Rule. The Rule regulates facilities based on emissions from trucks that visit those warehouses by requiring warehouse operators to earn points from an à la carte menu of emissions-reducing activities to comply with the Rule. The wide variety of options include constructing solar panels, building electric vehicle or hydrogen fueling stations, installing air filtration systems at nearby residences, and purchasing or contracting for visits by natural gas or zero-emission trucks. Warehouse operators may also choose to cover point deficits by paying a fee in lieu of taking actions to earn those points. Warehouse operators additionally may craft their own custom emissions-reduction plans.

As State Intervenor-Applicants explained at length in their comment letter to the District on the Warehouse Indirect Source Rule's legality,[1] the Rule is a proper exercise of the District's legal authority to reduce emissions associated with indirect

[1] *See* Declaration of Robert Swanson in Support of State Intervenor-Applicants' Unopposed Motion to Intervene as Respondents ("Swanson Decl.") ¶ 3, Ex. A.

sources.[2] Indeed, the Rule was passed to help California meet its obligations under the federal Clean Air Act and to advance the protection of human health and welfare.

Under the Clean Air Act, the United States Environmental Protection Agency ("EPA") sets national ambient air quality standards for certain air pollutants, including ozone and fine particulate matter. 42 U.S.C. § 7409; *see also* 40 C.F.R. Part 50. EPA then evaluates regions on their attainment of the standards. Regions that are in nonattainment must bring their air quality into attainment by certain deadlines. 42 U.S.C. § 7511. The Clean Air Act obligates such states to submit State Implementation Plans identifying how they will achieve and/or maintain the standards. *Id*. § 7410(a). EPA reviews each State Implementation Plan for compliance with the Clean Air Act. *Id*. § 7410(k)(3). Once EPA approves a State Implementation Plan, it becomes federal law and cannot be changed without EPA's approval. *Safe Air for Everyone v. U.S. E.P.A.*, 488 F.3d 1088, 1097 (9th Cir. 2007).

California law requires the District to draft air quality management plans periodically for reducing emissions and achieving attainment status. Cal. Health &

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[2] An "indirect emissions source" is a facility that attracts mobile sources of pollution. For example, a warehouse is a facility that attracts diesel trucks, which are mobile sources. An indirect source rule is distinct from a stationary source rule in that it does not regulate facilities based on emissions that the facilities themselves emit. It is also distinct from a mobile source rule in that it reduces emissions from mobile sources only by virtue of their association with a stationary source. *See Nat'l Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.*, 627 F.3d 730, 739 (9th Cir. 2010) ("The [Clean Air] Act, by allowing states to regulate indirect sources of pollution, necessarily contemplates imputing mobile sources of pollution to an indirect source as a whole." Otherwise, "states could not adopt any indirect source review program.").

Safety Code §§ 40460, 40462. The District's 2016 air quality management plan includes a commitment to adopt a facility-based measure to reduce indirect source emissions from warehouses, which the District Board later voted to implement via regulation. Swanson Decl. ¶ 4, Ex. B at 4-28 to -29; ¶ 5, Ex. C at 9. CARB subsequently reviewed the District's plan and included it in CARB's State Implementation Plan submission to EPA. *Id*. ¶ 6, Ex. D. EPA approved the State Implementation Plan, including the warehouse indirect source measure, giving it the force of federal law. 84 Fed. Reg. 52005 (Oct. 1, 2019).

The District fulfilled its legal obligation to adopt an indirect source regulation to reduce emissions associated with warehouses when it passed the Warehouse Indirect Source Rule. CARB then reviewed the Rule and included it in a State Implementation Plan submission to EPA on August 13, 2021, which is currently under evaluation. Swanson Decl. ¶ 7, Ex. E. As part of State Implementation Plan submittals, a state must provide "necessary assurances that the State … will have adequate personnel, funding, and authority" for the measures in the plan and is "not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof." 42 U.S.C. § 7410(a)(2)(E). EPA must then review these submittals and determine whether they "meet[] all of the applicable requirements." *Id.* § 7410(k)(3).

CTA filed its complaint on August 5, 2021. ECF No. 1. Among other things, CTA seeks to permanently enjoin enforcement of the Warehouse Indirect Source Rule. *Id*. CTA served defendants on August 17, and they are set to respond on October 7. ECF Nos. 10, 11; *see also* ECF No. 12 (stipulation to extend time for the defendants to respond to October 7, 2021). The Court has not yet set an initial

case management conference or schedule.

ARGUMENT

I. STATE INTERVENOR-APPLICANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

State Intervenor-Applicants satisfy the test for intervention as of right. Under Federal Rule of Civil Procedure 24(a), a movant seeking to intervene as of right must show that (1) the motion is timely, (2) the movant "claims an interest relating to the property or transaction that is the subject of the action," (3) "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and (4) existing parties to the action do not adequately represent that interest. Fed. R. Civ. P. 24(a)(2); *see Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (citing *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (internal quotation marks and citation omitted)).

Courts "construe Rule 24(a) liberally in favor of potential intervenors." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006). "A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *United States v. City of Los Angeles*, 288 F.3d 391, 397-98 (9th Cir. 2002). Broadly interpreting Rule 24(a) "prevent[s] or simplif[ies] future litigation involving related issues" and "allow[s] an additional interested party to express its views before the court." *Id*. at 398. As discussed below, State Intervenor-Applicants meet the standard for intervention as of right.

A. The Motion to Intervene is Timely.

"To determine whether a motion to intervene is timely, [courts] consider '(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the

prejudice to other parties; and (3) the reason for and length of the delay.' " *Peruta v. Cty. of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

Applying these principles here, State Intervenor-Applicants' motion to intervene is timely because the proceedings are at a very early stage, intervention now would not cause prejudice to the original parties, and State Intervenor-Applicants have not delayed in moving to intervene. CTA filed its complaint on August 5, 2021, about two months ago. ECF No. 1. Defendants filed an answer on October 7, 2021, and the Court set an initial joint case management statement to be due December 27, 2021. ECF Nos. 15, 16. The Court has not set a schedule. State Intervenor-Applicants have submitted a proposed answer along with their motion, so intervention would not delay the case or otherwise prejudice the parties. *See, e.g.*, *Citizens for Balanced Use*, 647 F.3d at 897 (9th Cir. 2011) (intervention timely when filed three months after complaint, and two weeks after answer); *LMNO Cable Grp., Inc. v. Discovery Commc'ns, LLC*, No. LA CV-16-045430-JAK-SKX, 2017 WL 8943167, at *3 (C.D. Cal. June 19, 2017) (intervention timely when filed five months after intervenor-applicants became aware of case). State Intervenor-Applicants also have not delayed in filing this motion. Since CTA filed the complaint, State Intervenor-Applicants have diligently evaluated the issues presented by the complaint and determined that intervention is necessary to protect their unique interests.

B. State Intervenor-Applicants Have a Significant Interest in the Subject Matter of this Litigation.

To intervene as of right under Rule 24(a), the movant must demonstrate "an

interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a). "To demonstrate a significant protectable interest, an applicant must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." *Citizens for Balanced Use*, 647 F.3d at 897. The interest test "is a practical, threshold inquiry, and no specific legal or equitable interest need be established." *Id.* (internal quotations and alterations omitted). Moreover, it "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Los Angeles*, 288 F.3d at 398.

State Intervenor-Applicants' interests in the pending litigation supports intervention as of right. Intervention is necessary to defend State Intervenor-Applicants' interests in (1) protecting the environment, public health, and welfare; (2) reducing harmful emissions to meet state and federal air quality standards; and (3) preserving appropriate interpretations of the state constitution, state statutes, and federal preemption of state authority in their unique roles as California's Chief Law Enforcement Officer and statewide regulator of California's air quality.

State Intervenor-Applicants have a significant interest in protecting California's environment, public health, and welfare. The California Legislature has declared that "the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California." Cal. Health & Safety Code § 39000. The State's policy is "to prevent destruction, pollution, or

irreparable impairment of the environment and the natural resources of this state." Accordingly, California law grants the Attorney General authority to intervene in judicial matters to protect the public from environmental harms. Cal. Gov. Code §§ 12600, 12606. The California Attorney General thus holds a special duty to safeguard the environment, public health, and welfare.

Likewise, CARB's mission is "to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy." Swanson Decl. ¶ 10, Ex. H; *see id.* ¶ 11, Ex. I. To further this mission, CARB must "coordinate, encourage, and review the efforts of all levels of government as they affect air quality." Cal. Health & Safety Code § 39500. CTA's complaint references CARB 28 times, reflecting CARB's central role—and significant interest—in the matters raised by this suit. *See* ECF No. 1. These interests easily clear Rule 24(a)'s low bar for intervention. *See Citizens for Balanced Use*, 647 F.3d at 897 (interest in enjoyment of wildlands found to be a sufficient legally protectable interest).

State Intervenor-Applicants also have a longstanding and significant interest in reducing emissions to meet air quality standards. California established the first statewide air quality standards in 1959, and CARB was created in 1967 as a principal public agency "responsible for the establishment of ambient air quality and emission standards and air pollution control programs." Cal. Pub. Res. Code § 30414; *see also* Cal. Health & Safety Code § 39003 (designating CARB as "the state agency charged with coordinating efforts to attain and maintain ambient air quality standards"). Three years later, in 1970, the federal Clean Air Act was amended to require promulgation of federal air quality standards for certain

pollutants. *See Gen. Motors Corp. v. United States*, 496 U.S. 530, 532-33 (1990). As described in the Background section above, state and federal law obligate State Intervenor-Applicants to reduce emissions to meet state and federal air quality standards. *See* 42 U.S.C. § 7410(a).

CTA's complaint recognizes CARB's special role to prepare the State Implementation Plan required by the federal Clean Air Act and to coordinate air district activity needed to comply with the Clean Air Act. ECF No. 1 ¶ 28. The Warehouse Indirect Source Rule supports State Intervenor-Applicants' programs to improve air quality by reducing emissions. In reliance on the Warehouse Indirect Source Rule's emissions reductions, State Intervenor-Applicants incorporated the Rule into California's State Implementation Plan for achieving federal air quality standards. Swanson Decl. ¶ 7, Ex. E. When State Intervenor-Applicants submitted the State Implementation Plan to EPA, they certified that the Warehouse Indirect Source Rule is consistent with federal and state law. *Id.*; *see* 42 U.S.C. § 7410(a)(2)(E). Accordingly, the complaint effectively attacks State Intervenor-Applicants' assurances to EPA. State Intervenor-Applicants therefore have a significant interest in defending the legality of the Warehouse Indirect Source Rule.

Finally, State Intervenor-Applicants have a significant protectable interest in preserving appropriate interpretations of the state constitution, state statutes, and federal preemption of state authority. As Chief Law Enforcement Officer for the State of California, the California Attorney General occupies a primary position in interpretation of state laws and authority. Cal. Const., art. V, § 13; Cal. Gov. Code, § 12511. The Attorney General regularly issues legal opinions clarifying laws for public officials, Cal. Gov. Code § 12519, and defends state legal authority in state

and federal courts, Cal. Gov. Code § 12511.

CARB is responsible for reducing air pollution in California, working alongside the District at times and independently at others. Cal. Health & Safety Code §§ 39602, 39500; Swanson Decl. ¶ 11, Ex. I. CARB submits and updates California's state implementation plan under the federal Clean Air Act, and bears responsibility for attainment or non-attainment of district air basins under the state Clean Air Act. Cal. Health & Safety Code §§ 39602, 39602.5, 39608, *see also id.* § 39604 (requiring CARB to post periodic summaries of the status of the state implementation plan). CARB is also responsible for ensuring that California's regulation of toxic air contaminants meets the requirements of section 112 of the federal Clean Air Act. *Id.* §§ 39656, 39657, 39659. Therefore, while State Intervenor-Applicants have an interest in preserving state regulatory authority in any area where federal laws have some preemptive reach, their interest is particularly strong in matters involving efforts to reduce emissions of air pollutants. Accordingly, State Intervenor-Applicants have multiple, strong interests in this litigation that satisfy Rule 24(a).

C. State Intervenor-Applicants' Interests May Be Impaired as a Result of this Litigation.

Rule 24(a) also requires State Intervenor-Applicants to show that the litigation "may, as a practical matter, impair or impede [their] interest." Fed. R. Civ. P. 24(a)(2). "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Citizens for Balanced Use*, 647 F.3d at 898 (citing Fed. R. Civ. P. 24 Advisory Committee's Note; *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d

810, 822 (9th Cir. 2001)). After finding that an intervenor-applicant has a significant protectable interest, the Ninth Circuit often has "little difficulty concluding that the disposition of the case may, as a practical matter, affect it." *Id*. (quoting *Lockyer*, 450 F.3d at 442).

Each of State Intervenor-Applicants' interests may be impaired as a result of this litigation. The South Coast Air Basin is in "extreme" nonattainment for several ozone standards and "serious" nonattainment for multiple fine particulate matter standards.[3] Swanson Decl. ¶ 8, Ex. F (extreme nonattainment for 2008 and 2015 8-hour ozone standards, serious nonattainment for the 2006 and 2012 fine particulate matter standards, and moderate nonattainment for the 1997 fine particulate matter standard). Moreover, emissions associated with warehouses also tend to be concentrated in lower-income communities and communities of color that already suffer from disproportionate pollution exposure and the resulting public health harms. *Id*. ¶ 8, Ex. G at 4-6. The District conservatively estimated that the Warehouse Indirect Source Rule would produce public health benefits exceeding its costs by hundreds of millions to billions of dollars. *Id.* at 50-51, Table 42. As this litigation seeks to permanently enjoin enforcement of the Warehouse Indirect Source Rule, it imperils the Rule's massive public health benefits in the South Coast Air Basin, and particularly in the most disadvantaged communities. The litigation thus threatens State Intervenor-Applicants' interests in protecting public health, welfare, and the environment.

[3] For those areas designated as being in nonattainment with national ambient air quality standards, EPA further classifies each region based on the severity of the nonattainment: marginal, moderate, serious, severe, or extreme. 42 U.S.C. § 7511(a)(1).

An unfavorable disposition here may also, as a practical matter, impair State Intervenor-Applicants' ability to meet air quality standards. The Warehouse Indirect Source Rule already is a component of California's submitted State Implementation Plan. If CTA were to prevail, the Warehouse Indirect Source Rule's emissions reductions would be lost, so State Intervenor-Applicants would need to identify other, potentially more costly or less efficient measures to meet state and federal air quality standards. Moreover, CTA's complaint mischaracterizes the Warehouse Indirect Source Rule as being a consequence of District "dissatisfaction with the perceived slow pace of CARB's rulemaking." ECF No. 1 ¶ 41. State Intervenor-Applicants' interests would be impaired if they were unable to intervene to correct the record on the complementary roles CARB and the District play in regulating air pollution.

Finally, this lawsuit threatens to impair State Intervenor-Applicants' significant interest in preserving appropriate interpretations of the state constitution, state statutes, and federal preemption of state authority. CTA's complaint is premised on numerous legal errors that, if adopted, would improperly circumscribe state regulatory authority, upset California laws' careful division of CARB and air district authority, and upend state regulatory schemes under the California Constitution. The complaint also misconstrues a 1993 Attorney General opinion letter and quotes it out of context. *Id.* ¶ 35. State Intervenor-Applicants' interests would therefore be harmed if they were not allowed to intervene to correct the complaint's erroneous legal assertions.

Accordingly, this litigation threatens to impair State Intervenor-Applicants' multiple interests in this case, satisfying the third prong of Rule 24(a).

D. State Intervenor-Applicants' Interests Are Not Adequately Represented.

The fourth and final element to justify intervention as of right is inadequate representation of State Intervenor-Applicants' interests by existing parties to the litigation. Fed. R. Civ. P. 24(a)(2). The Ninth Circuit considers three factors to determine adequacy of representation: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Citizens for Balanced Use*, 647 F.3d at 898. "The burden of showing inadequacy of representation is minimal and satisfied if the applicant can demonstrate that representation of its interests may be inadequate." *Id*.

The existing parties to this litigation cannot adequately represent State Intervenor-Applicants' interests. Neither the District nor other parties can attend to California's legal interests. Cal. Gov. Code § 12511 ("The Attorney General has charge, as attorney, of all legal matters in which the State is interested, except [exceptions not applicable here].") As Chief Law Enforcement Officer, the Attorney General speaks with unique authority to issues involving interpretation of state law. Cal. Const., art. V, § 13.

Furthermore, State Intervenor-Applicants' interests are not identical to the District's such that the District will "undoubtedly" make all of State Intervenor-Applicants' arguments. *Citizens for Balanced Use*, 647 F.3d at 898. State Intervenor-Applicants would add a broader perspective to the proceeding that the

District cannot. As discussed above, CTA's complaint misconstrues the Warehouse Indirect Source Rule's relationship to CARB regulations and an Attorney General opinion letter. *See supra* Section I.C. CARB and the Attorney General are best positioned to correct the record on those issues. Moreover, given their statewide jurisdictions and interests, State Intervenor-Applicants' arguments will consider broader issues of how the Court's interpretation of state and federal law in this case will impact the State, including the State's ability to reduce emissions in compliance with federal law. For example, State Intervenor-Applicants may have a different perspective than the District on the breadth of federal preemption or the division between CARB and air district authority under California law.

II. ALTERNATIVELY, THIS COURT SHOULD GRANT STATE INTERVENOR-APPLICANTS PERMISSIVE INTERVENTION.

In the alternative, this Court should grant State Intervenor-Applicants permissive intervention under Rule 24(b). District courts have discretion to grant permissive intervention where the applicant shows "(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Los Angeles*, 288 F.3d at 403. "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

As discussed in Part I.A, *supra*, this motion is timely filed. Because the litigation is in its very early stages, and State Intervenor-Applicants agree to adhere to all litigation deadlines that have been set thus far, intervention would not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P.

24(b)(3). Further, State Intervenor-Applicants' defenses overlap with the main action in that they all assert that CTA's legal theories misinterpret the law. This Court has jurisdiction over this controversy for the same reason it has jurisdiction over the claims in CTA's complaint. ECF No. 1 ¶¶ 17–20. Therefore, State Intervenor-Applicants also satisfy the requirements for permissive intervention under Rule 24(b).

CONCLUSION

For the reasons discussed above, State Intervenor-Applicants respectfully request that the Court grant their intervention as of right pursuant to Rule 24(a). In the alternative, this Court should grant State Intervenor-Applicants permissive intervention under Rule 24(b).

Dated: October 13, 2021

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