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10
11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA DUMP TRUCK OWNERS
14 ASSOCIATION,

15 Plaintiff,

16 v.

17 AIR RESOURCES BOARD and DOES 1–50,

18 Defendant,

19
20 NATURAL RESOURCES DEFENSE
21 COUNCIL, INC.,

22 Proposed Defendant-Intervenor.
23

Case No. 2:11-CV-00384-MCE-GGH

NOTICE OF MOTION AND MOTION TO
INTERVENE OF NATURAL RESOURCES
DEFENSE COUNCIL, INC;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: May 5, 2011

Time: 2:00 p.m.

Judge: Hon. Morrison C. England

Courtroom: 7

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 5, 2011 at 2:00 p.m., or as soon thereafter as counsel may be heard in the courtroom of the Honorable Morrison C. England, Jr., located at 501 I Street, Sacramento, California 95814, the Natural Resources Defense Council, Inc. (“NRDC”) will and hereby does respectfully move this Court to intervene as a Defendant as of right pursuant to Federal Rule of Civil Procedure 24(a), or in the alternative, for leave for permissive intervention pursuant to Federal Rule of Civil Procedure 24(b).

The motion will be made on the grounds that good cause exists because (a) this motion, which is filed before any substantial activity has occurred in the case, is plainly timely; (b) NRDC and its members’ interests in reducing truck and bus diesel emissions are “significantly protectable interests” in the subject matter of the case; (c) a decision in Plaintiff’s favor enjoining the implementation and enforcement of the Truck and Bus Regulation¹ enacted by the California Air Resources Board would directly impair NRDC’s ability to protect it and its members’ interests in reducing the public health impacts of diesel emissions on California residents, as well as their interests in upholding regulations the adoption of which they actively advocated; and (d) Defendant may not adequately represent NRDC’s interests because, as a public agency, it must balance resource constraints and the interests of various constituencies—some of which (such as those of Plaintiff) are at odds with NRDC’s interests. Further, Defendant has taken positions on regulatory matters contrary to NRDC’s, including taking steps to weaken the Regulation at issue in this case.

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¹ The Trucks and Bus Regulation is formally entitled “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles.” Cal. Code Regs. tit. 13 § 2025.

1 This Motion is based on this Notice of Motion and accompanying Memorandum of
2 Points and Authorities, the concurrently filed Declarations of Melissa Lin Perrella and Diane
3 Bailey, the pleadings and papers on file herein, and such other matters as may be presented to the
4 Court at the time of the hearing.

5
6 Dated: April 5, 2011

Respectfully submitted,

7 David Pettit
8 Melissa Lin Perrella
9 Morgan Wyenn
Natural Resources Defense Council

10 By: /s/ Melissa Lin Perrella
11 Melissa Lin Perrella

12 Attorneys for Proposed Defendant-Intervenor
13 Natural Resources Defense Council, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24(a), the Natural Resources Defense Council, Inc. (“NRDC”) respectfully moves to intervene as of right as a defendant in this action, in which the California Dump Truck Owners Association (“Plaintiff” or “CDTOA”) challenges the validity of the Truck and Bus Regulation² enacted by the California Air Resources Board (“CARB”). The Truck and Bus Regulation is a key component of California’s plan to reduce air pollution, and specifically, diesel emissions. In the alternative, NRDC seeks leave for permissive intervention under Federal Rule of Civil Procedure 24(b). Defendant does not oppose this motion and Plaintiff stated that it has not yet determined whether it will oppose this motion. Declaration of Melissa Lin Perrella in Support of NRDC’s Motion to Intervene (“Lin Perrella Decl.”), ¶¶ 2–3.

NRDC satisfies the four requirements under Rule 24(a) for intervention as of right. Fed. R. Civ. P. 24(a). First, this motion, which is filed before any substantial activity has occurred in the case, is plainly timely. Second, NRDC and its members’ interests in reducing truck- and bus-generated air pollution in California are “significantly protectable interests” in the subject matter of the case. Third, a decision in Plaintiff’s favor enjoining the implementation and enforcement of the Truck and Bus Regulation would directly impair NRDC’s ability to protect its and its members’ interests in reducing the public health impacts of diesel emissions in California, as well as its interests in upholding regulations the adoption of which they actively advocated. Fourth, Defendant may not adequately represent NRDC’s interests because, as a public agency, it must balance resource constraints and the interests of various constituencies—some of which (such as those of Plaintiff) are at odds with NRDC’s interests. Further, Defendant has taken positions on regulatory matters contrary to NRDC’s, including taking steps to weaken the Regulation at issue in this case.

² The Truck and Bus Regulation is formally entitled “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles.” Cal. Code Regs. tit. 13 § 2025.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 CARB adopted the Truck and Bus Regulation in December 2008. The Regulation
3 became effective in January 2010, and was subsequently amended in December 2010.

4 The Truck and Bus Regulation will reduce emissions of diesel particulate matter (“PM”),
5 oxides of nitrogen (“NOx”), and other pollutants from diesel-fueled vehicles. Cal. Code Regs.
6 tit. 13 § 2025(a) (2011). Emissions of diesel PM are associated with increased cancer risk,
7 premature mortality, aggravation of respiratory and cardiovascular disease, asthma exacerbation,
8 chronic and acute bronchitis, and reductions in lung function. Declaration of Diane Bailey in
9 Support of NRDC’s Motion to Intervene (“Bailey Decl.”), ¶ 10. NOx leads to the formation of
10 ozone as well as fine PM. *Id.* ¶ 11. Exposure to ozone can result in decreased lung function, a
11 variety of respiratory ailments, hospitalizations for cardiopulmonary causes, emergency room
12 visits for asthma, and restrictions in activity. *Id.* The United States Environmental Protection
13 Agency has established federal air quality standards for ozone and PM. *Id.* ¶ 12. While multiple
14 areas across the state exceed these standards, the air quality in the South Coast³ and San Joaquin
15 Valley⁴ air basins pose the greatest challenges and need the greatest reductions. *Id.* ¶ 13.

16 Generally speaking, the Regulation requires owners and operators of trucks and buses to
17 reduce PM and NOx emissions from their vehicle fleets. Cal. Code Regs. tit. 13 § 2025(e).
18 Emissions reductions are achieved by requiring fleet owners and operators to install retrofit
19 devices on existing engines, replace vehicles with newer vehicles that have cleaner engines, or
20 repower vehicles with newer, cleaner engines. *Id.*⁵

21 _____
22 ³ The South Coast Air Basin includes all of Orange County and the urban portions of Los
23 Angeles, Riverside, and San Bernardino counties. *See* South Coast Air Quality Management
24 District, http://www.aqmd.gov/map/Map_AQMD1.pdf.

24 ⁴ The San Joaquin Valley Air Basin includes eight counties in California’s Central Valley: San
25 Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and a portion of Kern. *See* San
26 Joaquin Valley Air Pollution Control District, About the District, [http://www.valleyair.org/
27 General_info/aboutdist.htm](http://www.valleyair.org/General_info/aboutdist.htm).

26 ⁵ More specifically, the Truck and Bus Regulation applies to any person, business, school
27 district, school transportation provider, or federal government agency that owns or operates
28 “affected vehicles” in California. Cal. Code Regs. tit. 13 § 2025(b). With some exceptions (e.g.,
emergency vehicles and military tactical support vehicles), “affected vehicles” include nearly all
diesel-fueled trucks and buses with a gross vehicle weight rating higher than 14,000 pounds that

1 CARB estimates that the Truck and Bus Regulation will reduce emissions of diesel PM
2 and NOx from over 400,000 diesel vehicles registered in the State, and another half a million
3 out-of-state trucks that visit California each year. Bailey Decl., ¶ 8. In 2010, these nearly 1
4 million vehicles emitted approximately 512 tons per day of NOx and 20 tons per day of PM. *Id.*
5 Vehicles covered by the Regulation and trucks covered by a related “Drayage Truck
6 Regulation,” Cal. Code Regs. tit. 13 § 2027 (rules applying to port-serving trucks), are the single
7 largest statewide source of mobile source emissions, representing 40 percent of the total PM and
8 32 percent of the total NOx emitted from all mobile sources in California—including cars—in
9 2010. Bailey Decl., ¶ 7.

10 The Truck and Bus Regulation and Drayage Truck Regulation—together—are expected
11 to reduce diesel PM emissions by 45 percent from business as usual levels in 2014, and achieve a
12 36 percent reduction in statewide NOx emissions in 2023. *Id.* ¶ 9. As a result, the Truck and
13 Bus Regulation is a critical piece in California’s efforts to meet federal air quality standards,
14 particularly in the South Coast and San Joaquin Valley air basins where air pollution levels
15 currently exceed federal air quality standards. In terms of public health benefits, the Regulation
16 will prevent approximately 3,500 premature deaths between 2010 and 2025. *Id.* ¶ 15.

17 NRDC actively advocated for adoption of the Regulation. *Id.* ¶ 5. Beginning in April
18 2006 through December 2008, NRDC attended meetings with CARB staff to help develop the
19 Regulation, provided written comments to CARB advocating that the Board strengthen the
20 Regulation, participated in public workshops on the Regulation, and testified before CARB at the
21 public hearing urging adoption of the Regulation. *Id.*

22 On February 11, 2011, CDTOA filed this suit. The Complaint seeks declaratory relief,
23 and a preliminary and permanent injunction barring enforcement of the Truck and Bus
24

25 are privately or federally owned, and private and publicly owned school buses. *Id.* § 2025(b);
26 California Air Resources Board, Facts About: Truck and Bus Regulation Compliance
27 Requirements Summary, <http://www.arb.ca.gov/msprog/onrdiesel/documents/FSRegSum.pdf>
28 (noting that other public fleets, e.g., garbage trucks and transit buses, are already subject to other
regulations and are not part of the Truck and Bus Regulation). The Truck and Bus Regulation is
applicable regardless of where the vehicle is registered.

1 Regulation on the theory that the Regulation is preempted under the Federal Aviation
2 Administration Authorization Act, 49 U.S.C. § 14501. On March 7, 2011, CDTOA filed a
3 Motion for Leave to file its First Amended Complaint, which is set for hearing on April 7, 2011.
4 The First Amended Complaint does not allege any new claims; it only substituted the name of
5 the Defendant. Defendant has not yet answered. No substantive proceedings have occurred.

6 **III. ARGUMENT**

7 **A. NRDC is Entitled to Intervene as of Right Under FRCP 24(a).**

8 The Ninth Circuit applies a four-part test to determine whether intervention as of right
9 under Rule 24(a)(2)⁶ is warranted: (1) the applicant must “timely” move to intervene; (2) the
10 applicant must have a “significantly protectable” interest relating to the transaction that is the
11 subject of the litigation; (3) the applicant must be so situated that the disposition of the action
12 “may,” as a practical matter, impair or impede the ability to protect its interest; and (4) the
13 interest must not be inadequately represented by the parties to the action. *Sw. Ctr. for Biological*
14 *Diversity v. Berg* (*Sw. Ctr.*), 268 F.3d 810, 817–18 (9th Cir. 2001); *Sierra Club v. Envtl. Prot.*
15 *Agency*, 995 F.2d 1478, 1481 (9th Cir. 1993), *abrogated on other grounds by Wilderness Soc’y*
16 *v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

17 In assessing these factors, the Ninth Circuit construes Rule 24(a) liberally in favor of
18 intervention. *Sw. Ctr.*, 268 F.3d at 818. Allowing interested persons to participate serves “both
19 efficient resolution of issues and broadened access to the courts”—and often prevents or
20 simplifies future related litigation. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d
21 1489, 1493 n.8 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc’y v. U.S. Forest*
22 *Serv.*, 630 F.3d 1173 (9th Cir. 2011). The Ninth Circuit has routinely allowed interested
23
24

25 ⁶ Rule 24(a)(2) provides, in pertinent part:

26 On timely motion, the court must permit anyone to intervene who . . . claims an
27 interest relating to the property or transaction that is the subject of the action, and
28 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.

1 organizations to intervene.⁷ Because NRDC meets the four-part test for intervention here, their
2 motion should likewise be granted.

3 **1. This Motion to Intervene Is Timely.**

4 The Ninth Circuit considers three criteria in determining whether a motion to intervene is
5 timely: (1) the stage of the proceedings; (2) potential for prejudice to other parties; and (3) the
6 reason for any delay in moving to intervene. *United States v. Oregon*, 913 F.2d 576, 588 (9th
7 Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991); *United States ex rel. Killingsworth v. Covington*
8 *Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992).

9 CDTOA filed its Complaint on February 11, 2011, less than two months ago, and a
10 Motion for Leave to file its First Amended Complaint on March 7, 2011, less than one month
11 ago. The hearing on Plaintiff's motion is set for April 7, 2011. Defendant has not yet answered.
12 Discovery has not commenced. No substantive motions have been filed, let alone rulings issued.
13 In short, NRDC is moving to intervene at the outset of this case.

14 Under these circumstances, it is clear this motion to intervene is timely. *Cf., e.g., Nw.*
15 *Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) (holding that a "motion to
16 intervene does not appear to have prejudiced either party in the lawsuit, since the motion was
17 filed before the district court had made any substantive rulings"); *Idaho Farm Bureau Fed'n v.*
18 *Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (allowing environmental groups to intervene four
19 months after the complaint was filed, even though plaintiff had already moved for a preliminary
20 injunction).

21 **2. NRDC Has Protectable Interests in this Action.**

22 Rule 24(a)(2) requires a proposed intervenor to assert "an interest relating to the property
23 or transaction which is the subject of the action." The Ninth Circuit has explained that this
24 requirement is "primarily a practical guide to disposing of lawsuits by involving as many
25 apparently concerned persons as is compatible with efficiency and due process." *County of*

26 _____
27 ⁷ See, e.g., *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397–98 (9th Cir. 1995); *Wash.*
28 *State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 629–30 (9th Cir. 1982), *cert.*
denied, 461 U.S. 913 (1983); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527–29 (9th Cir.
1983).

1 *Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (quoting *Nuesse v. Camp*, 385 F.2d 694,
2 700 (D.C. Cir. 1967)). The Ninth Circuit has therefore “rejected the notion that Rule 24(a)(2)
3 requires a specific legal or equitable interest,” *id.*, or even that an intervenor must have an
4 interest “protected by the statute under which the litigation is brought.” *Sierra Club*, 995 F.2d at
5 1484. Rather, the intervenor need only show an interest “protectable under some law” and a
6 “relationship” between that interest and the claims at issue. *Id.*; *Sw. Ctr.*, 268 F.3d at 818.
7 NRDC meets this standard.

8 First, NRDC’s members have significant, direct, and personal interests in the Truck and
9 Bus Regulation. NRDC is a national non-profit organization, which maintains offices in Los
10 Angeles and San Francisco, CA, as well as New York, NY, Washington, D.C., Chicago, IL, and
11 Beijing, China. Bailey Decl., ¶ 3. NRDC has more than 400,000 members nationwide. *Id.* One
12 of NRDC’s organizational purposes is to protect the environment and public health, including the
13 environment and health of its members. *Id.* Reducing harmful diesel pollution is a key
14 component of this work. *Id.*

15 NRDC has more than 70,000 members who reside in the State of California, including
16 many who live near transportation corridors where vehicles covered by the Regulation travel.
17 Bailey Decl., ¶ 16. Because the Truck and Bus Regulation will result in significant reductions of
18 PM and NOx, and associated health risks, NRDC’s members stand to benefit directly from the
19 Regulation’s implementation. *Id.* The Regulation is particularly crucial for NRDC members
20 who live in close proximity to freeways and other transportation corridors and who are therefore
21 significantly impacted by truck and bus emissions. *Id.* Such interests would be more than
22 sufficient to establish Article III standing in a case concerning regulation of pollution, *see, e.g.*,
23 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–86 (2000)
24 (holding that exposure to a potential chemical risk is an Article III injury), and are, *a fortiori*,
25 sufficient to support intervention as a defendant. *See, e.g., Legal Aid Soc’y v. Brennan*, 608 F.2d
26 1319, 1328 n.9 (9th Cir. 1979) (holding that parties that satisfy Article III standing requirements
27 “necessarily possess the interest required to support intervention under [Rule 24]”).
28

1 Second, NRDC worked with CARB staff for over two years to develop the Truck and
 2 Bus Regulation and advocated for its strengthening and adoption in December 2008. Bailey
 3 Decl., ¶ 5. This involvement is independently sufficient to support intervention, for a “public
 4 interest group is entitled as a matter of right to intervene in an action challenging the legality of a
 5 measure it has supported.” *Idaho Farm Bureau*, 58 F.3d at 1397; *see also Sagebrush Rebellion,*
 6 *Inc.*, 713 F.2d at 526–27 (noting participation of proposed intervenor in administrative process to
 7 establish the conservation area at issue in the litigation); *Wash. State Bldg. & Constr. Trades*
 8 *Council*, 684 F.2d at 630.

9 In sum, NRDC, as well as the members that it represents, have significant, specific
 10 interests, protectable under law, with a plain and direct relationship to the instant litigation.
 11 These interests are sufficient under Rule 24(a)(2). *See Sierra Club*, 995 F.2d at 1484.⁸

12 3. Absent Intervention, NRDC’s Interests Would Be Impaired.

13 Rule 24(a)(2)’s “impairment” prong requires a proposed intervenor to show that the
 14 disposition of an action “*may*, as a practical matter,” impede the intervenor’s ability to protect its
 15 interests in the subject of the action. Fed. R. Civ. P. 24(a)(2) (emphasis added). In evaluating
 16 this question “the court is not limited to consequences of a strictly legal nature.” *Forest*
 17 *Conservation Council*, 66 F.3d at 1497–98 (quoting *Natural Res. Defense Council, Inc. v. U.S.*
 18 *Nuclear Regulatory Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978)).

19 There is no question that the disposition of CDTOA’s claims “*may*” impair NRDC and its
 20 members’ interests. As explained above, CDTOA seeks a declaration and injunction precluding
 21 the State of California from implementing and enforcing critical environmental and public health
 22 regulations designed to reduce the pollution caused by trucks and buses. If CDTOA is
 23 successful, NRDC’s efforts to reduce diesel emissions across the state will be significantly
 24

25 ⁸ NRDC also has significant expertise in working to reduce diesel emissions. Bailey Decl., ¶ 4.
 26 For example, NRDC has authored reports on air pollution from the trucking industry; undertaken
 27 litigation to defend clean truck programs adopted by the Ports of Los Angeles and Long Beach;
 28 and helped to develop regional and statewide regulations and policies to reduce diesel pollution
 from “goods movement sources,” including policies adopted by CARB and California ports. *Id.*;
see also Lin Perrella Decl., ¶ 4.

1 impaired and the health benefits of the Regulation will be lost. This impact is all Rule 24(a)(2)
 2 requires. *See* Advisory Committee Notes to 1966 Amend., Fed. R. Civ. P. 24 (“If an absentee
 3 would be substantially affected in a practical sense by the determination made in an action, he
 4 should, as a general rule, be entitled to intervene.”).

5 **4. NRDC’s Interests in this Action are not Adequately Represented by**
 6 **CARB.**

7 The “inadequate representation” prong of Rule 24(a)(2) “is satisfied if the applicant
 8 shows that representation of his interest ‘may be’ inadequate; and the burden of making that
 9 showing should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538
 10 n.10 (1972); *Sagebrush Rebellion*, 713 F.2d at 528. In evaluating this question, the Ninth Circuit
 11 has considered three issues: (1) whether “the interests of a present party to the suit are such that it
 12 will *undoubtedly* make all of the intervenor’s arguments”; (2) whether “the present party is
 13 capable of and willing to make such arguments”; and (3) whether “the intervenor would not offer
 14 any necessary element to the proceedings that the other parties would neglect.” *County of*
 15 *Fresno*, 622 F.2d at 438–39 (emphasis added).

16 NRDC represents concerns that at the very least “may” not, *Trbovich*, 404 U.S. at 538
 17 n.10, be adequately represented by the existing parties. CDTOA’s interests are directly at odds
 18 with NRDC’s. CARB, for its part, must take into account both its own political and resource
 19 constraints, and also the interests of the State’s many diverse constituencies—including those of
 20 the economic actors represented by CDTOA. *Cf. Forest Conservation Council*, 66 F.3d at 1499
 21 (government agency was “required to represent a broader view than the more narrow, parochial
 22 interests of” intervenors); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994). It is simply
 23 not CARB’s responsibility to align its regulatory policy or litigation position with NRDC’s
 24 interests. CARB instead represents what it perceives to be the interests of the state as a whole,
 25 including the economic interests of industry groups whose positions are contrary to NRDC’s.⁹
 26

27 _____
 28 ⁹ *See* ARB Mission, Goal, and Strategic Plan, *available at* <http://www.arb.ca.gov/html/mission.htm> (last visited Mar. 18, 2011) (stating that CARB’s mission is “[t]o promote and protect public health, welfare and ecological resources through the effective and efficient

1 This is not a hypothetical concern: During the rulemaking process, NRDC disagreed
 2 with CARB over many aspects of the Regulation, with NRDC advocating for more stringent
 3 controls. Bailey Decl., ¶ 6. Moreover, NRDC vigorously opposed the amendments CARB made
 4 to the Regulation in December 2010, which weakened certain compliance provisions and pushed
 5 back the implementation schedule for other provisions, thereby giving fleet owners and operators
 6 additional time to reduce air pollution from their aging fleets. *Id.* NRDC argued that such
 7 amendments weakened the environmental benefits of the Regulation and postponed the public
 8 health benefits of the rules. *Id.* CARB amended the Regulation despite these objections. *Id.*
 9 NRDC's interests have also been at odds with CARB on a number of other occasions, including
 10 in litigation.¹⁰

11 CARB's legal arguments in this litigation and its position in any settlement negotiations
 12 will be influenced by the agency's own interests, and could, for example, result in CARB
 13 "voluntarily" vacating or weakening portions of the Regulation—a position NRDC would
 14 oppose. The historical pattern of divergence between CARB and NRDC is more than enough to
 15 satisfy the inadequacy-of-representation prong of Rule 24(a). *See Forest Conservation Council,*
 16 *66 F.3d at 1499; Sierra Club, 18 F.3d at 1208.*

17 **B. Alternatively, Permissive Intervention is Warranted.**

18 If this Court denies intervention as of right, then in the alternative NRDC respectfully
 19 requests that the Court grant permissive intervention under Federal Rule of Civil Procedure
 20 24(b).¹¹ The Ninth Circuit has stated that a court may grant permissive intervention if the
 21 proposed intervenor satisfies three threshold requirements: "(1) the movant must show an
 22 independent ground for jurisdiction; (2) the motion must be timely; and (3) the movant's claim
 23

24 reduction of air pollutants *while recognizing and considering the effects on the economy of the*
 25 *state*" (emphasis added)).

25 ¹⁰ Lin Perrella Decl., ¶ 5 (listing policy, regulatory, and legal matters in which NRDC has been at
 26 odds with CARB).

26 ¹¹ Federal Rule of Civil Procedure 24(b) provides, in pertinent part:

27 On timely motion, the court may permit anyone to intervene who . . . has a claim
 or defense that shares with the main action a common question of law or fact. . . .

28 In exercising its discretion, the court must consider whether the intervention will
 unduly delay or prejudice the adjudication of the original parties' rights.

1 or defense and the main action must have a question of law and fact in common.” *Venegas v.*
2 *Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989), *aff’d*, 495 U.S. 82 (1990); *see also Greene v. United*
3 *States*, 996 F.2d 973, 978 (9th Cir. 1993). Each of these prerequisites is met here.

4 As discussed above, NRDC’s motion is timely and its intervention in this case will result
5 in no prejudice to the current parties. *See supra* Part III.A.1. This Court has jurisdiction over
6 NRDC and their anticipated defenses, which involve precisely the issues of federal law raised by
7 CDTOA’s Complaint.¹² NRDC’s defenses and the main action raise questions of law and fact in
8 common, including the scope of preemption under the Federal Aviation Administration
9 Authorization Act and CARB’s authority to adopt and implement the Regulation. *See Bureerong*
10 *v. Uvawas*, 167 F.R.D. 83, 85 (C.D. Cal. 1996) (noting that the existence of a common question
11 is liberally construed). Because intervention would contribute to the just and equitable
12 adjudication of the legal questions presented, it should be permitted.

13 **IV. CONCLUSION**

14 For the foregoing reasons, this Court should grant NRDC’s motion to intervene as of
15 right under Rule 24(a) or, in the alternative, permissively under Rule 24(b).

16 Dated: April 5, 2011

Respectfully submitted,

17 David Pettit
18 Melissa Lin Perrella
19 Morgan Wyenn
Natural Resources Defense Council

20 By: /s/ Melissa Lin Perrella
21 Melissa Lin Perrella

22 Attorneys for Proposed Defendant-Intervenor
23 Natural Resources Defense Council, Inc.

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27 ¹² The Court also retains supplemental jurisdiction over NRDC pursuant to 28 U.S.C. § 1367(a),
28 which provides jurisdiction over “claims that involve the joinder or intervention of additional
parties.” As this is a federal question case rather than a diversity case, none of the exceptions
stated in 28 U.S.C. § 1367(b) apply.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of April, 2011, she caused the following:

- NOTICE OF MOTION AND MOTION TO INTERVENE OF NATURAL RESOURCES DEFENSE COUNCIL, INC; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
- DECLARATION OF MELISSA LIN PERRELLA IN SUPPORT OF NRDC'S MOTION TO INTERVENE
- DECLARATION OF DIANE BAILEY IN SUPPORT OF NRDC'S MOTION TO INTERVENE
- ANSWER OF PROPOSED DEFENDANT-INTERVENOR NATURAL RESOURCES DEFENSE COUNCIL, INC.
- [PROPOSED] ORDER GRANTING NATURAL RESOURCES DEFENSE COUNCIL, INC.'S MOTION TO INTERVENE

to be filed electronically using this Court's CM/ECF system. Pursuant to Civ. L.R. 5-135(a), an electronic Notice of this filing will be sent automatically to all parties, and constitutes service pursuant to Fed. R. Civ. P. 5(b)(2)(D).

Date: April 5, 2011

/s/ Lizzeth Henao

Lizzeth Henao