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NINTH CIRCUIT

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FILED
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STATE OF CALIFORNIA
by and through ARNOLD SCHWARZENEGGER, GOVERNOR OF THE STATE OF
CALIFORNIA, the CALIFORNIA AIR RESOURCES BOARD,
and EDMUND G. BROWN JR., ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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

PETITION FOR REVIEW

EDMUND G. BROWN JR., Attorney General of
the State of California
JANET GAARD
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Attorneys for Petitioner State of California

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure, section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), and 40 C.F.R. section 23.3, petitioner State of California by and through Arnold Schwarzenegger, Governor of the State of California, the California Air Resources Board, and Edmund G. Brown Jr., Attorney General of the State of California, hereby petitions the Court to review a final action of the Administrator of the United States Environmental Protection Agency (“US EPA”). This final agency action denied California’s request, under section 209(b) of the Clean Air Act, 42 U.S.C. § 7543(b), for a waiver of federal preemption for California’s regulations to control greenhouse gas emissions from motor vehicles. These regulations would require reductions in fleet-average greenhouse gas emissions, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFCs), for most new passenger motor vehicles sold in California, beginning with the 2009 model year.

This final agency action was issued by US EPA on December 19, 2007, and is attached. In that document, US EPA’s Administrator wrote “to inform [Governor Schwarzenegger] of my decision with respect to the request for a waiver of Federal preemption for motor vehicle greenhouse gas emission standards submitted by the California Air Resources Board,” and explained his reasons for his denial decision. The document did not make a finding of “nationwide scope or effect” as provided for in the third sentence of section 307(b)(1) of the

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Clean Air Act, 42 U.S.C. § 7607(b)(1).

DATED: January 2, 2008

Respectfully submitted,

EDMUND G. BROWN JR., Attorney General
of the State of California

JANET GAARD

Acting Chief Assistant Attorney General

MARY E. HACKENBRACHT

Senior Assistant Attorney General

ELLEN M. PETER

Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read "Marc N. Melnick". The signature is written in a cursive style with a large initial "M" and a distinct "N" and "M".

MARC N. MELNICK

Deputy Attorney General

Attorneys for Petitioner State of California



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 19 2007

OFFICE OF THE
ADMINISTRATOR

The Honorable Arnold Schwarzenegger
Governor of the State of California
State Capitol
Sacramento, California 95814

Dear Governor Schwarzenegger,

As I have committed to you in previous correspondence, I am writing to inform you of my decision with respect to the request for a waiver of Federal preemption for motor vehicle greenhouse gas emission standards submitted by the California Air Resources Board (CARB).

As you know, EPA undertook an extensive public notice and comment process with regard to the waiver request. The Agency held two public hearings: one on May 22, 2007 in Washington, D.C. and one in Sacramento, California on May 30, 2007. We heard from over 80 individuals at these hearings and received thousands of written comments during the ensuing public comment process from parties representing a broad set of interests, including state and local governments, public health and environmental organizations, academia, industry and citizens. The Agency also received and considered a substantial amount of technical and scientific material submitted after the close of the comment deadline on June 15, 2007.

EPA has considered and granted previous waivers to California for standards covering pollutants that predominantly affect local and regional air quality. In contrast, the current waiver request for greenhouse gases is far different; it presents numerous issues that are distinguishable from all prior waiver requests. Unlike other air pollutants covered by previous waivers, greenhouse gases are fundamentally global in nature. Greenhouse gases contribute to the problem of global climate change, a problem that poses challenges for the entire nation and indeed the world. Unlike pollutants covered by the other waivers, greenhouse gas emissions harm the environment in California and elsewhere regardless of where the emissions occur. In other words, this challenge is not exclusive or unique to California and differs in a basic way from the previous local and regional air pollution problems addressed in prior waivers.

Also, I firmly believe that, just as the problem extends far beyond the borders of California, so too must be the solution. Congress has recognized the need for very aggressive yet technically feasible national standards to address greenhouse gases and energy security by passing the Energy Independence and Security Act. Just today the President signed these national standards into law, providing environmental benefits and economic certainty for Californians and all Americans. I strongly support this national approach to this national challenge which establishes an aggressive standard of 35 miles per gallon for all 50 states, as opposed to 33.8 miles per gallon in California and a patchwork of other states. This legislation

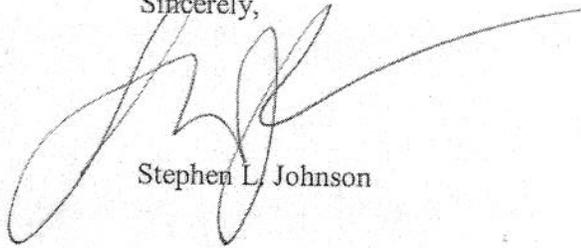
will deliver energy security benefits and bring a much needed national approach to addressing global climate change, improving the environment for all Americans.

In light of the global nature of the problem of climate change, I have found that California does not have a "need to meet compelling and extraordinary conditions." Accordingly, I have decided that EPA will be denying the waiver and have instructed my staff to draft appropriate documents setting forth the rationale for this denial in further detail and to have them ready for my signature as soon as possible.

Please be assured that my decision in this matter is made specific to the facts and circumstances of this request, which, as explained above, are distinctly different from prior waiver requests. I do not intend for this decision to affect any future requests by the State of California for waiver determinations for non-greenhouse gas emissions from vehicles.

Finally, I want to acknowledge the leadership that you and your state have shown to increase vehicle fuel economy, to address energy security, and to reduce greenhouse gases. I agree that increased vehicle standards can be a win-win for the environment and the economy. I have no doubt that the national standards Congress adopted and the President signed into law this week were enacted, in part, because of your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Johnson', with a long horizontal flourish extending to the right.

Stephen L. Johnson

cc: Governor Janet Napolitano
Governor Bill Ritter
Governor Charlie Crist
Governor Deval Patrick
Governor Martin O' Malley
Governor John Baldacci
Governor Jon S. Corzine
Governor Eliot Spitzer
Governor Ted Kulongoski
Governor Don Carcieri
Governor Jon Huntsman, Jr.
Governor Jim Douglas
Governor Christine Gregoire
Governor M. Jodi Rell
Governor Edward Rendell
Governor Bill Richardson
Senator Barbara Boxer
Senator Dianne Feinstein
Representative Xavier Becerra
Representative Howard Berman
Representative Brian Bilbray
Representative Mary Bono
Representative Ken Calvert
Representative John Campbell
Representative Lois Capps
Representative Dennis Cardoza
Representative Jim Costa
Representative Susan Davis
Representative John Doolittle
Representative David Dreier
Representative Anna Eshoo
Representative Sam Farr
Representative Bob Filner
Representative Elton Gallegly
Representative Jane Harman
Representative Wally Herger
Representative Mike Honda
Representative Duncan Hunter
Representative Darrell Issa
Representative Tom Lantos
Representative Barbara Lee
Representative Jerry Lewis
Representative Zoe Lofgren
Representative Dan Lungren
Representative Doris Matsui
Representative Kevin McCarthy

Representative Howard "Buck" McKeon
Mary D. Nichols, California Air Resources Board

CERTIFICATE OF SERVICE

I hereby certify that on or before January 2, 2008, I will cause a true and accurate copy of the foregoing Petition for Review to be served on the following, via registered mail, return receipt requested:

Michael B. Mukasey, United States Attorney General
U. S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, DC 20530-0001

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Room 3000
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

In addition, on or before January 2, 2008, I will cause a true and accurate courtesy copy of the foregoing Petition for Review to be served on the following, by first class mail, postage prepaid, and by facsimile:

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7415
Washington, DC 20044-7415
(facsimile: 202.514.0557)

Roger R. Martella, Jr.
General Counsel
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W. (2310A)
Washington, DC 20460
(facsimile: 202.564.1778)



Marc N. Melnick