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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

CENTRAL VALLEY CHRYSLER-JEEP	)	No. CV-F-04-6663 REC/LJO
INC., et al.,	)	
	)	ORDER GRANTING MOTIONS TO
	)	INTERVENE BY SIERRA CLUB,
Plaintiff,	)	NATURAL RESOURCES DEFENSE
	)	COUNCIL AND ENVIRONMENTAL
vs.	)	DEFENSE AND BY BLUEWATER
	)	NETWORK, GLOBAL EXCHANGE,
	)	AND RAINWATER FOREST ACTION
CATHERINE E. WITHERSPOON,	)	NETWORK (Docs. 17 & 26)
	)	
	)	
Defendant.	)	
	)	
	)	

On July 25, 2005, the court heard the respective motions to intervene filed by Sierra Club, Natural Resources Defense Council, and Environmental Defense and by Bluewater Network, Global Exchange, and Rainforest Action Network.

Upon due consideration of the arguments and the record herein, the court grants the respective motions to intervene.

On December 7, 2004, plaintiffs filed a Complaint for Declaratory and Injunctive Relief against defendant. On February 16, 2005, plaintiffs filed a First Amended Complaint (FAC).

1 Plaintiffs in the FAC include the following automobile  
2 dealerships located in Modesto, Turlock, Merced, Madera, Lemoore,  
3 Tulare, and Porterville: Central Valley Chrysler-Jeep, Inc.;  
4 Kitahara Pontiac GMC Buick, Inc.; Madera Ford Mercury, Inc.;  
5 Madera Chevrolet; Frontier Dodge, Inc.; Tom Fields Motors, Inc.;  
6 Pistoresi Chrysler Dodge Jeep; Bob Williams Chevrolet; Courtesy  
7 Oldsmobile Cadillac, Inc.; Merle Stone Chevrolet, Inc.; Merle  
8 Stone Porterville, Inc.; Sturgeon and Beck Incorporated; and  
9 Swanson Fahrney Ford, Inc. General Motors Corporation and  
10 DaimlerChrysler Corporation are also plaintiffs. The Tulare  
11 County Farm Bureau and the Alliance of Automobile Manufacturers  
12 are also plaintiffs. The defendant is Catherine E. Witherspoon  
13 in her official capacity as Executive Officer of the California  
14 Air Resources Board.

15 The FAC alleges that it is an action for declaratory and  
16 injunctive relief under the Supremacy Clause in Article VI of the  
17 United States Constitution and 42 U.S.C. § 1983. The FAC  
18 challenges the requirements of A.B. 1493, codified at California  
19 Health and Safety Code § 43018.5, and the regulation proposed by  
20 the California Air Resources Board (CARB) set forth in Resolution  
21 No. 04-28, dated September 24, 2004. The FAC alleges that CARB  
22 has interpreted the statute to require the adoption and  
23 enforcement of rules to limit the release of carbon dioxide from  
24 new motor vehicles sold in California beginning in the 2009 model  
25 year, which starts in calendar year 2008. The FAC, which is very  
26 verbose, alleges the following claims for declaratory and

1 injunctive relief:

2 1. Count I - Preemption under the Energy  
3 Policy and Conservation Act of 1975 (EPCA),  
4 49 U.S.C. §§ 329021-32919, specifically  
5 Section 32919(a).

6 2. Count II - Preemption under § 209(a) of  
7 the Federal Clean Air Act, 42 U.S.C. §  
8 7543(a).

9 3. Count III - Preemption under the foreign  
10 policy of the United States and the foreign  
11 affairs powers of the Federal Government.

12 4. Count IV - Violation of the Dormant  
13 Commerce Clause of the United States  
14 Constitution.

15 5. Count V - Violation of the Sherman Act,  
16 15 U.S.C. § 1.

17 The FAC prays for a declaratory judgment that "the regulation  
18 adopted by CARB and Defendant on September 24, 2004, in  
19 Resolution 04-28 violates federal law" and for a preliminary and  
20 permanent injunction enjoining Defendant "from implementing or  
21 enforcing the regulation adopted by CARB in Resolution 04-28, or  
22 any substantially similar regulation."

23 The Sierra Club, Natural Resources Defense Council, and  
24 Environmental Defense (hereinafter sometimes referred to as the  
25 Sierra Club Applicants) have filed a motion to intervene in this  
26 action as party defendants pursuant to Rule 24, Federal Rules of  
Civil Procedure.

In addition, Bluewater Network, Global Exchange, and  
Rainforest Action Network (hereinafter sometimes referred to as  
the Bluewater Applicants) have filed a motion to intervene in  
this action as party defendants pursuant to Rule 24.

1           The Sierra Club is a national nonprofit environmental  
2 organization with approximately 700,000 members, including  
3 thousands of members in California. The Sierra Club is dedicated  
4 to exploring, enjoying and protecting the wild places of the  
5 earth; to practicing and promoting the responsible use of the  
6 earth's ecosystems and resources; to educating and enlisting  
7 humanity to protect and restore the quality of natural and human  
8 environments; and to using all lawful means to carry out these  
9 objectives. One of Sierra Club's major programs is its national  
10 Global Warming and Energy Campaign, which seeks to promote  
11 solutions to global warming using current and cutting edge  
12 technologies, and securing promulgation of the proposed  
13 regulatory amendments set forth in Resolution 04-28 (referred to  
14 by the movants as the "Pavley regulations") was among the top  
15 priorities of this campaign.

16           National Resources Defense Council (NRDC) has approximately  
17 489,000 members, with 94,000 members in California. NRDC uses  
18 law, science and the support of its members to protect wildlife  
19 and wild places and to ensure a safe and healthy environment for  
20 all living things. One of NRDC's top priorities is to reduce air  
21 pollution that endangers public health and welfare and causes  
22 global warming.

23           Environmental Defense (ED) has over 400,000 members  
24 nationally, with more than 30,000 in California. ED specializes  
25 in the development of innovative, scientifically sound, market-  
26 based solutions to environmental problems. ED works extensively

1 on the international, national and state level to address the  
2 causes and effects of global warming through its Climate and Air  
3 Program.

4 Bluewater Network is a national non-profit organization  
5 dedicated to finding innovative solutions to protecting the  
6 earth's finite resources, including halting global warming and  
7 reducing air and water pollution. Bluewater Network has over  
8 8,000 member, including 3,000 members in California. A focal  
9 point of Bluewater Network's activities is the Global Warming  
10 Campaign, which, in January 2001, launched the idea to regulate  
11 greenhouse gas emissions from motor vehicles in California.

12 Global Exchange (GX) is a San Francisco-based human rights  
13 organization that promote environmental, political, and social  
14 justice. GX has 15,000 members in the United States, including  
15 5,000 members in California. Several of GX's programs target  
16 global warming and climate change, including the Jumpstart Ford  
17 campaign and the Clean Car campaign. Through these programs, GX  
18 promotes the use of alternative-fuel vehicles, including electric  
19 and hybrid-electric vehicles, to reduce greenhouse gas emissions.

20 Rainforest Action Network (RAN) is a non-profit organization  
21 that advocates protection of forests and their natural  
22 ecosystems. RAN has 15,000 members in the United States of which  
23 approximately 10,000 are Californians. RAN's Zero Emission  
24 Campaign endeavors to halt global climate change by encouraging  
25 the automotive industry to reduce greenhouse gas emissions.

26 All of the applicants for intervention supported the

1 proposed regulatory amendments during the legislative and  
2 administrative processes that led to their passage. Their  
3 respective staffs' lobbied to secure the passage of A.B. 1493.  
4 Sierra Club, NRDC, ED, and Bluewater Network were recognized as  
5 "co-sources" of the bill. Sierra Club, NRDC, ED and Bluewater  
6 Network testified at CARB's hearings on the proposed regulatory  
7 amendments, and all applicants have worked to educate the public  
8 about the importance of A.B. 1493 and the proposed regulatory  
9 amendments.

10 A. Intervention As Of Right.

11 Rule 24(a), Federal Rules of Civil Procedure, which governs  
12 intervention as of right, provides in pertinent part:

13 Upon timely application anyone shall be  
14 permitted to intervene in an action ... when  
15 the applicant claims an interest relating to  
16 the property or transaction which is the  
17 subject of the action and the applicant is so  
18 situated that the disposition of the action  
19 may as a practical matter impair or impede  
20 the applicant's ability to protect that  
21 interest, unless the interest is adequately  
22 protected by existing parties.

19 An applicant may intervene as of right pursuant to Rule  
20 24(a) if the following elements are satisfied: (1) the motion  
21 must be timely; (2) the applicant must have a "significant  
22 protectable interest" relating to the property or transaction  
23 which is the subject of the action; (3) the applicant must be  
24 situated such that disposition of the action may as a practical  
25 matter impair or impede its ability to protect that interest; and  
26 (4) the applicant's interest must be inadequately represented by

1 the parties to the action. Smith v. Marsh, 194 F.3d 1045, 1049  
2 (9<sup>th</sup> Cir. 1999). The court must interpret the rule broadly in  
3 favor of intervention. Forest Conservation Council v. U.S.  
4 Forest Service, 66 F.3d 1489, 1493 (9<sup>th</sup> Cir. 1995).

5 There is no dispute by plaintiffs that these applications  
6 for intervention are timely, that these applicants have a  
7 significant protectable interest in the subject of this action,  
8 and that the disposition of this action may impair or impede the  
9 applicants' ability to protect that interest.

10 Therefore, the focus of these motions is on the final  
11 requirement, i.e., that the applicants' interest will be  
12 inadequately represented by the Executive Director of CARB.

13 With respect to this factor, the Ninth Circuit sets forth  
14 the following standards in Southwest Center for Biological  
15 Diversity v. Berg, 268 F.3d 810, 822-823 (9<sup>th</sup> Cir. 2001):

16 In determining whether a would-be  
17 intervener's interests will be adequately  
18 represented by an existing party, courts  
19 consider:

20 (1) whether the interest of a  
21 present party is such that it will  
22 undoubtedly make all the  
23 intervener's arguments; (2) whether  
24 the present party is capable and  
25 willing to make such arguments; and  
26 (3) whether the would-be intervener  
would offer any necessary elements  
to the proceedings that the other  
parties would neglect.

... The prospective intervener bears the  
burden of demonstrating that the existing  
parties may not adequately represent its  
interest ... However, the burden of showing  
inadequacy is 'minimal,' and the applicant

1 need only show that representation of its  
2 interests by existing parties 'may be'  
3 inadequate. In assessing the adequacy of  
4 representation, the focus should be on the  
5 'subject of the action,' not just the  
6 particular issues before the court at the  
7 time of the motion.

8 However, "'a presumption of adequate representation generally  
9 arises when the representative is a governmental body or officer  
10 charged by law with representing the interests of the absentee.'" Forest Conservation Center v. U.S. Forest Service, 66 F.3d 1489,  
11 1499 (9<sup>th</sup> Cir. 1995). In Arakaki v. Cayetano, 324 F.3d 1078,  
12 1086 (9<sup>th</sup> Cir.), cert. denied, 540 U.S. 1017 (2003), further  
13 explained:

14 The most important factor in determining the  
15 adequacy of representation is how the  
16 interest compares with the interests of  
17 existing parties ... When an applicant for  
18 intervention and an existing party have the  
19 same ultimate objective, a presumption of  
20 adequacy of representation arises ... If the  
21 applicant's interest is identical to that of  
22 one of the present parties, a compelling  
23 showing should be required to demonstrate  
24 inadequate representation ....

25 There is also an assumption of adequacy when  
26 the government is acting on behalf of a  
27 constituency that it represents ... In the  
28 absence of a 'very compelling showing to the  
29 contrary,' it will be presumed that a state  
30 adequately represents its citizens when the  
31 applicant shares the same interest ... Where  
32 the parties share the same ultimate  
33 objective, differences in litigation strategy  
34 do not normally justify intervention. ....

35 The Bluewater Applicants contend that, if allowed to  
36 intervene, they intend to present an argument that defendant has  
37 stated she does not currently intend to include that the

1 Bluewater Network applicants believe is "fundamental to  
2 preventing preemption of the Greenhouse Gas Statute", to wit:

3 that manufacturers may comply with the  
4 Greenhouse Gas regulations by producing  
5 vehicles, such as plug-in hybrid electric  
6 vehicles, that rely on electricity or other  
7 non-gas powered sources, the regulation of  
8 which does not related to fuel economy  
standards ... CARB's history of focusing on  
gas powered vehicles, and its failure to make  
this critical argument, demonstrate that the  
Bluewater Applicant's interests will not be  
adequately represented by CARB.

9 In the reply brief, the Bluewater Applicants expand on their  
10 position that defendant will not adequately represent their  
11 interests:

12 The difference of interest between CARB and  
13 Bluewater Applicants has been demonstrated in  
14 the history of the Greenhouse Gas Law and the  
15 drafting of its regulations. Since the time  
16 that Bluewater Network first drafted and  
17 began to work to pass the Greenhouse Gas Law,  
18 it has been the primary and most vocal  
19 advocate for non-gas powered vehicle as a  
20 method of compliance. In contrast,  
21 throughout the development of the Greenhouse  
22 Gas regulations, CARB has failed to seriously  
23 consider the possibility that automakers can  
24 achieve emissions reduction targets solely  
25 with the use of non-gas powered vehicles.  
26 Based on that assumption, CARB has  
consistently been more focused on developing  
methods of compliance for gas powered  
vehicles ....

It is only through Bluewater Network's  
persistence through written and oral  
presentations and comments, discussions with  
CARB staff, and contributions of technical  
information and studies, that CARB has made  
non-gas powered vehicles a more meaningful  
compliance option ... For instance, at  
Bluewater's request, CARB changed its  
regulations to account for upstream  
greenhouse gas emissions for non-gas powered

1 vehicles rather than waiting until 20,000  
2 non-gas powered vehicles were on the  
3 California roads, as first proposed by CARB  
4 ... This full accounting created appropriate  
5 incentives for vehicles with the highest  
6 climate benefit ... Bluewater's comments and  
7 information also resulted in the elimination  
8 of 1.2 discount factor for alternative  
9 compliance, eliminating an unfair  
10 disadvantage for such technologies;  
11 guaranteed automakers credit for the  
12 electricity use in a plug-in hybrid, giving  
13 them the certainty necessary to invest in  
14 this new technology; and prompted CARB to  
15 give manufacturers credit for emission  
16 reductions as a result of electricity use in  
17 the first year of the program, rather than  
18 the second year, as initially proposed by  
19 CARB ....

20 CARB's defense of the Greenhouse Gas  
21 Regulations retains this same narrow focus.  
22 CARB's attorneys have stated that they  
23 currently do not intend to include an  
24 argument that Bluewater Applicant's believe  
25 is fundamental to preventing preemption of  
26 the Greenhouse Gas Statute: that  
27 manufacturers may comply with the Greenhouse  
28 Gas Regulations by producing vehicles, such  
29 as plug-in hybrid electric vehicles, that  
30 rely on electricity or other non-gas powered  
31 sources, the regulation of which does not  
32 relate to fuel economy standards ... CARB's  
33 history of focusing on gas powered vehicles,  
34 and its failure to make this critical  
35 argument, demonstrate that the Bluewater  
36 Applicant's interests will not be adequately  
37 represented by CARB ....

38 The Bluewater Applicants further argue that defendant will not  
39 adequately represent their interests:

40 The Bluewater Applicants also have a  
41 particular expertise and knowledge base in  
42 non-gas powered vehicles that CARB does not  
43 possess. This will be critical in raising,  
44 developing, and fully fleshing out necessary  
45 arguments, including that the Regulations are  
46 not preempted because non-gas powered  
47 vehicles are a viable compliance option.

1 This expertise will also be necessary in  
2 addressing Plaintiffs' arguments that it is  
3 too difficult, too costly, or impossible to  
4 comply with the Greenhouse Gas Regulations,  
5 especially with regard to the non-gas powered  
6 compliance pathway. Just as Bluewater  
7 provided an in-depth and independent analysis  
8 of the costs of non-gas vehicle compliance  
9 options that CARB relied on extensively ...,  
10 so too can Bluewater Applicants fulfill such  
11 particularized needs in the course of this  
litigation. CARB does not have limitless  
man-hours or a limitless budget to devote to  
this litigation. When faced with a mountain  
of factual evidence submitted by the many  
plaintiffs in this action, CARB will have to  
make choices about how and what to address.  
Because CARB's priorities and interests  
differ from Bluewater Applicants' interests,  
Bluewater Applicants' position will not be  
fully represented.

12 The Sierra Club applicants also argue that they have  
13 satisfied this factor because their interests and those of  
14 defendant are clear and distinct.<sup>1</sup> Applicants contend:

15 Sierra Club Applicants seek to promote  
16 environmental welfare both in and outside the  
state of California ....

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18 <sup>1</sup>In contending that they have satisfied this factor, the  
19 Sierra Club applicants assert that they will be making at least one  
20 major dispositive argument in defense of the proposed regulatory  
21 amendments that defendant will not be making, to wit: that their  
22 proposed motion to dismiss "challenges the ripeness of the instant  
23 dispute, based on the fact that the regulations have not been  
24 finalized for adoption and CARB will likely seek a waiver from the  
25 EPA if the finalized regulations are found to be preempted under  
26 Section 209(b) of the Clean Air Act." However, one of the grounds  
for dismissal of this action raised by defendant in her motion to  
dismiss is the exact argument described by applicants. Therefore,  
to the extent that the applicants contend that this factor is  
satisfied by defendant's failure to raise this proposed ground for  
dismissal, it is belied by defendant's motion to dismiss.  
Furthermore, because the regulations have been finally approved by  
California's Office of Administrative Law, the issue of ripeness is  
now moot.

1           Meanwhile, California's greenhouse gas  
2           emission law specifically '[r]equires the  
3           board to consider the technological  
4           feasibility of the regulations and the  
5           impacts of the regulations on the economy of  
6           *the state*, including specified job, business,  
7           and competitive impacts.' ... And '[t]he Air  
8           Resources Board's (ARB) mission is to promote  
9           and protect the public health, welfare and  
10           ecological resources through the effective  
11           and efficient reduction of air pollutants in  
12           recognition and consideration of the effects  
13           on the economy of *the state*.' ...  
14           Accordingly, CARB's primary obligation is to  
15           consider the interests of California's  
16           citizenry, including economic and public  
17           welfare concerns. However, many of these  
18           interests are different and conflict with  
19           Sierra Club Applicants' interests in  
20           prioritizing the environment. ...

1           In addition to their shared interest in  
2           protecting California's citizens and  
3           resources, Sierra Club Applicants have  
4           interests in protecting public health and  
5           environmental resources outside of California  
6           - an interest CARB lacks ... Sierra Club  
7           Applicants have a national presence and  
8           scope. CARB does not. It has no presence or  
9           legal authority or standing outside of  
10           California, and no obligation to consider  
11           environmental issues not directly affecting  
12           California. CARB's purported interest in  
13           other states and countries adopting its  
14           standards does not establish a national or  
15           global interest, nor do its talks with the  
16           Canadian government ....

1           Furthermore, Sierra Club Applicants' concerns  
2           regarding CARB's inability to adequately  
3           represent their interests are based on actual  
4           instances in which CARB has refused to  
5           advocate environmental protection. For  
6           example, CARB has declined to enforce zero-  
7           emission vehicles mandates, thereby  
8           preventing other states from adopting these  
9           mandates. ....

10           ...

11           The disparities in interests between Sierra

1 Club Applicants and CARB translate into  
2 disparities in defending the Greenhouse Gas  
3 Regulations. CARB is legally required to  
4 prioritize economic and other public  
5 interests of the California citizenry.  
6 However, Sierra Club Applicants seek to  
7 protect public interests nationwide, and  
8 environmental protection is their focal  
9 point. Sierra Club Applicants respectfully  
10 submit that they will defend the legislation  
11 with equal or greater vigor than CARB.

12 In addition to their disparate interests,  
13 Sierra Club Applicants have greater access to  
14 a broad range of expertise regarding  
15 environmental issues than CARB ... Because of  
16 their singular focus, concentration of  
17 resources, and national scope, the applicants  
18 have a more comprehensive understanding of  
19 national and global environmental issues.  
20 Such expertise is needed in this case, as the  
21 issue of how the Greenhouse Gas Regulations  
22 differ from fuel economy regulation is a  
23 complex technical determination requiring a  
24 global knowledge of environmental issues.  
25 Sierra Club Applicants are uniquely  
26 positioned to assist the Court in making  
these crucial determinations.

Given these disparities in obligations and  
expertise, it is certainly not beyond doubt  
that CARB will make all of Sierra Club  
Applicants' arguments in this action ... In  
fashioning appropriate relief and in  
settlement discussions (if any), CARB may  
have to compromise on issues that the  
applicants would not, because it must limit  
itself to the interests of California's  
citizens and cannot consider the interests of  
Sierra Club Applicants' members in other  
states.

The court concludes that the applicants have established  
this factor under the minimal showing required by the decisions  
cited above. This is especially true with the Sierra Club  
Applicants. It is clear that both the defendant and the  
applicants share the same ultimate objective in this litigation,

1 i.e., to defend these amendments against the challenges to their  
2 legality based on the preemptive effect of federal laws and based  
3 on the alleged violations of federal laws. Defendant is acting  
4 to defend in this lawsuit on behalf of the constituency that it  
5 represents, i.e., the citizens of this state. Applicants admit  
6 that part of their membership includes this constituency.  
7 Although the applicants argue that their expertise demonstrates  
8 that defendant's defense of these regulations will not be  
9 adequate, CARB is the state agency charged by law to promulgate  
10 and enforce regulations pertaining to the quality of air in  
11 California. Applicants make no showing that defendant is not  
12 experienced in this area or that defendant's expertise is not  
13 sufficiently developed to adequately defend the proposed  
14 regulatory amendments against the challenges made by plaintiffs  
15 in this litigation. Nonetheless, the applicants have  
16 demonstrated that they intend to raise arguments that will not be  
17 raised by defendant. Thus, the Bluewater Applicants have  
18 demonstrated that defendant will not present the argument that  
19 manufacturers may comply with the proposed regulation by  
20 producing vehicles the regulation of which does not related to  
21 fuel economy standards, thereby preventing preemption. The  
22 Sierra Club Applicants have demonstrated that they will raise a  
23 ripeness challenge to this court's subject matter jurisdiction  
24 immediately based on the defendant's failure to seek a waiver  
25 from the EPA. The court concludes that these positions are more  
26 than a difference in litigation strategy, especially given the

1 Ninth Circuit's position that public interest groups are entitled  
2 as of right to intervene in an action challenging the legality of  
3 measures they have supported. See Idaho Farm Bureau Federation  
4 v. Babbitt, 58 F.3d 1392, 1397 (9<sup>th</sup> Cir. 1995).

5 B. Permissive Intervention.

6 Even if the court's conclusion that these applicants are  
7 entitled to intervention as of right is erroneous, the court  
8 concludes that these applicants are entitled to permissive  
9 intervention.

10 Permissive intervention is governed by Rule 24(b):

11 Upon timely application anyone may be  
12 permitted to intervene in an action ... when  
13 an applicant's claim or defense and the main  
14 action have a question of law or fact in  
15 common ... In exercising its discretion the  
16 court shall consider whether the intervention  
17 will unduly delay or prejudice the  
18 adjudication of the rights of the original  
19 parties.

20 An applicant who seeks permissive intervention must demonstrate  
21 that it meets three threshold requirements: (1) it shares a  
22 common question of law or fact with the main action; (2) its  
23 motion is timely; and (3) the court has an independent basis for  
24 jurisdiction over the applicant's claims. Donnelly v. Glickman,  
25 159 F.3d 405, 412 (9<sup>th</sup> Cir. 1998). "Even if the applicant  
26 satisfies those threshold requirements, the district court has  
discretion to deny permissive intervention ... In exercising its  
discretion, the district court must consider whether intervention  
will unduly delay the main action or will unfairly prejudice the  
existing parties." Id.

1           There is no dispute that the applicants satisfy the three  
2 threshold requirements.

3           Plaintiffs oppose permissive intervention for these  
4 applicants on the ground that their intervention will increase  
5 the number of briefs in support of defendant on any given motion  
6 or issue, much of which will be repetitious. In addition,  
7 plaintiffs argue that there is a substantial risk of disputes,  
8 undue delay, and prejudice to existing parties if the applicants  
9 try to use party status in order to obtain access to the  
10 financial records and product plans of the various plaintiffs,  
11 including those plaintiffs who have provided confidential  
12 business information under seal. Plaintiffs represent that they  
13 and defendant are currently working on the terms of a protective  
14 order to govern defendant's access to and use of that  
15 confidential information. Plaintiffs assert that such a  
16 protective order will protect their interests in confidentiality  
17 because the protective order would limit access to the relevant  
18 confidential information to State officials, "who are accustomed  
19 to handling such information and maintaining its  
20 confidentiality." However, plaintiffs assert:

21                   In contrast, plaintiffs do not believe that  
22                   the confidential business information such as  
23                   that filed under seal should be made  
24                   available to the Applicants or that a  
25                   Protective Order would provide adequate  
26                   safeguards for the disclosure of such  
                  material to the Applicants. For example, the  
                  material filed under seal to date relates to  
                  such issues as manufacturers' product plans,  
                  lead-time requirements, cost projections, and  
                  dealers' financial outlook. Although this

1 information is highly sensitive, plaintiffs  
2 recognize that defendant must have some  
3 access to it, with appropriate court-ordered  
4 limitations. Defendant's motion to dismiss  
5 or transfer this action is based on various  
6 assumptions about how the industry will  
7 respond to the A.B. 1493 regulations and how  
8 CARB's rule affects the dealer plaintiffs and  
9 others. Defendant needs to be able to  
10 understand how the facts contained in  
11 plaintiffs' confidential business information  
12 conflicts with her assumptions. Applicants,  
13 on the other hand, are not involved in the  
14 motion to dismiss or transfer, and have no  
15 compelling interest in access to confidential  
16 business information.

17 When the case proceeds to the merits,  
18 plaintiffs cannot conceive of any arrangement  
19 for the treatment of confidential information  
20 that would provide adequate protection  
21 against the potential disclosure or misuse of  
22 the information in these filings by  
23 Applicants, other than an Order that limits  
24 access to confidential information to  
25 defendant and appropriate representatives of  
26 defendant. Disclosing confidential  
information to defendant under appropriate  
conditions means disclosing it to State  
officials whose duties require them to review  
confidential business information on a  
regular basis, and who have longstanding  
protocols in place to protect against  
disclosure or improper use of information.  
Such is not the case with Applicants.  
Applicants are private organizations that are  
not accustomed to handling information of  
this type, and whose interests and abilities  
to preserve its confidentiality may be  
compromised by other competing interests.

27 The applicants for intervention respond that plaintiffs'  
28 concern over "substantial repetition" of arguments and briefs is  
29 overstated, noting that many litigations involve more than one  
30 party. The Sierra Club Applicants are represented by a single  
31 national law firm that is represented to have over fifty years

1 experience in handling complex and sensitive litigation.  
2 Furthermore, the applicants note, they have coordinated their  
3 efforts by filing a single reply brief in support of the two  
4 motions for intervention, thereby minimizing concerns that the  
5 parties and the court will be faced with responding to or  
6 reviewing multiple briefs saying essentially the same things.

7       The applicants for intervention also respond to plaintiffs'  
8 assertion that the applicants cannot be trusted to keep  
9 confidential information confidential as absurd, contending that  
10 counsel for the respective applicants have been parties to  
11 numerous cases involving protective orders in a broad range of  
12 complex litigation matters. The applicants further note that  
13 protective orders may be crafted to suit the needs of particular  
14 parties, i.e., that the parties may agree to only grant access to  
15 specified confidential material.

16       The court concludes that the applicants also have  
17 demonstrated that they are entitled to permissive intervention.

18       However, in so concluding, the court expresses its concern  
19 about the risk of undue delay. The amount of paper already  
20 generated in this case is staggering and includes not only the  
21 briefs pro and con, but numerous declarations and evidentiary  
22 submissions, objections to those declarations and/or evidence,  
23 and responses to those objections. In order to prevent the court  
24 and the parties from being overwhelmed, the court will require  
25 these Applicants to coordinate their positions with defendant and  
26 to only file motions and/or briefs if the defendant refuses to

1 make an argument that the applicants consider relevant. In  
2 imposing this requirement, the court cautions that merely because  
3 counsel for the applicants believe that they can word an argument  
4 better or that there may be a case that could be cited but was  
5 not, counsel for applicants should not file a separate brief.

6 ACCORDINGLY:

7 1. The motions to intervene filed by Sierra Club, Natural  
8 Resources Defense Council, and Environmental Defense and by  
9 Bluewater Network, Global Exchange, and Rainforest Action Network  
10 are granted.

11 IT IS SO ORDERED.

12 **Dated: October 20, 2005**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE