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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA - FRESNO

10 CENTRAL VALLEY CHRYSLER-JEEP, INC.,)
11 et al.)

Case No.1:04-CV-06663-REC-LJO

12 Plaintiffs,)

13 v.)

14 Catherine B. WITHERSPOON, in her official)
15 capacity as Executive Officer of the California)
16 Air Resources Board,)

17 Defendant,)

**MOTION OF BLUEWATER
NETWORK ET AL. TO
INTERVENE AS PARTY
DEFENDANTS AND
MEMORANDUM IN SUPPORT**

Date: To be notified¹

Time: 1:30 pm

Judge: Honorable Robert Coyle

18 Pursuant to Federal Rule of Civil Procedure 24, Bluewater Network – the public interest
19 organization responsible for California’s innovative and precedent-setting legislation to reduce
20 greenhouse gas emissions, Assembly Bill No. 1493 (“AB 1493” or the “Pavley Bill”)(codified at
21 section 43018.5 of the California Health & Safety Code) – along with Global Exchange and
22 Rainforest Action Network (“Bluewater Network intervenors” or “applicants”), seek leave of this
23 Court to intervene in the above-captioned case on behalf of defendant Catherine E. Witherspoon,
24 Executive Officer of the California Air Resources Board (“CARB”). As detailed below, applicants –
25 which were not only instrumental in drafting and supporting the Pavley Bill and regulation of

26 _____
27 ¹In compliance with this Court’s February 18, 2005 Order, Bluewater Network Intervenors will
28 file an amended notice of hearing setting our motion on the date set in CARB’s motion to dismiss. See
Order Granting Joint Request, Continuing Oral Argument on Motions to Intervene, and Vacating Oral
Argument Set for March 7, 2005 (Feb. 18, 2005).

1 greenhouse gases emissions in California, but which also participated extensively in the creation of
2 CARB’s implementing regulations that plaintiffs seek to invalidate in this case (“Pavley
3 regulations”) – satisfy the standards for intervention as of right in this case, or, alternatively, should
4 be granted permissive intervention.

5 BACKGROUND

6 Bluewater Network, the leading organization advocating for strong regulation of greenhouse
7 gas emissions in California, is a national non-profit organization dedicated to finding innovative
8 solutions to protecting the earth’s finite resources, including halting global warming and reducing air
9 and water pollution. Bluewater Network has over 8,000 members, including 3,000 members in
10 California. A focal point of Bluewater Network’s activities is the Global Warming Campaign,
11 which, in January 2001, first launched the idea to regulate greenhouse gas emissions from motor
12 vehicles in California. See Declaration of Russell Long (“Long Decl.”), at ¶ 4.

13 Global Exchange (“GX”) is a San Francisco-based, human rights organization that promotes
14 environmental, political, and social justice. GX has 15,000 members in the United States, including
15 5,000 members in California. Several of GX’s programs specifically target global warming and
16 climate change, including the Jumpstart Ford campaign and the Clean Car Campaign. Through these
17 programs, GX promotes the use of alternative-fuel vehicles, including electric and hybrid-electric
18 vehicles, to reduce greenhouse gas emissions. See Declaration of Jason Mark (“Mark Decl.”), at
19 ¶ 1-3.

20 Rainforest Action Network (“RAN”) is a non-profit organization that advocates protection of
21 forests and their natural ecosystems. RAN has 15,000 members in the United States, and
22 approximately 10,000 members in California. RAN’s Zero Emissions Campaign endeavors to halt
23 global climate change by encouraging the automotive industry to reduce greenhouse gas emissions.
24 See Declaration of Michael Brune (“Brune Decl.”), ¶ 1-2.

25 Recognizing a host of “compelling and extraordinary impacts” that global warming will
26 impose on California, including increases in air pollution and catastrophic wildfires, reductions in
27 water supply from changes to snowpack and spring runoff, damage to coastlines and ocean systems,

1 as well as impacts to consumers, businesses, and the economy due to increased energy costs and
2 environmental losses, on July 22, 2002 California enacted AB 1493 in order to “ensure reductions in
3 emissions of greenhouse gases.” AB 1493.

4 To accomplish this goal, AB 1493 directs CARB to “develop and adopt, by January 1, 2005,
5 regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas
6 emissions from motor vehicles.” Cal. Health & Safety Code, § 43018.5(a). In developing these
7 regulations, the Legislature directed CARB to consider the technological feasibility of the
8 regulations and the impact of the regulations on the economy. *Id.* § 43018.5(c). In addition, the
9 Legislature directed CARB, “to the maximum extent feasible,” to provide “flexibility” in the means
10 by which the regulated community could comply with the regulations, including by authorizing
11 “alternative methods of compliance” with the regulations. *Id.* § 43018.5(c).

12 On August 6, 2004, pursuant to AB 1493, CARB initiated the rulemaking process and
13 published and requested comment on an Initial Statement of Reasons for Proposed Rulemaking
14 (“ISOR”). The proposed regulations established greenhouse gas exhaust emissions standards,
15 expressed in carbon dioxide (“CO₂”) equivalent fleet averages, and test procedures for motor
16 vehicles, including passenger cars, light-duty trucks, and medium-duty vehicles. The proposed
17 regulations allow manufacturers to comply with the emissions standards by producing grid-
18 connected hybrid electric vehicles (“plug-in hybrids”), and other alternative-fuel vehicles. CARB
19 held a public hearing on the proposed regulations on September 23, 2004, deciding then to “initiate[]
20 steps towards final adoption” of greenhouse gas emissions standards. See State of California Air
21 Resources Board Resolution 04-28 (September 23, 2004). To date, CARB has not taken final action
22 to adopt these regulations.

23 As set out in the attached declarations, Bluewater Network intervenors have been crucial
24 supporters of the Pavley Bill and its implementing regulations. In addition to initially conceiving the
25 ground-breaking idea of regulating greenhouse gas emissions in California, Bluewater Network was
26 largely responsible for obtaining the critical support of the bill’s sponsor, Assembly Member Fran
27 Pavley, as well as the support of the bill’s co-sponsors. Not surprisingly, Bluewater Network was

1 consequently designated as a “co-source” or sponsor of the Pavley Bill. Long Decl. ¶¶ 5- 7. All of
2 the Bluewater Network intervenors have been relentless advocates of AB 1493 and its implementing
3 regulations in the community, dedicating substantial resources to public education efforts about
4 California’s regulation of greenhouse gas emissions. Id.; Brune Decl., ¶ 7; Mark Decl., ¶ 6.

5 Bluewater Network intervenors were also strong organizing voices in the environmental
6 community, participating in forums on the impacts of global warming on the environmental justice
7 community, organizing protests, press conferences, and letter-writing campaigns, and requesting
8 testimony of key national environmental groups at the committee hearing for the Pavley Bill. Long
9 Decl., ¶ 7, 13, 17; Mark Decl., ¶ 6; Brune Decl., ¶ 7.

10 Bluewater Network was particularly important to CARB’s formulation of the regulations
11 implementing AB 1493. Bluewater Network staff testified at CARB’s public hearings, participated in
12 numerous workshops, and submitting extensive written comments on the draft and proposed
13 rulemaking. Many of Bluewater Network’s comments and suggestions were specifically adopted by
14 CARB staff. Long Decl., ¶ 16, 20.

15 Bluewater Network intervenors have been the lead, and, at times, only voice advocating the
16 importance and feasibility of alternative-fueled vehicles, and, in particular, the potential for plug-in
17 hybrid vehicles to satisfy Pavley’s requirements. Id., ¶ 21; Mark Decl., ¶ 6; Brune Decl., ¶ 8.

18 On December 7, 2004, a coalition of automobile manufacturers and dealers filed this lawsuit
19 seeking to invalidate the Pavley regulations, principally arguing that the regulations were preempted
20 by federal legislation. An amended complaint was filed on February 16, 2005. See Amended
21 Complaint for Declaratory and Injunctive Relief (“Amended Complaint”), ¶ 1.

22 ARGUMENT

23 Bluewater Network intervenors easily meet the standards for intervention under the Federal
24 Rules of Civil Procedure. Because controlling precedent of this Circuit has repeatedly affirmed that a
25 “public interest group is entitled as a matter of right to intervene in an action challenging the legality
26 of a measure it has supported,” Idaho Farm Bureau Fed’n v. Babbitt, 58 F.3d 1393, 1397 (9th Cir.

1 1995) (internal citations omitted), applicants are entitled to intervene as a matter of right under Rule
2 24(a). In the alternative, applicants satisfy the criteria for permissive intervention under Rule 24(b).

3
4 **I. Bluewater Network Intervenors Are Entitled to Intervene as a Matter of Right.**

5 Federal Rule 24(a) allows an applicant to intervene as of right when the following four
6 conditions are satisfied: (1) the applicant claims an interest in the subject of the action, (2) disposition
7 of the case will, “as a practical matter,” impair or impede the applicant’s ability to protect that
8 interest, (3) the application is timely, and (4) the applicant’s interest may not be adequately
9 represented by existing parties. Fed. R. Civ. P. 24(a); Sierra Club v. EPA, 995 F.2d 1478, 1481 (9th
10 Cir. 1993). The test for intervention as of right under Rule 24 is interpreted “broadly in favor of
11 intervention.” Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1493 (9th Cir. 1995).

12 **A. Bluewater Network Intervenors Have A “Significantly Protectable” Interest in**
13 **the Litigation.**

14 The Ninth Circuit has explained that whether an applicant for intervention as of right
15 demonstrates a “significantly protectable interest” in an action is a "practical, threshold inquiry," and
16 "[n]o specific legal or equitable interest need be established." Northwest Forest Resource Council v.
17 Glickman, 82 F.3d 825, 837 (9th Cir. 1996) (quoting Greene v. United States, 996 F.2d 973, 976 (9th
18 Cir. 1993). To demonstrate this interest, a prospective intervenor need only establish that (1) "the
19 interest [asserted] is protectable under some law," and (2) there is a "relationship between the legally
20 protected interest and the claims at issue." Id. (internal citations omitted).

21 It is the law of this Circuit that proponents of a regulation have a sufficient interest in the
22 subject matter of litigation challenging the regulation to warrant intervention as of right. See Idaho
23 Farm Bureau Fed’n, 58 F.3d at 1397 (intervention granted to conservation group that had advocated
24 for the decision being challenged); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527 (9th Cir.
25 1983) (granting intervention to environmental group that participated in Department of Interior
26 administrative process establishing challenged critical habitat); County of Fresno v. Andrus, 622 F.2d
27 436, 438 (9th Cir. 1980) (conservation group had a sufficient interest to intervene because it was

1 “responsible for the regulations being promulgated in the first instance”); Washington State Bldg. and
2 Constr. Trades v. Spellman, 684 F.2d 627, 629 (9th Cir. 1982) (public interest group entitled to
3 intervene in challenge to measure it had supported); Idaho v. Freeman, 625 F.2d 886, 887 (9th Cir.
4 1980) (non-profit entitled to intervene in challenge relating to measure it supported).

5 Here, as the attached declarations demonstrate, Bluewater Network intervenors and their
6 members have significant institutional interests in defending the Pavley regulations. Not only did
7 applicants expend substantial resources in order to participate in the promulgation of the Pavley Bill
8 and its implementing regulations through public comment, lobbying, and outreach efforts, see Long
9 Decl., ¶ 4; Mark Decl., ¶ 3, 8; Brune Decl., ¶ 7, but, indeed, Bluewater Network originally conceived
10 the Pavley Bill and was instrumental in orchestrating the bill’s passage. See Long Decl., ¶ 4. In this
11 sense, as in Andrus, applicants are “responsible for the regulations being promulgated in the first
12 place,” 622 F.2d at 438, and are therefore entitled to participate in litigation aimed at overturning
13 those regulations.

14 Moreover, in addition to Bluewater Network intervenors’ institutional interests in the
15 promulgation of the Pavley regulations, the Bluewater Network intervenors’ – and their members’ –
16 interests in reducing greenhouse gas emissions and other forms of pollution, at which the Pavley
17 regulations are aimed, are precisely the kinds of interests that courts have routinely recognized as
18 “legally cognizable” and sufficient to justify intervention in a lawsuit. See, e.g. Forest Conservation
19 Council, 66 F.3d at 1497 (in addition to economic interests, interest in “environmental health of, and
20 wildfire threats to,” particular lands were protectable interests under Rule 24). For example,
21 applicants’ members have significant economic, environmental, recreational, and aesthetic interests
22 that are continually threatened by global warming and the effects of climate change, including damage
23 to homes and neighborhoods and other environmental losses caused by increasingly erratic weather,
24 rising flood lines, increased smog, and reduced snowfall and runoff from the Sierra Nevada
25 Mountains. See Declaration of Marsha Mather-Thrift (“Mather-Thrift Decl.”), ¶ 2-12); Brune Decl.,
26 ¶ 4. These are the very same interests that the Pavley Bill and its implementing regulations are
27 designed to protect, by reducing the emissions of greenhouse gases – i.e., gases that contribute to

1 climate change – in California. See AB 1493, Sec. 1 (finding that global warming would cause
2 “potential damage to the state’s extensive coastline and ecosystems due to the increase in storms and
3 significant rise in sea level,” “significant impacts to consumers, businesses, and the economy of the
4 state due to increased costs of food and water, energy, insurance, and additional environmental losses
5 and demands upon the public health,” and “potential reduction in the state’s water supply due to
6 changes in the snowpack levels in the Sierra Nevada Mountains”). Bluewater Network intervenors
7 therefore have an acute and “significantly protectable” interest in defending the challenged
8 regulations. Northwest Forest Resource Council, 82 F.3d at 837.

9 **B. Bluewater Network Intervenors’ Interests Will Be Impaired if Plaintiffs Succeed**
10 **in Invalidating the CAR Regulations.**

11 Intervention is appropriate if the district court’s decision may result in “practical impairment”
12 of Bluewater Network Intervenor’s interests. Fed. R. Civ. P. 24(a) (intervention as of right is
13 appropriate if the applicant “is so situated that the disposition of the action may as a practical matter
14 impair or impede the applicant’s ability to protect that interest”); see also Yniquez v. State of Ariz.,
15 939 F.2d 727, 735 (9th Cir. 1991). The test is whether “an absentee would be substantially affected in
16 a practical sense by the determination made in an action.” Southwest Ctr. for Biological Diversity v.
17 Berg, 268 F.3d 810, 822 (9th Cir. 2001) (emphasis added). Bluewater Network Intervenors certainly
18 meet this standard here.

19 First, applicants’ interests in the CARB regulations – including the significant time, energy,
20 and resources expended to bring about California’s regulation of greenhouse gas emissions – would
21 be nullified if this court were to set aside the CARB regulations. Courts have routinely found
22 “practical impairment” of a group’s interests in similar circumstances. See, e.g., Sagebrush
23 Rebellion, 713 F.3d at 528 (finding impairment of the applicant’s interests in challenge to designation
24 of conservation area that group had supported); Idaho Farm Bureau, 58 F.3d at 1398 (impairment
25 present when adverse decision would invalidate listing of species for which group had advocated and
26 litigated).

1 Moreover, as the attached declarations demonstrate, applicants' members possess significant
2 economic, environmental, recreational, and aesthetic interests that will continue to be impaired if the
3 Pavley regulations are invalidated. See Mather-Thrift Decl., ¶ 2-12; Brune Decl., ¶ 4-5; Mark Decl.,
4 ¶ 4. Aside from CARB's regulations, which other states may choose to adopt, see 42 U.S.C. § 7507,
5 no other regulatory efforts are being made, either at the state or federal level, to reduce emissions of
6 greenhouse gases due to motor vehicles. Thus, an adverse decision in this case would entirely
7 eliminate the only existing program to reduce greenhouse gas emissions from motor vehicles, and
8 thereby impair or impede the applicants' members' ability to protect their interest in reducing
9 greenhouse gas emissions from motor vehicles. See Forest Conservation Council, 66 F.3d at 1498
10 (finding that state and county's ability to protect interest in environmental health of state lands would
11 be impaired if not allowed to intervene in suit challenging Forest Service's management of Northern
12 Goshawk habitat); Sagebrush Rebellion, Inc., 713 F.2d at 528 (adverse decision in suit challenging
13 creation of conservation area for birds of prey would impair or impede organization's interest in
14 preservation of birds and their habitat).

15 **C. The Motion to Intervene Is Timely.**

16 A court evaluates three factors in order to determine whether a motion to intervene is timely:
17 (1) the stage of the proceedings, (2) prejudice to other parties, and (3) the reason for and length of any
18 delay. See U.S. v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004) (internal citations omitted).
19 Here, the motion to intervene is timely for the following reasons.

20 First, the proceedings in this case are still at an extremely early stage. The plaintiffs filed a
21 Complaint on December 7, 2004, only two months ago, and filed an Amended Complaint on February
22 16, 2005. No motions concerning the merits have been filed in the case, no discovery has occurred,
23 and there has been no hearing or ruling on any matter.

24 Second, there is no conceivable prejudice to the parties that could result from granting the
25 motion to intervene at this point in the proceedings. With an Amended Complaint recently filed and
26 two other Motions to Intervene pending before the court, this is the most appropriate time for the
27 court to handle a Motion to Intervene – i.e., before any substantive motions have been filed.

1 Courts have granted Motions to Intervene filed at much later stages, and with significantly
2 more progress on substantive matters. See Idaho Farm Bureau, 58 F.3d at 1397 (court granted motion
3 to intervene that had been filed four months after the complaint, and after a motion for preliminary
4 injunction, but prior to the hearing); U.S. v. Carpenter, 298 F.3d 1122, 1125 (9th Cir. 2002) (motion to
5 intervene not untimely even though applicant “had filed the motion eighteen months after the
6 complaint was filed, after six months of court-ordered mediation, and four days of settlement
7 negotiations in front of a magistrate”); San Jose Mercury News, Inc. v. U.S. Dist. Court--Northern
8 Dist. (San Jose), 187 F.3d 1096, 1101 (9th Cir.1999) (noting with approval that delays of several years
9 may be tolerated “where an intervenor is pressing the public's right of access to judicial records”)
10 (internal citations omitted). Accordingly, the applicants’ motion to intervene is timely.

11 **D. Bluewater Network Intervenors’ Interests Are Not Adequately Represented By**
12 **Any Parties to the Litigation.**

13 Under Supreme Court precedent, to obtain intervention of right, a proposed intervenor has a
14 “minimal” burden to show that existing parties may not adequately represent their interests. Trbovich
15 v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972) (emphasis added); Berg, 268 F.3d at 823
16 (applying Trbovich). Three factors govern whether an applicant’s interests are adequately represented
17 by existing parties: “(1) whether the interest of a present party is such that it will undoubtedly make
18 all of the intervenor’s arguments; (2) whether the present party is capable and willing to make such
19 arguments, and (3) whether the would-be intervenor would offer any necessary elements to the
20 proceedings that other parties would neglect.” Southwest Ctr. for Biological Diversity v. Berg, 268
21 F.3d 810, 823 (9th Cir. 2001). To satisfy this test, it is sufficient for an applicant to show that
22 “because of the difference in interests, it is likely that [existing parties] will not advance the same
23 arguments as Applicants.” Id. at 824.

24 Certainly CARB, the only current defendant to the litigation, does not adequately represent
25 applicants’ interests under this standard. As a state agency charged with a duty to represent the
26 interests of the general public, CARB’s interests are significantly broader than the unique interest that
27 Bluewater Network Intervenors bring to the table. Bluewater Network intervenors’ primary interests

1 are to reduce air pollution and the effects of climate change; CARB, on the other hand, must also take
2 into account numerous other factors, such as the effect of its activities on the regulated community,
3 budgetary restraints, and political concerns.

4 This Circuit has consistently held that intervention is warranted when – as here – an
5 applicant’s interests are narrower than those of existing parties, and, in particular, a governmental
6 entity. See Berg, 268 F.3d at 823 (defendant city did not adequately represent interests of building
7 trades association because the city’s “range of considerations in development is broader than the
8 profit-motives animating developers”); Californians for Safe and Competitive Dump Truck
9 Transportation v. Mendonca, 152 F.3d 1184, 1190 (9th Cir. 1998) (union’s interests not adequately
10 represented by state agencies because union’s interests were “potentially more narrow and parochial
11 than the interests of the public at large”); Forest Cons. Council, 66 F.3d at 1499 (Forest Service did
12 not adequately represent interests of state and county because federal government “is required to
13 represent a broader view than the narrow, parochial interests of the State of Arizona and Apache
14 County”) (internal citations omitted).

15 Moreover, because Bluewater Network was the original organization that developed and
16 advocated for the Pavley legislation, and because all of the Bluewater Network intervenors have
17 shown strong support for AB 1493 and the regulation of greenhouse gases, Bluewater Network
18 intervenors bring a unique perspective to this case, and will undoubtedly offer “necessary elements to
19 the proceedings.” Berg, 268 F.3d at 822 (internal citations omitted). For these reasons, as this Circuit
20 recently explained in Berg, “[t]he interests of [the] government and the [applicant] may diverge.”
21 Berg, 268 F.3d at 823-24; see also Trbovich, 404 U.S. 538-39 (intervention was appropriate where
22 government agency represented “related but not identical interests” including that of the union
23 applicant and the general public).

24 In addition, although the Sierra Club applicants are not “existing parties” under Rule 24(a),
25 Bluewater Network intervenors also offer a perspective that is substantially distinct from the Sierra
26 Club applicants. Since conceiving of the Pavley legislation, and throughout the promulgation of its
27 implementing regulations, Bluewater Network in particular has been the primary advocate for

1 alternative-fuel vehicles as a method of complying with the regulations. See Long Decl., ¶ 21. Thus,
2 in comments and in testimony, Bluewater Network has consistently argued that alternative-fuel
3 vehicles, and plug-in hybrids in particular, are a feasible option for automobile manufacturers to
4 comply with the regulations without necessarily requiring other modifications to traditional gasoline-
5 powered vehicles. This unique perspective will not be presented by Sierra Club applicants if they are
6 allowed to intervene in the litigation.

7 Moreover, although Bluewater Network intervenors and the Sierra Club applicants certainly
8 agree that, contrary to plaintiffs’ allegations in this case, the fact that automobile manufacturers may
9 choose to comply with the Pavley regulations by making improvements to gasoline-powered motor
10 vehicles does not render the regulations preempted by federal motor vehicle fuel economy standards,
11 see Amended Complaint, ¶¶ 112-120, the attached declaration of Russell Long demonstrates that
12 Bluewater Network intervenors are the only parties that will make an additional, critical argument.
13 See Long Decl., ¶ 21. In particular, Bluewater Network intervenors, will argue that, among the
14 reasons that preemption principles do not apply is that manufacturers may choose to comply with the
15 regulations by producing electric plug-in hybrid vehicles, and obtaining credit for reductions in
16 greenhouse gas emissions achieved through the vehicles’ use of electric power. In short, Bluewater
17 Network intervenors will argue that, irrespective of Pavley’s bearing on gasoline-powered vehicles,
18 California may impose its regulations because manufacturers will be able to comply by producing
19 electric plug-in hybrid vehicles, the regulation of which does not even arguably relate to fuel economy
20 standards. Id.; see, e.g., Ray v. Atlantic Richfield Co., 435 U.S. 151, 172-73 (1978) (because tanker
21 companies had the option of either improving tanker design or using tug escorts for less cost, a
22 Washington state law was not preempted by federal law preempting state laws on tanker design);
23 California Div. of Labor Stds. Enf. v. Dillingham Constr., 519 U.S. 316, 334-335 (1997) (preemption
24 of state laws that “relate to any employee benefit plan” does not preempt state law which “alters the
25 incentives, but does not dictate the choices, facing” benefit plans). Thus, not only is it apparent that
26 the Sierra Club applicant’s are not “willing and capable” of raising all of the same issues as Bluewater
27 Network, it is certain that they will not. Long Decl., ¶ 21 (explaining that the Sierra Club Intervenor

1 have informed Bluewater Network that they will not present this argument). Existing parties and
2 Sierra Club applicants therefore do not adequately represent Bluewater Network Intervenors’
3 interests. See Trbovich, 404 U.S. at 538 (granting intervention because “there is sufficient doubt
4 about the adequacy of representation”).²

5 **II. In the Alternative, Bluewater Network Intervenors Should be Granted Permissive**
6 **Intervention.**

7 Alternatively, permissive intervention is warranted under Rule 24(b). A court may grant
8 permissive intervention “where the applicant for intervention shows (1) independent grounds for
9 jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action,
10 have a question of law or a question of fact in common.” U.S. v. City of Los Angeles, Cal., 288 F.3d
11 391, 403 (9th Cir. 2002) (internal citations omitted). Courts are directed to consider “undue delay or
12 prejudice” that may be caused by intervention. Fed. R. Civ. P. 24(b).

13 First, this court has an independent ground for jurisdiction based on the federal question raised
14 in the amended complaint. Second, as already addressed in this brief, Bluewater Network
15 intervenors’ application for intervention is timely and will not prejudice the parties or cause any
16 undue delay. See supra pp. 8-9. Finally, the arguments applicants intend to make in the case are
17 directed solely at defending the regulations that are at issue in the main action; there are therefore
18 numerous questions of law and fact in common with the underlying action. In addition, the
19 arguments will provide the Court with an important perspective on the issues that will not be
20 provided by any other party. As noted, Bluewater Network intervenors are certainly willing to
21 coordinate with other defendants to avoid duplicate briefing, and, in particular, seek intervention
22 solely to advance the independent argument concerning the relevance of alternative-fueled vehicles to
23 the legality of AB 1493. Permissive intervention is therefore appropriate.

24
25 ²If the Court allows both the Sierra Club Intervenors and Bluewater Network, et al., to intervene,
26 Bluewater Network, et al., will endeavor to coordinate with Sierra Club Intervenors to ensure that
27 duplicate filings are not made.

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CONCLUSION

In light of the unique perspective offered by Bluewater Network Intervenors, including the organization responsible for the legislation and regulations at issue in this case, and for all of the other reasons discussed above, Bluewater Network, et al., respectfully requests that this court grant this motion to intervene.

Respectfully submitted,

/s/ Leslie Caplan

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