

APPEAL,CLOSED,TYPE-C

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:11-cv-02235-RLW**

ALEC L. et al v. JACKSON et al
Assigned to: Judge Robert L. Wilkins
Case in other court: California Northern, 3:11-cv-02203
Cause: 33:1365 Environmental Matters

Date Filed: 12/14/2011
Date Terminated: 05/31/2012
Jury Demand: None
Nature of Suit: 893 Environmental Matters
Jurisdiction: U.S. Government Defendant

Plaintiff

ALEC L.
*by and through his Guardian Ad Litem
Victoria Loorz*

represented by **Jordanna G. Thigpen**
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TERMINATED: 12/14/2012

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Plaintiff

VICTORIA LOORZ

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TERMINATED: 12/14/2012

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Plaintiff

MADELINE W.
by and through her Guardian Ad Litem
Janet Wallace

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TERMINATED: 12/14/2012

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Plaintiff

GARRETT S.
by and through his Guardian Ad Litem
Valerie Serrels

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Julia A. Olson
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TERMINATED: 12/14/2012

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Plaintiff

GRANT S.
by and through his Guardian Ad Litem
Valerie Serrels

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Julia A. Olson
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Tanya Sanerib
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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

VALERIE SERRELS

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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

ZOE J.
by and through her Guardian Ad Litem
Nina Grove

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Julia A. Olson
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Tanya Sanerib

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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

NINA GROVE

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Philip L. Gregory
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Tanya Sanerib
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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

KIDS VS. GLOBAL WARMING
a nonprofit

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Julia A. Olson
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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

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a nonprofit

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TERMINATED: 12/14/2012

Thomas J. Beers
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Plaintiff

JANET WALLACE

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TERMINATED: 12/14/2012

Thomas J. Beers
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V.

Defendant

LISA P. JACKSON
*in her official capacity as Administrator
of the United States Environmental
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Defendant

KENNETH LEE SALAZAR
*in his official capacity as Secretary of the
United States Department of the Interior*

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Defendant

THOMAS JAMES VILSACK
*in his official capacity as Secretary of the
United States Department of Agriculture*

represented by **Martin F. McDermott**
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Defendant

GARY F. LOCKE
*in his official capacity as Secretary of the
United States Department of Commerce*

represented by **Martin F. McDermott**
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Defendant

STEVEN CHU
*in his official capacity as Secretary of the
United States Department of Energy*

represented by **Martin F. McDermott**
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Defendant

ROBERT M. GATES

*in his official capacity as Secretary of the
United States Department of Defense
TERMINATED: 07/27/2011*

represented by **Martin F. McDermott**
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LEAD ATTORNEY
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Defendant

LEON PANETTA

*in his official capacity as Secretary of the
United States Department of Defense*

represented by **Martin F. McDermott**
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LEAD ATTORNEY
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V.

Intervenor Defendant

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MANUFACTURERS**

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Intervenor Defendant

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Intervenor Defendant

DALTON TRUCKING, INC.

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Intervenor Defendant

**SOUTHERN CALIFORNIA
CONTRACTORS ASSOCIATION,
INC.**

represented by **Theodore Hadzi-Antich**
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Intervenor Defendant

**CALIFORNIA DUMP TRUCK
OWNERS ASSOCIATION**

represented by **Theodore Hadzi-Antich**
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Intervenor Defendant

**ENGINEERING & UTILITY
CONTRACTORS ASSOCIATION**

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| Date Filed | # | Page | Docket Text |
|------------|----------|------|---|
| 05/04/2011 | <u>1</u> | | COMPLAINT against Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Kenneth L. Salazar, Thomas J. Vilsack (Filing fee \$ 350, receipt |

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|------------|----------|--|
| | | number 34611059475.) filed by Madeline W., Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S., Victoria Loorz, Nina Grove, Kids vs. Global Warming, Zoe J., Janet Wallace. (vlk, COURT STAFF) (Filed on 5/4/2011) Modified on 5/6/2011 (vlk, COURT STAFF). (Additional attachment(s) added on 5/31/2011: # <u>1</u> Civil Cover Sheet) (vlk, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 05/06/2011) |
| 05/04/2011 | | CASE DESIGNATED for Electronic Filing. (vlk, COURT STAFF) (Filed on 5/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 05/06/2011) |
| 05/04/2011 | <u>2</u> | ADR SCHEDULING ORDER: Case Management Statement due by 8/3/2011. Case Management Conference set for 8/10/2011 01:30 PM. (Attachments: # <u>1</u> Standing Order)(vlk, COURT STAFF) (Filed on 5/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 05/06/2011) |
| 05/04/2011 | <u>3</u> | Summons Issued as to Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Kenneth L. Salazar, Thomas J. Vilsack, U.S. Attorney and U.S. Attorney General (vlk, COURT STAFF) (Filed on 5/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 05/06/2011) |
| 07/27/2011 | <u>4</u> | AMENDED COMPLAINT <i>FOR DECLARATORY AND INJUNCTIVE RELIEF</i> against Steven Chu, Leon E. Panetta, Lisa P. Jackson, Gary F. Locke, Kenneth L. Salazar, Thomas J. Vilsack. Filed by Madeline W., Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S., Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace, Zoe J.. (Gregory, Philip) (Filed on 7/27/2011) Modified on 7/28/2011 (vlk, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 07/27/2011) |
| 08/02/2011 | <u>5</u> | NOTICE OF RELATED CASE by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians (Gregory, Philip) (Filed on 8/2/2011) Modified on 8/3/2011 (vlk, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 08/02/2011) |
| 08/02/2011 | <u>6</u> | Declination to Proceed Before a U.S. Magistrate Judge by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 8/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/02/2011) |
| 08/03/2011 | <u>7</u> | Ex Parte Application <i>FOR CONTINUANCE OF FIRST CASE MANAGEMENT CONFERENCE AND SUBSEQUENTLY A CONTINUANCE OF DEADLINES PURSUANT TO ADR SCHEDULING ORDER</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Gregory, Philip) (Filed on 8/3/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/03/2011) |
| 08/03/2011 | <u>8</u> | Proposed Order re <u>7</u> Ex Parte Application <i>FOR CONTINUANCE OF FIRST CASE MANAGEMENT CONFERENCE AND SUBSEQUENTLY A CONTINUANCE OF DEADLINES PURSUANT TO ADR SCHEDULING ORDER</i> by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Gregory, Philip) (Filed on 8/3/2011) [Transferred |

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| | | | from California Northern on 12/15/2011.] (Entered: 08/03/2011) |
| 08/03/2011 | <u>9</u> | | CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (ig, COURT STAFF) (Filed on 8/3/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/04/2011) |
| 08/05/2011 | <u>10</u> | | ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Edward M. Chen for all further proceedings. Magistrate Judge Donna M. Ryu no longer assigned to the case. Signed by the Executive Committee on August 5, 2011. (cjl, COURT STAFF) (Filed on 8/5/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/05/2011) |
| 08/10/2011 | <u>11</u> | | CLERKS NOTICE the court has reviewed the motion for related case and determined that no cases are related and no reassignments shall occur. (dt, COURT STAFF) (Filed on 8/10/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/10/2011) |
| 08/11/2011 | <u>12</u> | | CASE MANAGEMENT SCHEDULING ORDER: Case Management Statement due by 9/23/2011. Case Management Conference set for 9/30/2011 09:00 AM in Courtroom 5, 17th Floor, San Francisco.. Signed by Judge Edward M. Chen on 8/11/11. (bpf, COURT STAFF) (Filed on 8/11/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/11/2011) |
| 08/11/2011 | <u>13</u> | | STANDING ORDER. Signed by Judge Edward M. Chen on 8/11/11. (bpf, COURT STAFF) (Filed on 8/11/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 08/11/2011) |
| 09/15/2011 | <u>14</u> | | Ex Parte Application re <u>12</u> Case Management Scheduling Order, <i>Motion to Vacate</i> , filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (Attachments: # <u>1</u> Proposed Order)(McDermott, Martin) (Filed on 9/15/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/15/2011 | <u>15</u> | | MOTION to Dismiss <i>Pursuant to Fed. R. Civ. P. 4(m)</i> filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. Motion Hearing set for 10/21/2011 01:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 9/29/2011. Replies due by 10/6/2011. (Attachments: # <u>1</u> Proposed Order)(McDermott, Martin) (Filed on 9/15/2011) [Transferred from California Northern on 12/15/2011.]. (Entered: 09/15/2011) |
| 09/15/2011 | <u>16</u> | | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace . Gary F. Locke served on 8/4/2011, answer due 10/3/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/15/2011 | <u>17</u> | | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Lisa P. Jackson served on 8/4/2011, answer due 10/3/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |

| | | |
|------------|-----------|---|
| 09/15/2011 | <u>18</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Robert M. Gates served on 8/10/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/15/2011 | <u>19</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Thomas J. Vilsack served on 8/4/2011, answer due 10/3/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/15/2011 | <u>20</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Kenneth L. Salazar served on 8/8/2011, answer due 8/29/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/15/2011 | <u>21</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Steven Chu served on 8/4/2011, answer due 10/3/2011. (Gregory, Philip) (Filed on 9/15/2011) Modified on 9/16/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 09/15/2011) |
| 09/16/2011 | <u>22</u> | CLERKS NOTICE Case Management Statement due by 10/14/2011. Case Management Conference set for 10/21/2011 01:30 PM in Courtroom 5, 17th Floor, San Francisco. (bpf, COURT STAFF) (Filed on 9/16/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/16/2011) |
| 09/22/2011 | <u>23</u> | MOTION of Thomas J. Beers for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611064990) filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 9/22/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/23/2011) |
| 09/28/2011 | <u>24</u> | MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. Motion Hearing set for 11/21/2011 02:00 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 10/12/2011. Replies due by 10/19/2011. (Olson, Julia) (Filed on 9/28/2011)[Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>25</u> | Declaration of Paul Epstein, M.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u> |

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| | |) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>26</u> | Declaration of Garrett Serrels in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>27</u> | Declaration of Grant Serrels in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>28</u> | Declaration of Ove Hoegh-Guldberg, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>29</u> | Declaration of Jaime Lynn Butler in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>30</u> | Declaration of Zoe Johnson in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>31</u> | Declaration of Nelson Kanuk in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>32</u> | Declaration of Pushker Kharecha, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec |

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| | | L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>33</u> | Declaration of David B. Lobell, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>34</u> | Declaration of Madeleine MacGillivray Wallace in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>35</u> | Declaration of Jonathan Overpeck, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>36</u> | Declaration of Stefan Rahmstorf, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>37</u> | Declaration of Sivan Kartha, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>38</u> | Declaration of James Gustave Speth in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>39</u> | Declaration of Kevin E. Trenberth, Sc.D. in Support of <u>24</u> MOTION for |

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| | | Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>40</u> | Declaration of Lise Van Susteren, M.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>41</u> | Proposed Order re <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>42</u> | Declaration of Alec Loorz in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>43</u> | EXHIBITS re <u>42</u> Declaration in Support, <i>Alec Loorz</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>42</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>44</u> | Declaration of Camille Parmesan, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>45</u> | Declaration of Arjun Makhijani, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>46</u> | Declaration of Julia A. Olson in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> |

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| | | filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>47</u> | EXHIBITS re <u>46</u> Declaration in Support,, <i>Julia A. Olson</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>46</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>48</u> | EXHIBITS re <u>46</u> Declaration in Support,, <i>Julia A. Olson, Exhibit L</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>46</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>49</u> | EXHIBITS re <u>46</u> Declaration in Support,, <i>Julia A. Olson, Exhibit M</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>46</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>50</u> | Declaration of Steven W. Running, Ph.D. in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>24</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/28/2011 | <u>51</u> | EXHIBITS re <u>46</u> Declaration in Support,, <i>Julia A. Olson, Exhibit N</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>46</u>) (Olson, Julia) (Filed on 9/28/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/28/2011) |
| 09/30/2011 | <u>52</u> | EXHIBIT A of the <u>42</u> Declaration of Alec Loorz in Support of <u>24</u> MOTION for Preliminary Injunction filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>24</u> , <u>42</u> , <u>43</u>) (slh, COURT STAFF) (Filed on 9/30/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 09/30/2011) |
| 10/03/2011 | <u>53</u> | ORDER by Judge Edward M. Chen granting <u>23</u> Motion for Pro Hac Vice (Beers) (bpf, COURT STAFF) (Filed on 10/3/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/03/2011) |
| 10/04/2011 | <u>54</u> | CLERKS NOTICE Case Management Conference set for 11/21/2011 02:00 PM in Courtroom 5, 17th Floor, San Francisco. Motion Hearing set for 11/21/2011 02:00 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. (bpf, COURT STAFF) (Filed on 10/4/2011) [Transferred |

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| | | from California Northern on 12/15/2011.] (Entered: 10/04/2011) |
| 10/07/2011 | <u>55</u> | NOTICE of Appearance by Thomas J. Beers <i>Pro Hac Vice</i> (Attachments: # <u>1</u> Order Granting Application for Admission of Attorney pro hac vice)(Beers, Thomas) (Filed on 10/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/07/2011) |
| 10/07/2011 | <u>56</u> | REPLY (re <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> , <u>15</u> MOTION to Dismiss Pursuant to Fed. R. Civ. P. 4(m) MOTION to Dismiss Pursuant to Fed. R. Civ. P. 4(m)) filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 10/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/07/2011) |
| 10/11/2011 | | ***Deadlines terminated (10/21 motion hearing #15 reset to 11/21 at 2:00 pm.). (bpf, COURT STAFF) (Filed on 10/11/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/11/2011) |
| 10/11/2011 | <u>57</u> | NOTICE by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians of <i>Curing Service on Defendants Pursuant to Rule 4(i)(4)(B)</i> (Olson, Julia) (Filed on 10/11/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/11/2011) |
| 10/12/2011 | <u>58</u> | STIPULATION <i>Regarding Briefing Schedule for Plaintiffs' Motion for Preliminary Injunction</i> by Steven Chu, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 10/12/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/12/2011) |
| 10/12/2011 | <u>59</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Steven Chu served on 10/7/2011, answer due 12/6/2011; Lisa P. Jackson served on 10/7/2011, answer due 12/6/2011; Gary F. Locke served on 10/7/2011, answer due 12/6/2011; Leon E. Panetta served on 10/7/2011, answer due 12/6/2011; Kenneth L. Salazar served on 10/7/2011, answer due 12/6/2011; Thomas J. Vilsack served on 10/7/2011, answer due 12/6/2011. (Gregory, Philip) (Filed on 10/12/2011) Modified on 10/13/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 10/12/2011) |
| 10/12/2011 | <u>60</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. U.S. Attorney served on 10/7/2011. (Gregory, Philip) (Filed on 10/12/2011) Modified on 10/13/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 10/12/2011) |
| 10/12/2011 | <u>61</u> | SUMMONS Returned Executed by Madeline W. , Grant S., Valerie Serrels, Alec L., WildEarth Guardians, Garrett S. , Victoria Loorz, Nina Grove, Kids vs. Global Warming, Janet Wallace , Zoe J.. Attorney General served on 10/7/11. (Gregory, Philip) (Filed on 10/12/2011) Modified on 10/13/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 10/12/2011) |

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| 10/13/2011 | <u>62</u> | STIPULATION AND ORDER on Briefing Schedule for Plaintiffs' Motion for Preliminary Injunction. Set/Reset Deadlines as to <u>24</u> MOTION for Preliminary Injunction. Responses due by 10/31/2011. Replies due by 11/14/2011. Motion Hearing set for 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Signed by Judge Edward M. Chen on 10/13/2011. (tmi, COURT STAFF) (Filed on 10/13/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/13/2011) |
| 10/31/2011 | <u>63</u> | Notice of Withdrawal of Motion <i>to Dismiss Pursuant to FRCP 4(m)</i> (McDermott, Martin) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>64</u> | Memorandum in Support of MOTION to Dismiss for Lack of Jurisdiction <i>and for Failure to State a Claim</i> , MOTION to Dismiss filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. Motion Hearing set for 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 11/14/2011. Replies due by 11/21/2011. (McDermott, Martin) (Filed on 10/31/2011) Modified on 11/1/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] Modified on 3/5/2012 (ztcb,). (Entered: 10/31/2011) |
| 10/31/2011 | <u>65</u> | MOTION to Intervene filed by National Association of Manufacturers. Motion Hearing set for 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 11/14/2011. Replies due by 11/21/2011. (Attachments: # <u>1</u> Proposed Order)(Miller, Samuel) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] Modified on 3/5/2012 (ztcb,). (Entered: 10/31/2011) |
| 10/31/2011 | <u>66</u> | Declaration of Dr. Chad Moutray in Support of <u>65</u> MOTION to Intervene filed by National Association of Manufacturers. (Related document(s) <u>65</u>) (Miller, Samuel) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>67</u> | MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i> filed by National Association of Manufacturers. Motion Hearing set for 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 11/14/2011. Replies due by 11/21/2011. (Attachments: # <u>1</u> Proposed Order)(Miller, Samuel) (Filed on 10/31/2011)[Transferred from California Northern on 12/15/2011.] Modified on 3/5/2012 (ztcb,). (Entered: 10/31/2011) |
| 10/31/2011 | <u>68</u> | MOTION to Shorten Time <i>and to Set Hearing on Defendants' Motion to Dismiss for Same Day as Hearing on Plaintiffs' Preliminary Injunction Motion -- Administrative Relief Sought</i> filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>69</u> | Certificate of Interested Entities by National Association of Manufacturers (Miller, Samuel) (Filed on 10/31/2011) [Transferred from California |

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| | | | Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>70</u> | | NOTICE by National Association of Manufacturers <i>Corporate Disclosure Statement</i> (Miller, Samuel) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>71</u> | | RESPONSE (re <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i>) filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 10/31/2011) |
| 10/31/2011 | <u>74</u> | | MOTION of David T. Buente, Jr. for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611066440) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>75</u> | | MOTION of Ragu-Jara Gregg for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611066442) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>76</u> | | MOTION of Joseph R. Guerra for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611066445) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>77</u> | | MOTION of Roger R. Martella, Jr. for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611066444) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>78</u> | | MOTION of Karen K. Mongoven for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 34611066447) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>79</u> | | MOTION of Quin M. Sorenson for leave to appear in Pro Hac Vice (Filing fee \$ 275, receipt number 334611066446) filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 10/31/2011 | <u>80</u> | | CERTIFICATE OF SERVICE by National Association of Manufacturers re <u>75</u> MOTION for leave to appear in Pro Hac Vice, <u>76</u> MOTION for leave to appear in Pro Hac Vice, <u>77</u> MOTION for leave to appear in Pro Hac Vice, <u>74</u> MOTION for leave to appear in Pro Hac Vice, <u>78</u> MOTION for leave to appear in Pro Hac Vice, <u>79</u> MOTION for leave to appear in Pro Hac Vice. (slh, COURT STAFF) (Filed on 10/31/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |

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| 11/01/2011 | <u>72</u> | Proposed Order <i>Granting Defendants' <u>68</u> Motion For Administrative Relief To Set Hearing Date On Defendants' Motion To Dismiss For Same Date As Hearing On Plaintiffs' Motion For Preliminary Injunction</i> by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 11/1/2011) Modified on 11/2/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 11/01/2011 | <u>73</u> | Proposed Order <i>Granting Defendants' <u>64</u> Motion To Dismiss</i> by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 11/1/2011) Modified on 11/2/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 11/01/2011) |
| 11/02/2011 | <u>81</u> | RESPONSE (re <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i>) <i>Proposed Intervenor's Opposition to Plaintiffs' Motion for Preliminary Injunction</i> filed by National Association of Manufacturers. (Miller, Samuel) (Filed on 11/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/02/2011) |
| 11/02/2011 | <u>82</u> | Declaration of William J. Warren–Hicks, PhD in Support of <u>81</u> Opposition/Response to Motion, <i>The National Association of Manufacturers' Opposition to Plaintiffs' Motion for Preliminary Injunction</i> filed by National Association of Manufacturers. (Related document(s) <u>81</u>) (Miller, Samuel) (Filed on 11/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/02/2011) |
| 11/02/2011 | <u>83</u> | Declaration of W. David Montgomery, PhD in Support of <u>81</u> Opposition/Response to Motion, <i>The National Association of Manufacturers Motion to Intervene and Opposition to Plaintiffs' Motion for Preliminary Injunction</i> filed by National Association of Manufacturers. (Related document(s) <u>81</u>) (Miller, Samuel) (Filed on 11/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/02/2011) |
| 11/02/2011 | <u>84</u> | Declaration of Steven Messner in Support of <u>81</u> Opposition/Response to Motion, <i>The National Association of Manufacturers Motion to Intervene and Opposition to Plaintiffs; Motion for Preliminary Injunction</i> filed by National Association of Manufacturers. (Related document(s) <u>81</u>) (Miller, Samuel) (Filed on 11/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/02/2011) |
| 11/02/2011 | <u>85</u> | Proposed Order re <u>81</u> Opposition/Response to Motion, <i>Denying Plaintiffs Motion for Preliminary Injunction</i> by National Association of Manufacturers. (Miller, Samuel) (Filed on 11/2/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/02/2011) |
| 11/03/2011 | <u>86</u> | ORDER Granting <u>68</u> Defendants' Motion for Administrative Relief and Setting (1) Defendants' Motion to Dismiss, (2) Intervenor's Motion to Intervene, and (3) Intervenor's Motion to Dismiss for Same Time as Hearing on Plaintiffs' Motion for Preliminary Injunction. Motions set for Hearing on 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Signed by Judge Edward M. Chen on 11/3/2011. (emcsec, COURT STAFF) (Filed on 11/3/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/03/2011) |

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| 11/03/2011 | <u>87</u> | | CLERKS NOTICE Case Management Statement due by 1/20/2012. Case Management Conference set for 1/27/2012 09:00 AM in Courtroom 5, 17th Floor, San Francisco. (bpf, COURT STAFF) (Filed on 11/3/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/03/2011) |
| 11/04/2011 | <u>88</u> | | Filed in error [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>89</u> | | ORDER by Judge Edward M. Chen granting <u>75</u> Motion for Pro Hac Vice (Gregg) (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>90</u> | | ORDER by Judge Edward M. Chen granting <u>76</u> Motion for Pro Hac Vice (Guerra) (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>91</u> | | ORDER by Judge Edward M. Chen granting <u>77</u> Motion for Pro Hac Vice (Martella) (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>92</u> | | ORDER by Judge Edward M. Chen granting <u>78</u> Motion for Pro Hac Vice (Mongaven) (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>93</u> | | ORDER by Judge Edward M. Chen granting <u>79</u> Motion for Pro Hac Vice (Sorenson) (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>94</u> | | ORDER re <u>74</u> MOTION for leave to appear in Pro Hac Vice (Buente) (Filing fee \$ 275, receipt number 34611066440.) filed by National Association of Manufacturers. Signed by Judge Edward M. Chen on 11/4/11. (bpf, COURT STAFF) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>95</u> | | MOTION to Transfer Case Pursuant to 28 USC section 1404(a) filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. Motion Hearing set for 11/28/2011 02:30 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 11/18/2011. Replies due by 11/22/2011. (Attachments: # <u>1</u> Proposed Order)(McDermott, Martin) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>96</u> | | MOTION to Shorten Time <i>and for Administrative Relief to Set Hearing on Defendants' Motion to Transfer Venue for November 28, 2011</i> filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (Attachments: # <u>1</u> Proposed Order)(McDermott, Martin) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/04/2011 | <u>97</u> | | MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. Motion Hearing set for 11/28/2011 02:30 PM |

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| | | in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. Responses due by 11/18/2011. Replies due by 11/22/2011. (Attachments: # <u>1</u> Declaration of Julia A. Olson, # <u>2</u> Proposed Order)(Olson, Julia) (Filed on 11/4/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/04/2011) |
| 11/07/2011 | <u>98</u> | ORDER by Judge Edward M. Chen Partially Granting Defendants' <u>96</u> Motion for Administrative Relief and Setting Hearing Date for Defendants' <u>95</u> Motion to Transfer and Resetting Hearing Dates for (1) Plaintiffs' <u>24</u> Motion for Preliminary Injunction; (2) Defendants' <u>64</u> Motion to Dismiss; (3) Intervenor's <u>65</u> Motion to Intervene; (4) Intervenor's <u>67</u> Motion to Dismiss; and (5) Plaintiffs' <u>97</u> Motion to Strike. (emcsec, COURT STAFF) (Filed on 11/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/07/2011) |
| 11/07/2011 | | Set/Reset Deadlines as to <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> . Motion Hearing set for 12/15/2011 03:00 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. (bpf, COURT STAFF) (Filed on 11/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/07/2011) |
| 11/07/2011 | | Set/Reset Deadlines as to <u>65</u> MOTION to Intervene, <u>64</u> MOTION to Dismiss for Lack of Jurisdiction <i>and for Failure to State a Claim</i> , <u>97</u> MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support,, <u>67</u> MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i> . Responses due by 11/14/2011. Replies due by 11/21/2011. Motion Hearing set for 12/15/2011 03:00 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. (bpf, COURT STAFF) (Filed on 11/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/07/2011) |
| 11/07/2011 | | Set/Reset Deadlines as to <u>95</u> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i> . Motion Hearing set for 11/30/2011 03:45 PM in Courtroom 5, 17th Floor, San Francisco before Hon. Edward M. Chen. (bpf, COURT STAFF) (Filed on 11/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/07/2011) |
| 11/10/2011 | <u>99</u> | RESPONSE (re <u>97</u> MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support,) <i>Proposed Intervenor-Defendant's Opposition to Plaintiffs' Motion To Strike, or, in the Alternative, Administrative Motion to Allow Filing of the NAM's Opposition</i> |

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| | | <i>to Plaintiffs' Preliminary Injunction Motion and to Set Date for Plaintiffs' Reply Brief</i> filed by National Association of Manufacturers. (Attachments: # <u>1</u> Proposed Order)(Miller, Samuel) (Filed on 11/10/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/10/2011) |
| 11/14/2011 | <u>100</u> | REPLY (re <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i>) filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>101</u> | Declaration of Pushker Kharecha, Ph.D. in Support of <u>100</u> Reply to Opposition/Response, <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof Supplemental</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>100</u> , <u>24</u>) (Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>102</u> | RESPONSE (re <u>65</u> MOTION to Intervene) by NAM filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Proposed Order Denying Intervention)(Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>103</u> | Declaration of Julia A. Olson in Support of <u>102</u> Opposition/Response to Motion, <i>to NAM's Motion to Intervene</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Related document(s) <u>102</u>) (Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>104</u> | Declaration of Julia A. Olson in Support of <u>24</u> MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities in Support Thereof</i> , <u>100</u> Reply to Opposition/Response, <i>Second Declaration</i> filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Exhibit B, # <u>2</u> Exhibit C, # <u>3</u> Exhibit D, # <u>4</u> Exhibit E, # <u>5</u> Exhibit F, # <u>6</u> Exhibit G, # <u>7</u> Exhibit H, # <u>8</u> Exhibit I, # <u>9</u> Exhibit J)(Related document(s) <u>24</u> , <u>100</u>) (Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>105</u> | RESPONSE (re <u>67</u> MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i>) in Opposition filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Proposed Order Denying Motion to Dismiss)(Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |

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| 11/14/2011 | <u>106</u> | | RESPONSE (re <u>64</u> MOTION to Dismiss for Lack of Jurisdiction <i>and for Failure to State a Claim</i>) in Opposition filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Proposed Order Denying Motion to Dismiss)(Olson, Julia) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>107</u> | | MOTION to File Amicus Curiae Brief filed by James Hanson. Responses due by 11/28/2011. Replies due by 12/5/2011. (Tomaselli, Paige) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>108</u> | | EXHIBITS re <u>107</u> MOTION to File Amicus Curiae Brief filed by James Hanson. (Related document(s) <u>107</u>) (Tomaselli, Paige) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>109</u> | | EXHIBITS re <u>108</u> Exhibits <i>Exhibit 1 to Proposed Brief Amicus Curiae</i> filed by James Hanson. (Related document(s) <u>108</u>) (Tomaselli, Paige) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>110</u> | | Proposed Order re <u>107</u> MOTION to File Amicus Curiae Brief by James Hanson. (Tomaselli, Paige) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>111</u> | | Declaration of Daniel Galpern in Support of <u>107</u> MOTION to File Amicus Curiae Brief filed by James Hanson. (Related document(s) <u>107</u>) (Tomaselli, Paige) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/14/2011) |
| 11/14/2011 | <u>114</u> | | MOTION of Daniel Galpern for leave to appear in Pro Hac Vice (Filing fee \$ 305, receipt number 34611066953) filed by James E. Hansen. (Attachments: # <u>1</u> Proposed Order)(slh, COURT STAFF) (Filed on 11/14/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/15/2011) |
| 11/15/2011 | <u>112</u> | | RESPONSE (re <u>67</u> MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i>) Corrected Filing filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Attachments: # <u>1</u> Proposed Order Denying Motion to Dismiss)(Olson, Julia) (Filed on 11/15/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/15/2011) |
| 11/15/2011 | <u>113</u> | | CERTIFICATE OF SERVICE by James Hanson (Tomaselli, Paige) (Filed on 11/15/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/15/2011) |
| 11/15/2011 | <u>115</u> | | CERTIFICATE OF SERVICE by James E. Hansen re <u>107</u> MOTION to File Amicus Curiae Brief (Tomaselli, Paige) (Filed on 11/15/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/15/2011) |
| 11/16/2011 | <u>116</u> | | ORDER by Judge Edward M. Chen granting <u>114</u> Motion for Pro Hac Vice |

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| | | (Galpern) (bpf, COURT STAFF) (Filed on 11/16/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/16/2011) |
| 11/18/2011 | <u>117</u> | STATEMENT in Support re <u>95</u> MOTION to Transfer Case Pursuant to 28 USC section 1404(a) filed by National Association of Manufacturers. (Gregg, Ragu-Jara) (Filed on 11/18/2011) Modified on 11/21/2011 (slh, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 11/18/2011) |
| 11/18/2011 | <u>118</u> | RESPONSE (re <u>95</u> MOTION to Transfer Case Pursuant to 28 USC section 1404(a) MOTION to Transfer Case Pursuant to 28 USC section 1404(a)) in Opposition filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Olson, Julia) (Filed on 11/18/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/18/2011) |
| 11/18/2011 | <u>119</u> | Declaration of Julia A. Olson in Support of <u>118</u> Opposition/Response to Motion, filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>118</u>) (Olson, Julia) (Filed on 11/18/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/18/2011) |
| 11/18/2011 | <u>120</u> | Declaration of Victoria Loorz in Support of <u>118</u> Opposition/Response to Motion, filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Related document(s) <u>118</u>) (Olson, Julia) (Filed on 11/18/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/18/2011) |
| 11/18/2011 | <u>121</u> | Proposed Order re <u>118</u> Opposition/Response to Motion, by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Loorz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Olson, Julia) (Filed on 11/18/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/18/2011) |
| 11/21/2011 | <u>122</u> | REPLY (re <u>65</u> MOTION to Intervene) filed by National Association of Manufacturers. (Gregg, Ragu-Jara) (Filed on 11/21/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/21/2011) |
| 11/21/2011 | <u>123</u> | *** FILED IN ERROR. PLEASE SEE DOCKET # <u>125</u> . *** REPLY (re <u>67</u> MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i>) filed by National Association of Manufacturers. (Gregg, Ragu-Jara) (Filed on 11/21/2011) Modified on 11/22/2011 (ewn, COURT STAFF). [Transferred from California Northern on 12/15/2011.] (Entered: 11/21/2011) |
| 11/21/2011 | <u>124</u> | REPLY (re <u>64</u> MOTION to Dismiss for Lack of Jurisdiction <i>and for Failure to State a Claim</i>) filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 11/21/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/21/2011) |
| 11/22/2011 | <u>125</u> | |

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| | | REPLY (re <u>67</u> MOTION to Dismiss <i>Intervenor's Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; and Memorandum of Points and Authorities in Support Thereof</i>) <i>CORRECTION OF DOCKET # 123</i> filed by National Association of Manufacturers. (Gregg, Ragu-Jara) (Filed on 11/22/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/22/2011) |
| 11/22/2011 | <u>126</u> | NOTIFICATION OF REQUEST TO VIDEO RECORD December 15, 2011 Motion Hearing as part of Cameras in the Courtroom Pilot Project. NO LATER THAN DECEMBER 1, 2011, all parties must complete the attached Party Response to Request for Video Recording and email it to cameras@cand.uscourts.gov.(Attachments: # <u>1</u> Party Response to Request for Video Recording) (cmw, COURT STAFF) (Filed on 11/22/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/22/2011) |
| 11/22/2011 | <u>127</u> | REPLY (re <u>95</u> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i>) filed by Steven Chu, Robert M. Gates, Lisa P. Jackson, Gary F. Locke, Leon E. Panetta, Kenneth L. Salazar, Thomas J. Vilsack. (McDermott, Martin) (Filed on 11/22/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/22/2011) |
| 11/25/2011 | <u>128</u> | REPLY (re <u>97</u> MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support, MOTION to Strike <u>82</u> Declaration in Support, <u>85</u> Proposed Order, <u>81</u> Opposition/Response to Motion, <u>84</u> Declaration in Support, <u>83</u> Declaration in Support,) filed by Nina Grove, Zoe J., Kids vs. Global Warming, Alec L., Victoria Looz, Grant S., Garrett S., Valerie Serrels, Madeline W., Janet Wallace, WildEarth Guardians. (Olson, Julia) (Filed on 11/25/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 11/25/2011) |
| 12/01/2011 | <u>129</u> | Notice Regarding Proposed Video Recording of December 15, 2011 Motion Hearing. (cmw, COURT STAFF) (Filed on 12/1/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/01/2011) |
| 12/01/2011 | <u>130</u> | Minute Entry: Motion Hearing held on 11/30/2011 before Edward M. Chen (Date Filed: 12/1/2011) re <u>95</u> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i> MOTION to Transfer Case <i>Pursuant to 28 USC section 1404(a)</i> filed by Steven Chu, Robert M. Gates, Thomas J. Vilsack, Gary F. Locke, Kenneth L. Salazar, Lisa P. Jackson, Leon E. Panetta. Court took matter under submission and will issue order (Court Reporter Jim Yeomans.) (bpf, COURT STAFF) (Date Filed: 12/1/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/01/2011) |
| 12/06/2011 | <u>131</u> | ORDER by Judge Edward M. Chen Granting <u>95</u> Defendants' Motion to Transfer Venue. (emcsec, COURT STAFF) (Filed on 12/6/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/06/2011) |
| 12/07/2011 | <u>132</u> | MOTION to File Amicus Curiae Brief filed by Alec L.. Responses due by 12/21/2011. Replies due by 12/28/2011. (Middleton, Jennifer) (Filed on 12/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/07/2011) |

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| 12/07/2011 | <u>133</u> | | Proposed Order by Alec L.. (Middleton, Jennifer) (Filed on 12/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/07/2011) |
| 12/07/2011 | <u>134</u> | | Declaration of Jennifer J. Middleton <i>Amicus Counsel – Exhibit B</i> filed by Alec L.. (Middleton, Jennifer) (Filed on 12/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/07/2011) |
| 12/07/2011 | <u>135</u> | | Brief for <i>Amicus Curiae Law Professors – Exhibit A</i> filed by Alec L.. (Middleton, Jennifer) (Filed on 12/7/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/07/2011) |
| 12/09/2011 | <u>136</u> | | Case electronically transferred to the District of Columbia. (slh, COURT STAFF) (Filed on 12/9/2011) [Transferred from California Northern on 12/15/2011.] (Entered: 12/09/2011) |
| 12/14/2011 | <u>137</u> | | Case transferred in from District of California Northern; Case Number 3:11-cv-02203. Original file certified copy of transfer order and docket sheet received. (Additional attachment(s) added on 12/15/2011: # <u>2</u> Civil Cover Sheet) (zrdj,). (Entered: 12/15/2011) |
| 12/16/2011 | <u>138</u> | | NOTICE of Appearance by Timothy K. Webster on behalf of NATIONAL ASSOCIATION OF MANUFACTURERS (Webster, Timothy) (Entered: 12/16/2011) |
| 01/10/2012 | <u>139</u> | | NOTICE of Appearance by James R. Wedeking on behalf of NATIONAL ASSOCIATION OF MANUFACTURERS (Wedeking, James) (Entered: 01/10/2012) |
| 01/17/2012 | <u>140</u> | | NOTICE of Appearance by David T. Buente on behalf of NATIONAL ASSOCIATION OF MANUFACTURERS (Buente, David) (Entered: 01/17/2012) |
| 02/08/2012 | <u>141</u> | | ORDER: It is hereby ORDERED that counsel for all parties shall enter appearances within ten (10) days of this Order; it is: FURTHER ORDERED that, within twenty-one (21) days of this Order, the parties shall meet and confer and Plaintiffs shall cause to be filed a Joint Status Report setting forth the following: (1) what motions, if any, remain pending; (2) whether any party wishes to withdraw any pending motion; and (3) whether any party believes any pending motion is now moot. It is FURTHER ORDERED that the Clerk of the Court shall send a copy of this Order to counsel for Plaintiffs at the following addresses: Joseph W. Cotchett, Philip L. Gregory, Paul N. McCloskey, COTCHETT PITRE & McCARTHY, LLP, San Francisco Airport Office Center 840 Malcolm Road Burlingame, CA 94010. Julia Olson WILD EARTH ADVOCATES, 2985 Adams St. Eugene, OR 97405. Signed by Judge Robert L. Wilkins on 2/8/2012. (tcb) (Entered: 02/08/2012) |
| 02/08/2012 | <u>142</u> | | NOTICE of Appearance by Martin F. McDermott on behalf of STEVEN CHU, ROBERT M. GATES, LISA P. JACKSON, GARY F. LOCKE, LEON E. PANETTA, KENNETH L. SALAZAR, THOMAS J. VILSACK (McDermott, Martin) (Entered: 02/08/2012) |
| 02/18/2012 | <u>143</u> | | NOTICE of Appearance by Tanya Sanerib on behalf of All Plaintiffs (Sanerib, Tanya) (Entered: 02/18/2012) |

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| 02/18/2012 | <u>144</u> | Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Philip L. Gregory, :Firm– Cotchett, Pitre & McCarthy, LLP, :Address– 840 Malcolm Road Burlingame, California 94010. Phone No. – 650–697–6000. Fax No. – 650–697–0577 by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Sanerib, Tanya) (Entered: 02/18/2012) |
| 02/18/2012 | <u>145</u> | Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Julia A. Olson, :Firm– Wild Earth Advocates, :Address– 2985 Adams St. Eugene, OR 97405. Phone No. – 541–344–7066. Fax No. – 541–344–7061 by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Sanerib, Tanya) (Entered: 02/18/2012) |
| 02/18/2012 | <u>146</u> | Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Thomas J. Beers, :Firm– Beers Law Offices, :Address– 234 East Pine Street PO Box 7968 Missoula, MT 59807–7968. Phone No. – 406–728–4888. Fax No. – 406–728–8445 by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Sanerib, Tanya) (Entered: 02/18/2012) |
| 02/21/2012 | | MINUTE ORDER granting <u>144</u> Motion for Leave to Appear Pro Hac Vice of Philip L. Gregory ; granting <u>145</u> Motion for Leave to Appear Pro Hac Vice of Julia A. Olson ; granting <u>146</u> Motion for Leave to Appear Pro Hac Vice of Thomas J. Beers. Mr. Gregory, Ms. Olson and Mr. Beers are admitted pro hac vice to appear in this matter on behalf of Plaintiff.. Signed by Judge Robert L. Wilkins on 2/21/2012. (tcb) (Entered: 02/21/2012) |
| 02/27/2012 | <u>147</u> | MOTION to Intervene as Defendants by DELTA CONSTRUCTION COMPANY, INC., DALTON TRUCKING, INC., SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC., CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, ENGINEERING & UTILITY CONTRACTORS ASSOCIATION (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration of Andrew J. Vasconi, # <u>4</u> Declaration of Andrew J. Vasconi, # <u>5</u> Declaration of Peter L. Rasic, # <u>6</u> Declaration of Norman R. "Skip" Brown, # <u>7</u> Declaration of Emily Cohen, # <u>8</u> Declaration of Lee Brown, # <u>9</u> Declaration of Robert McClernon, # <u>10</u> Declaration of Larry C. Russell, # <u>11</u> Proposed Motion to Dismiss, # <u>12</u> Text of Proposed Order –Motion to Dismiss)(znmw,) (Entered: 02/28/2012) |
| 02/29/2012 | <u>148</u> | STATUS REPORT by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. (Sanerib, Tanya) (Entered: 02/29/2012) |
| 02/29/2012 | <u>149</u> | MOTION for Hearing, MOTION for Leave to File <i>Supplemental Briefing</i> by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, |

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| | | MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Text of Proposed Order)(Sanerib, Tanya) (Entered: 02/29/2012) |
| 03/01/2012 | | MINUTE ORDER denying <u>147</u> Motion to Intervene as to Defendants DELTA CONSTRUCTION COMPANY, INC.; DALTON TRUCKING, INC.; SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.; CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION; and ENGINEERING & UTILITY CONTRACTORS ASSOCIATION; It is ORDERED that the Motion is DENIED without prejudice for failure to comply with Local Rule 7(M). Signed by Judge Robert L. Wilkins on 3/01/2012. (ad) (Entered: 03/01/2012) |
| 03/01/2012 | | MINUTE ORDER: A telephonic status conference and hearing on <u>149</u> Plaintiffs' Motion for Leave to File Supplemental Briefing has been set for Monday, March 5, 2012 at 2:00 PM EST. Plaintiffs are responsible for coordinating the conference call to the Court. The parties are directed to JOINTLY contact chambers at (202) 354-3480. Signed by Judge Robert L. Wilkins on 3/01/2012. (ad) (Entered: 03/01/2012) |
| 03/02/2012 | | Set/Reset Hearing: A Telephonic Status Conference is set for 3/5/2012 at 02:00 PM EST in Chambers before Judge Robert L. Wilkins. The parties are directed to JOINTLY contact chambers at (202) 354-3480. (ad) (Entered: 03/02/2012) |
| 03/02/2012 | <u>150</u> | MOTION MOTION FOR THE COURT TO CONSIDER MOVANTS MOTION TO INTERVENE AT THE COURTS EARLIEST CONVENIENCE AND TO ALLOW PROPOSED INTERVENOR-DEFENDANT TO PARTICIPATE IN THE STATUS CONFERENCE ON MARCH 5, 2012 TO re <u>65</u> by NATIONAL ASSOCIATION OF MANUFACTURERS (Attachments: # <u>1</u> Text of Proposed Order)(Buente, David) (Entered: 03/02/2012) |
| 03/02/2012 | | MIINUTE ORDER: All proposed intervenors in this case shall participate in the telephonic Status Conference scheduled for March 5, 2012 at 2:00 PM EST. The proposed intervenors shall coordinate with Plaintiffs to make the necessary arrangements to join the call to the Court. Signed by Judge Robert L. Wilkins on 3/2/2012. (lrlw3) (Entered: 03/02/2012) |
| 03/02/2012 | <u>151</u> | RESPONSE re <u>149</u> MOTION for Hearing MOTION for Leave to File <i>Supplemental Briefing</i> filed by STEVEN CHU, ROBERT M. GATES, LISA P. JACKSON, GARY F. LOCKE, LEON E. PANETTA, KENNETH L. SALAZAR. (McDermott, Martin) (Entered: 03/02/2012) |
| 03/05/2012 | <u>152</u> | ORDER granting in part and denying in part <u>149</u> MOTION for Hearing, MOTION for Leave to File Supplemental Briefing; A hearing is set for April 2, 2012 at 2:00 P.M. EST in courtroom 17 before Judge Robert L. Wilkins on pending motions to intervene (National Association of Manufacturers Motion for Intervention (Docket No. 65) and Delta Construction Company, Inc. et al.s Motion for Intervention (yet to be filed)) and for further status regarding Defendants Motion to Dismiss (Docket No. 64) and Plaintiffs Motion for Preliminary Injunction (Docket No. 24). It is FURTHER ORDERED that Delta Construction Company, Inc. et al. shall file their renewed motion for intervention by no later than March 6, 2012; oppositions shall be filed by |

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| | | March 16, 2012; and replies, if any, shall be filed by March 23, 2012. It is FURTHER ORDERED that National Association of Manufacturers Motion to Consider Movants Motion to Intervene (Docket No. 150) is DENIED as moot. Signed by Judge Robert L. Wilkins on 3/5/2012. (tcb) (Entered: 03/05/2012) |
| 03/05/2012 | <u>153</u> | MOTION to Intervene as Defendants by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC. (Attachments: # <u>1</u> Exhibits and Declaration of Service, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration of Andrew J. Vasconi in Support of Engineering and Utility Contractors Associations Motion to Intervene, # <u>4</u> Declaration of Terry Klenske in Support of Dalton Trucking, Inc.s Motion to Intervene, # <u>5</u> Declaration of Peter L. Rasic in Support of Southern California Contractors Association Inc.s Motion to Intervene, # <u>6</u> Declaration of Norman R. Skip Brown in Support of Delta Construction Company, Inc.s Motion to Intervene, # <u>7</u> Declaration of Emily Cohen in Support of Engineering and Utility Contractors Associations Motion to Intervene, # <u>8</u> Declaration of Lee Brown in Support of California Dump Truck Owners Associations Motion to Intervene, # <u>9</u> Declaration of Robert McClernon in Support of California Dump Truck Owners Associations Motion to Intervene, # <u>10</u> Declaration of Larry C. Russell in Support of Southern California Contractors Associations Motion to Intervene, # <u>11</u> Declaration of Theodore Hazdi-Antich in Support of Defendants-Intervenors Motion to Intervene, # <u>12</u> Proposed Motion to Dismiss, # <u>13</u> Text of Proposed Order – Motion to Dismiss)(znmw,) (Entered: 03/07/2012) |
| 03/16/2012 | <u>154</u> | Memorandum in opposition to re <u>153</u> MOTION to Intervene filed by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. (Attachments: # <u>1</u> Text of Proposed Order Denying Defendants-Intervenors' Motion to Intervene)(Olson, Julia) (Entered: 03/16/2012) |
| 03/20/2012 | <u>155</u> | MOTION to Strike <u>154</u> Memorandum in Opposition, (<i>Strike Portion of Opposition Addressing the NAM's Motion to Intervene</i>), MOTION for Leave to File <i>Supplemental Brief (as alternative relief)</i> by NATIONAL ASSOCIATION OF MANUFACTURERS (Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Buente, David) (Entered: 03/20/2012) |
| 03/22/2012 | | MINUTE ORDER: It is hereby ORDERED that National Association of Manufacturers (NAM) Motion to Strike [DKT# 155] is GRANTED in part and DENIED in part. NAM shall submit a 7-page supplemental reply brief by March 26, 2012 to briefly address Plaintiffs arguments opposing intervention. Signed by Judge Robert L. Wilkins on 3/22/2012. (tcb) (Entered: 03/22/2012) |
| 03/23/2012 | <u>156</u> | REPLY to opposition to motion re <u>147</u> MOTION to Intervene filed by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, |

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| | | SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.. (Hadzi-Antich, Theodore) (Entered: 03/23/2012) |
| 03/26/2012 | <u>157</u> | SUPPLEMENTAL MEMORANDUM to re <u>153</u> MOTION to Intervene <i>RESPONSE BY TO PLAINTIFFS MEMORANDUM IN OPPOSITION TO PROPOSED DEFENDANTS-INTERVENORS DELTA CONSTRUCTION COMPANY INC., ET AL.S MOTION TO INTERVENE</i> filed by NATIONAL ASSOCIATION OF MANUFACTURERS. (Buente, David) (Entered: 03/26/2012) |
| 03/27/2012 | <u>158</u> | NOTICE of Appearance by Theodore Hadzi-Antich on behalf of CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC. (Hadzi-Antich, Theodore) (Entered: 03/27/2012) |
| 04/02/2012 | | Minute Entry for proceedings held before Judge Robert L. Wilkins: Motion Hearing held and concluded on 4/2/2012 re <u>65</u> NATIONAL ASSOCIATION OF MANUFACTURERS MOTION to Intervene; Heard and GRANTED for reasons stated on the record in open court. <u>153</u> MOTION to Intervene by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, DALTON TRUCKING, INC., SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC., DELTA CONSTRUCTION COMPANY, INC.; Heard and GRANTED for reasons stated on the record in open court. A Hearing on the pending Motion to Dismiss is set for 5/11/2012 09:30 AM in Courtroom 17 before Judge Robert L. Wilkins. Oppositions due by 4/16/2012, Consolidated Intervenor Reply due by 4/23/2012. Any further action on the Plaintiffs' <u>24</u> Motion for Preliminary Injunction shall be held in abeyance pending ruling on the Motion to Dismiss. (Court Reporter Rebecca Stonestreet) (tcb) (Entered: 04/03/2012) |
| 04/02/2012 | <u>159</u> | MOTION to Dismiss by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC. (Attachments: # <u>1</u> Text of Proposed Order)(rdj) (Entered: 04/03/2012) |
| 04/16/2012 | <u>160</u> | Memorandum in opposition to re <u>67</u> , <u>159</u> MOTION to Dismiss <i>by Defendant Intervenors</i> filed by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. (Attachments: # <u>1</u> Text of Proposed Order)(Olson, Julia) (Entered: 04/16/2012) |
| 04/17/2012 | <u>161</u> | NOTICE of Appearance by Quin M Sorenson on behalf of NATIONAL ASSOCIATION OF MANUFACTURERS (Sorenson, Quin) (Entered: 04/17/2012) |
| 04/23/2012 | <u>162</u> | REPLY to opposition to motion re <u>67</u> , <u>159</u> MOTION to Dismiss <i>of Intervenor-Defendants</i> filed by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION |

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| | | COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.. (Sorenson, Quin) (Entered: 04/23/2012) |
| 04/23/2012 | <u>163</u> | MOTION for Leave to File an Amicus Curiae Brief by RONALD A. CASS, ROBERT A. DESTRO, JAMES L. HUFFMAN, JASON SCOTT JOHNSTON (Attachments: # <u>1</u> Proposed Amicus Brief, # <u>2</u> Text of Proposed Order)(znmw,) (Entered: 04/24/2012) |
| 04/25/2012 | <u>164</u> | ORDER granting <u>163</u> MOTION for Leave to File an Amicus Curiae Brief; and Law Professors shall be permitted to participate in these proceedings as amici curiae, including filing a brief with this Court.. Signed by Judge Robert L. Wilkins on 4/25/2012. (tcb) (Entered: 04/25/2012) |
| 04/25/2012 | <u>165</u> | AMICUS BRIEF by RONALD A. CASS, ROBERT A. DESTRO, JAMES L. HUFFMAN, JASON SCOTT JOHNSTON. (rdj) (Entered: 04/25/2012) |
| 05/02/2012 | <u>166</u> | MOTION for Leave to File <i>Plaintiffs' Memorandum of Points and Authorities in Response to Brief of Amicus Curiae Huffman, et al.</i> , by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Exhibit Plaintiffs' Memorandum of Points and Authorities in Response to brief of Amicus Curiae Huffman, et al., # <u>2</u> Text of Proposed Order Granting Plaintiffs' Motion for Leave to File Memorandum)(Olson, Julia) (Entered: 05/02/2012) |
| 05/03/2012 | <u>167</u> | RESPONSE re <u>166</u> MOTION for Leave to File <i>Plaintiffs' Memorandum of Points and Authorities in Response to Brief of Amicus Curiae Huffman, et al.</i> , filed by ROBERT M. GATES, LISA P. JACKSON, GARY F. LOCKE, LEON EDWARD PANETTA, KENNETH L. SALAZAR, THOMAS J. VILSACK. (McDermott, Martin) (Entered: 05/03/2012) |
| 05/04/2012 | | MINUTE ORDER denying <u>166</u> MOTION for Leave to File Plaintiffs' Memorandum of Points and Authorities in Response to Brief of Amicus Curiae Huffman, et al. Signed by Judge Robert L. Wilkins on 5/4/2012. (tcb) (Entered: 05/04/2012) |
| 05/09/2012 | <u>168</u> | NOTICE of Appearance by Joseph Robert Guerra on behalf of NATIONAL ASSOCIATION OF MANUFACTURERS (Guerra, Joseph) (Entered: 05/09/2012) |
| 05/10/2012 | <u>169</u> | TRANSCRIPT OF PROCEEDINGS before Judge Robert L. Wilkins held on April 2, 2012; Page Numbers: 1 – 75. Date of Issuance: May 10, 2012. Court Reporter/Transcriber Rebecca Stonestreet, Telephone number 202-354-3249, Court Reporter Email Address : kingreporter2@verizon.net.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.<P> NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are |

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| | | | filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov .<P></P> Redaction Request due 5/31/2012. Redacted Transcript Deadline set for 6/10/2012. Release of Transcript Restriction set for 8/8/2012.(Stonestreet, Rebecca) (Entered: 05/10/2012) |
| 05/11/2012 | | | Minute Entry for proceedings held before Judge Robert L. Wilkins: Motion Hearing held and concluded on 5/11/2012. Defendant's and Intervenor's pending MOTION to Dismiss; Argument Heard and this matter is taken under advisement. Court to issue a written ruling. (Court Reporter Rebecca Stonestreet) (tcb) (Entered: 05/14/2012) |
| 05/24/2012 | <u>170</u> | | LEAVE TO FILE DENIED as to Lynn Augstein, Letter to the Court. "Leave to file denied. See Local Rule 5.1(b)", Signed by Judge Robert L. Wilkins on 5/24/2012. This document is unavailable as the Court denied its filing. (rdj) (Entered: 05/25/2012) |
| 05/25/2012 | <u>171</u> | | TRANSCRIPT OF PROCEEDINGS before Judge Robert L. Wilkins held on May 11, 2012; Page Numbers: 1 – 109. Date of Issuance:May 25, 2012. Court Reporter/Transcriber Rebecca Stonestreet, Telephone number 202–354–3249, Court Reporter Email Address : kingreporter2@verizon.net.<P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter.<P> NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at ww.dcd.uscourts.gov .<P></P> Redaction Request due 6/15/2012. Redacted Transcript Deadline set for 6/25/2012. Release of Transcript Restriction set for 8/23/2012.(Stonestreet, Rebecca) (Entered: 05/25/2012) |
| 05/31/2012 | <u>172</u> | 52 | MEMORANDUM AND OPINION re : Defendants and Defendant–Intervenors <u>64</u> , <u>67</u> & <u>159</u> Motions to Dismiss. Signed by Judge Robert L. Wilkins on 5/31/2012. (tcb) (Entered: 05/31/2012) |
| 05/31/2012 | <u>173</u> | 51 | ORDER granting Defendants and Defendant–Intervenors <u>64</u> , <u>67</u> & <u>159</u> Motions to Dismiss;and it is further ORDERED that Plaintiffs First Amended Complaint is hereby dismissed. SO ORDERED. Signed by Judge Robert L. Wilkins on 5/31/2012. (tcb) (Entered: 05/31/2012) |
| 06/28/2012 | <u>174</u> | | MOTION for Reconsideration by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Gregory, Philip) (Entered: 06/28/2012) |
| 06/28/2012 | <u>175</u> | | MEMORANDUM re <u>174</u> MOTION for Reconsideration <i>Memorandum In Support Thereof</i> by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., |

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|------------|------------|----|--|
| | | | VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Text of Proposed Order)(Gregory, Philip) Modified on 6/29/2012 to correct event(rdj). (Entered: 06/28/2012) |
| 06/29/2012 | <u>176</u> | | NOTICE <i>Supplemental Motion for Reconsideration</i> by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS re <u>174</u> MOTION for Reconsideration (Gregory, Philip) (Entered: 06/29/2012) |
| 07/16/2012 | <u>177</u> | | Memorandum in opposition to re <u>175</u> MOTION for Reconsideration re <u>174</u> MOTION for Reconsideration <i>Memorandum In Support Thereof</i> , <u>174</u> MOTION for Reconsideration filed by ROBERT M. GATES, LISA P. JACKSON, GARY F. LOCKE, LEON EDWARD PANETTA, KENNETH LEE SALAZAR, THOMAS J. VILSACK. (McDermott, Martin) (Entered: 07/16/2012) |
| 07/16/2012 | <u>178</u> | | Memorandum in opposition to re <u>175</u> MOTION for Reconsideration re <u>174</u> MOTION for Reconsideration <i>Memorandum In Support Thereof</i> , <u>174</u> MOTION for Reconsideration filed by CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, DALTON TRUCKING, INC., DELTA CONSTRUCTION COMPANY, INC., ENGINEERING & UTILITY CONTRACTORS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.. (Sorenson, Quin) (Entered: 07/16/2012) |
| 07/26/2012 | <u>179</u> | | REPLY to opposition to motion re <u>174</u> MOTION for Reconsideration filed by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. (Olson, Julia) (Entered: 07/26/2012) |
| 12/14/2012 | <u>180</u> | | NOTICE of Appearance by Jordanna G. Thigpen on behalf of All Plaintiffs (Thigpen, Jordanna) (Entered: 12/14/2012) |
| 12/14/2012 | <u>181</u> | | NOTICE OF WITHDRAWAL OF APPEARANCE as to NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. Attorney Tanya Sanerib terminated. (Sanerib, Tanya) (Entered: 12/14/2012) |
| 02/08/2013 | <u>182</u> | | MOTION to Substitute Party <i>and Request for Status Conference</i> by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS (Attachments: # <u>1</u> Text of Proposed Order Attachment 1)(Gregory, Philip) (Entered: 02/08/2013) |
| 02/11/2013 | | | MINUTE ORDER: The Motion to Substitute Party is hereby DENIED as there is no need to formally substitute the Acting Secretary of Commerce because Federal Rule of Civil Procedure 25(d) makes such substitution automatic. The Motion for a Status Conference is also DENIED. Signed by Judge Robert L. Wilkins on 2/11/2013. (tcb) (Entered: 02/11/2013) |
| 05/22/2013 | <u>183</u> | 40 | |

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| | | | MEMORANDUM OPINION re: Plaintiffs' <u>174</u> Motion for Reconsideration. Signed by Judge Robert L. Wilkins on 5/22/2013. (lclrw3) (Entered: 05/22/2013) |
| 05/22/2013 | <u>184</u> | 39 | ORDER denying Plaintiffs' <u>174</u> Motion for Reconsideration. Upon consideration of Plaintiffs' Motion for Reconsideration, Defendants' and Intervenors' Oppositions thereto, and Plaintiffs' Reply, and the entire record herein, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby ORDERED that Plaintiffs' Motion is DENIED. Signed by Judge Robert L. Wilkins on 5/22/2013. (lclrw3) (Entered: 05/22/2013) |
| 06/27/2013 | <u>185</u> | 37 | NOTICE OF APPEAL TO DC CIRCUIT COURT re <u>172</u> , <u>173</u> , <u>183</u> & <u>184</u> by NINA GROVE, ZOE J., KIDS VS. GLOBAL WARMING, ALEC L., VICTORIA LOORZ, GRANT S., GARRETT S., VALERIE SERRELS, MADELINE W., JANET WALLACE, WILDEARTH GUARDIANS. Filing fee \$ 455, receipt number 0090-3379211. Fee Status: Fee Paid. Parties have been notified. (Gregory, Philip) Modified on 6/27/2013 (zrdj,). (Entered: 06/27/2013) |

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| <hr/> | |) | |
| ALEC L., <i>et al.</i> , | |) | |
| | Plaintiffs, |) | |
| v. | |) | Case No. 1:11-cv-2235 (RLW) |
| | |) | |
| BOB PERCIASEPE, <i>et al.</i> , | |) | |
| | Defendants, |) | |
| | |) | |
| and | |) | |
| | |) | |
| THE NATIONAL ASSOCIATION OF | |) | |
| MANUFACTURERS, <i>et al.</i> , | |) | |
| | |) | |
| | Defendant-Intervenors. |) | |
| <hr/> | |) | |

NOTICE OF APPEAL

Notice is hereby given this 27th day of June, 2013, that Plaintiffs, Alec L., *et al.*, and each of them, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the District Court’s orders, including but not limited to the Order entered in this action in favor of Defendants and against Plaintiffs on May 22, 2013 (Doc. 184), and all orders that gave rise to the dismissal of Plaintiffs’ case, including, but not limited to, the May 31, 2012 Order and Memorandum Opinion granting Defendants’ and Defendant-Intervenors’ Motions to Dismiss (Docs. 172-173) and the May 22, 2013 Memorandum Opinion denying Plaintiffs’ Motion for Reconsideration (Doc. 183).

Respectfully submitted,

Date: June 27, 2013

/s/ Philip L. Gregory

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALEC L., et al.,

Plaintiffs,

v.

BOB PERCIASEPE, et al.,

Defendants,

and

**NATIONAL ASSOCIATION OF
MANUFACTURERS, et al.,**

Intervenors.

Civil Action No. 11-cv-2235 (RLW)

ORDER

Upon consideration of Plaintiffs' Motion for Reconsideration (Dkt. No. 174), Defendants' and Intervenors' Oppositions thereto (Dkt. Nos. 177, 178), and Plaintiffs' Reply (Dkt. No. 179), and the entire record in this action, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby **ORDERED** that Plaintiffs' Motion is **DENIED**.

SO ORDERED.

Date: May 22, 2013



Digitally signed by Judge Robert L. Wilkins
DN: cn=Judge Robert L. Wilkins,
o=U.S. District Court,
ou=Chambers of Honorable
Robert L. Wilkins,
email=RW@dc.uscourts.gov, c=US
Date: 2013.05.22 15:27:39 -04'00'

ROBERT L. WILKINS
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALEC L., et al.,

Plaintiffs,

v.

Civil Action No. 11-cv-2235 (RLW)

BOB PERCIASEPE, et al.,

Defendants,

and

**NATIONAL ASSOCIATION OF
MANUFACTURERS, et al.,**

Intervenors.

MEMORANDUM OPINION¹

The Plaintiffs in this lawsuit—five teenage citizens and two non-profit organizations, “Kids vs. Global Warming” and “WildEarth Guardians”—brought this action seeking declaratory and injunctive relief based on the defendants’ alleged failure to reduce greenhouse gas emissions. Plaintiffs advanced a novel theory in support of the relief they sought, arguing that each of the defendants, as the heads of various federal agencies and as officers of the federal

¹ This unpublished memorandum opinion is intended solely to inform the parties and any reviewing court of the basis for the instant ruling, or, alternatively, to assist in any potential future analysis of the *res judicata*, law of the case, or preclusive effect of the ruling. The Court has designated this opinion as “not intended for publication,” but this Court cannot prevent or prohibit the publication of this opinion in the various and sundry electronic and legal databases (as it is a public document), and this Court cannot prevent or prohibit the citation of this opinion by counsel. *Cf.* FED. R. APP. P. 32.1. Nonetheless, as stated in the operational handbook adopted by our Court of Appeals, “counsel are reminded that the Court’s decision to issue an unpublished disposition means that the Court sees no precedential value in that disposition.” D.C. Circuit Handbook of Practice and Internal Procedures 43 (2011).

government, violated their supposed fiduciary obligations “to protect the atmosphere” under the so-called federal public trust doctrine.² (Am. Compl. at ¶ 18; *see id.* at ¶¶ 136-153). On May 31, 2012, the Court dismissed this case with prejudice, concluding that Plaintiffs failed to establish a basis for federal jurisdiction because the public trust doctrine, upon which their claims hinged, is a creature of state common law and not federal law. *See Alec L. v. Jackson*, 863 F. Supp. 2d 11, 15-17 (D.D.C. 2012). In so holding, the Court relied substantially on the U.S. Supreme Court’s then-recent decision in *PPL Montana, LLC v. Montana*, wherein Justice Kennedy, writing for a unanimous Court, explained that “the public trust doctrine remains a matter of state law” and that its “contours . . . do not depend upon the Constitution.” *See id.* at 15 (quoting *PPL Montana*, --- U.S. ---, 132 S. Ct. 1215, 1235 (2012)). This Court also explained that, even if the public trust doctrine had been grounded in federal common law at some point in time, Congress plainly displaced any such doctrine, at least in this context, through its passage of the comprehensive and field-occupying Clean Air Act. *Id.* at 15-16 (quoting *Am. Elec. Power Co. v. Connecticut*, --

² Specifically, Plaintiffs sued: (1) Lisa P. Jackson in her official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”), (2) Kenneth L. Salazar in his official capacity as Secretary of the Interior, (3) Thomas J. Vilsack in his official capacity as Secretary of Agriculture, (4) Gary L. Locke in his official capacity as Secretary of Commerce, (5) Steven Chu in his official capacity as Secretary of Energy, and (6) Leon Panetta in his official capacity as Secretary of Defense. (*See generally* Am. Compl.). By operation of law, however, the following individuals have been automatically substituted as defendants in this action pursuant to Federal Rule of Civil Procedure 25(d): Bob Perciasepe as Acting Administrator of the EPA, Sally Jewell as Secretary of the Interior, Rebecca Blank as Acting Secretary of Commerce, Ernest Moniz as Secretary of Energy, and Chuck Hagel as Secretary of Defense. *See* FED. R. CIV. P. 25(d). As Secretary Vilsack remains in office, he remains a defendant in this action. The Court collectively refers to these defendants as the “Federal Defendants.”

The Court also allowed two groups to intervene in this action: the National Association of Manufacturers (“NAM”), as well as a collection of several California companies and trade associations. The California entities, all of which owned and operated (or had members who owned and operated) vehicles and/or equipment that emitted greenhouse gases into the atmosphere, included: California Dump Truck Owners Association, Dalton Trucking, Inc., Delta Construction Company, Inc., Southern California Contractors Association, Inc., and United Contractors f/k/a Engineering Utility Contractors Association (the “CA Intervenors”).

- U.S. ----, 131 S. Ct. 2527, 2537 (2011)). Consequently, following full briefing and lengthy argument from the parties during a three-hour hearing, the Court ultimately concluded that it lacked jurisdiction over Plaintiffs' claims and dismissed this action as a result.

Plaintiffs now seek reconsideration of the Court's decision pursuant to Federal Rule of Civil Procedure 59(e). (Dkt. No. 175 ("Pls.' Mem.")). Through this motion, Plaintiffs press three arguments that they insist warrant the extraordinary relief they seek: (1) that the Court failed to provide Plaintiffs with a sufficient opportunity to address the Supreme Court's decision in *PPL Montana*; (2) that the Court wrongly found that Plaintiffs' complaint "[did] not allege that the defendants violated any specific federal law or constitutional provision"; and (3) that the Court improperly construed and applied the Supreme Court's decision in *American Electric Power Co.* (*Id.*). Defendants and Intervenors oppose Plaintiffs' motion for reconsideration, rejoining that "Plaintiffs' response to the Court's decision—a Rule 59(e) motion rearguing their flawed legal theories and attempting to raise new ones—must be rejected." (Dkt. No. 177 ("Fed. Defs.' Opp'n") at 2; *see also* Dkt. No. 178 ("Intervenors' Opp'n")). The Court concurs.

Therefore, upon review of Plaintiffs' motion and the parties' respective briefing, along with the entire record in this action, the Court concludes that Plaintiffs' Motion for Reconsideration must be **DENIED** for the reasons set forth herein.

ANALYSIS

A. Standard of Review

Motions to alter or amend under Rule 59(e) are disfavored, "and relief from judgment is granted only when the moving party establishes extraordinary circumstances." *Niedermeier v. Office of Max S. Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001) (citing *Anyanwutaku v. Moore*, 151 F.3d 1053, 1057 (D.C. Cir. 1998)). As our Circuit has explained, a Rule 59(e) motion "need

not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Messina v. Krakower*, 439 F.3d 755, 758 (D.C. Cir. 2006); *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996). Consequently, “a losing party may not use a Rule 59 motion to raise new issues that could have been raised previously.” *Kattan by Thomas v. District of Columbia*, 995 F.2d 274, 276 (D.C. Cir. 1993). Nor is a Rule 59 motion a means by which to “reargue facts and theories upon which a court has already ruled,” *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995), or “a chance . . . to correct poor strategic choices,” *SEC v. Bilzerian*, 729 F. Supp. 2d 9, 15 (D.D.C. 2010).

B. Plaintiffs Establish No Entitlement To Relief Under Rule 59(e)

As summarized above, Plaintiffs advance three arguments in seeking reconsideration under Rule 59(e). Notably, however, Plaintiffs do not point to any intervening change in law, or any newly-discovered evidence, that they contend compels a different result. Instead, Plaintiffs strictly argue that the Court committed several “clear errors” in its prior analysis. In so arguing, however, Plaintiffs either repackage arguments the Court already considered and rejected, or they attempt to mount new attacks that they could and should have raised previously.

First, Plaintiffs insist they are entitled to relief because they were not afforded the opportunity to address the Supreme Court’s decision in *PPL Montana*. They argue that “[t]he fact that this Court based its decision to dismiss Plaintiffs’ claims on the very case the Court refused to let Plaintiffs brief constitutes a manifest injustice.” (Dkt. No. 175 at 28). This line of argument is wholly unconvincing, and, in suggesting that they were denied a chance to brief or otherwise address the impact of *PPL Montana* on their claims, Plaintiffs distort the procedural history of this case. While true that the Court denied Plaintiffs’ request to submit additional

briefing in response to the Amicus Brief of Law Professors, (*see* Dkt. No. 165), that hardly served as their one and only opportunity to address *PPL Montana*. The Supreme Court handed down its decision in that case on February 22, 2012. Several weeks later—as Plaintiffs themselves point out—the Court held a telephonic status conference on March 5, 2012, and asked the parties whether they felt the need to submit any supplemental briefing on the Federal Defendants’ or NAM’s motions to dismiss, which were both fully-briefed before the case was transferred to the undersigned from the Northern District of California. While Plaintiffs now fault Defendants and Intervenors for not mentioning *PPL Montana* during that status conference, Plaintiffs fail to recognize that they bypassed the same opportunity and did not ask to submit any additional briefing themselves; to the extent they felt the need to distinguish a newly-issued Supreme Court decision dealing with the public trust doctrine, Plaintiffs could and should have sought to do so at that time. Thereafter, Plaintiffs squandered another opportunity to brief their views on *PPL Montana* in opposing the Delta Intervenors’ dismissal motion on April 16, 2012. (*See* Dkt. No. 160). The *PPL Montana* decision was nearly two months old at that point, and Plaintiffs indisputably could have addressed the case and argued that—at least in their view—it had no bearing on this matter. But they failed to discuss or even mention *PPL Montana* in their briefing altogether. Accordingly, Plaintiffs’ suggestion that “the first opportunity [they] had to address *PPL Montana*” was through their proposed brief on May 2, 2012, (*see* Dkt. No. 175 at 3), is disingenuous and lacks merit.³

³ Of course, along with the Supreme Court’s discussion in *PPL Montana*, the Court’s conclusion that the public trust doctrine sounds in state, and not federal, law was also based upon persuasive dicta from the D.C. Circuit in *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077 (D.C. Cir. 1984), wherein the Court of Appeals explained that “the public trust doctrine has developed *almost exclusively as a matter of state law*,” and expressed concerns that a federal common-law public trust doctrine would be displaced by federal legislation. *Id.* at 1082, 1085, n.43 (emphasis added). Plaintiffs cannot credibly complain that they had no opportunity to

Furthermore, and perhaps more significantly, Plaintiffs also had ample opportunity to present their arguments regarding *PPL Montana* during the Court’s three-hour hearing on May 11, 2012, and Plaintiffs took full advantage of that opportunity, making many of the same arguments to the Court that they attempt to re-litigate now—i.e., that the *PPL Montana* Court did not characterize the public trust doctrine as a purely state-law issue, and that the discussion regarding the public trust doctrine therein was dicta in any event. (*See generally* Dkt. 171 (“5/11/12 Transcript”). This fact alone undercuts the notion that Plaintiffs were somehow stymied from responding to or otherwise addressing Defendants and Intervenors’ arguments regarding *PPL Montana*. *Cf. Acumed LLC v. Stryker Corp.*, 551 F.3d 1323, 1331-32 (Fed. Cir. 2008) (finding no abuse of discretion in denial of motion to strike reply brief that assertedly contained new arguments and evidence, where “it [was] clear that the court gave [defendant] an opportunity to present its rebuttal arguments to [the plaintiff’s] new evidence orally” during the subsequent hearing); *CIBC World Mkts., Inc. v. Deutsche Bank Sec., Inc.*, 309 F. Supp. 2d 637, 645 n.21 (D.N.J. 2004) (“In citing [new authority] in a Reply Brief to support a position clearly taken in the Moving Brief . . . the Moving Defendants did not make a newly minted argument, but rather merely explained a position in the initial brief that the respondent had refuted. Furthermore, because oral argument was heard on this motion, Plaintiff had sufficient opportunity to respond . . .”). Therefore, as shown, Plaintiffs clearly had many opportunities to present their views on *PPL Montana* and to respond to any arguments to the contrary, and the Court already considered Plaintiffs’ arguments and found them unconvincing. As such, their

address the *Air Florida* case, given that their earlier briefing expressly urged this Court to discount the D.C. Circuit’s statements as dicta. (*See, e.g.*, Dkt. No. 106 at 5).

contention that the Court committed “clear error” in denying their request to submit additional briefing on *PPL Montana* is thus unavailing and does not warrant relief under Rule 59(e).⁴

Second, Plaintiffs argue that the Court “committed clear legal error by summarily discounting [their] constitutional claims.” (Pls.’ Mem. at 15). They assert that the so-called federal public trust doctrine is “constitutionally enshrined” and “embodied in the sovereign’s reserved powers, as well as the due process, equal protection, and commerce clauses of the Constitution.” (*Id.* at 12-13). But throughout their briefing in this case, Plaintiffs staunchly maintained that the public trust doctrine, in and of itself, provided the basis for federal jurisdiction. (*See* Dkt. No. 106 (“Pls.’ Opp’n to Fed. Defs.’ Mtn.”) at 2-7; Dkt. No. 160 (“Pls.’ Opp’n to CA Intervenors’ Mtn.”) at 12-22). More specifically, Plaintiffs previously made clear that their “claim in this case is *based solely on the Public Trust Doctrine*, which exists independent of statutes, finding its foundation in an inherent and inalienable attribute of sovereignty and imposing a fiduciary obligation on the trustee that cannot be abdicated.” (Pls.’ Opp’n to CA Intervenors’ Mtn. at 20) (emphasis added). Now, however, Plaintiffs appear to be arguing that, through their alleged violations of their so-called federal public trust obligations, the Federal Defendants committed freestanding, independent violations of the Constitution under the Due Process Clause, the Equal Protection Clause, and the Commerce Clause. (*Id.* at 15-24). According to Plaintiffs, they were deprived of an opportunity to fully brief these theories before

⁴ It also bears noting that, since this Court handed down its decision and dismissed Plaintiffs’ action, at least two other courts have similarly interpreted the *PPL Montana* Court’s discussion of the public trust doctrine as affirmation that the doctrine is one of state law, and not federal law. *See United States v. 32.42 Acres of Land*, 683 F.3d 1030, 1038 (9th Cir. 2012) (“‘[T]he public trust doctrine remains a matter of state law,’ the contours of which are determined by the states, not by the United States Constitution.”); *Brigham Oil & Gas, L.P. v. N.D. Bd. of Univ. & Sch. Lands*, 866 F. Supp. 2d 1082, 1088 (D.N.D. 2012) (“The United States Supreme Court recently made clear that the public trust doctrine is a matter of state law.”).

the Court dismissed their case, and they insist that they are entitled to Rule 59(e) relief as a result. The Court disagrees.

To be sure, Plaintiffs had plenty of chances to clearly delineate the nature and extent of their claims—both through the many rounds of briefing and during the three-hour hearing the Court held on the various motions to dismiss. While Plaintiffs suggest that the constitutional aspects of their claims were never raised or fleshed out during the briefing process, this assertion is belied by the record. At a minimum, as NAM points out, these issues were squarely teed up through its motion to dismiss, wherein NAM argued as follows:

Plaintiffs do not and cannot claim any violations of the constitutional provisions they cite in their complaint other than through the asserted violations of the public trust doctrine. The Commerce Clause is a grant of power authorizing Congress to regulate, not a requirement that Congress enact particular regulations. *See Gonzales v. Raich*, 545 U.S. 1, 17 (2005). The Fourteenth Amendment “applies only to the states,” not to the federal government. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The Due Process clause is a limitation on the government’s power to act, and does not impose affirmative duties. *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992) (language of the Due Process Clause “cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm.”).

(*See* Dkt. No. 67 (“NAM Mtn.”) at 17 n.9). Indeed, NAM made these arguments before Plaintiffs filed any briefing whatsoever on the various motions to dismiss. So even setting aside the fact that Plaintiffs could and should have clearly spelled out the contours of their claims independently, to the extent they sought to assert constitutional claims, Plaintiffs certainly had an obligation to respond to these direct arguments—i.e., that the conclusory constitutional references in their Amended Complaint did not provide an independent jurisdictional hook for this action. Plaintiffs failed to do so. And to the extent that Plaintiffs now wish they had briefed these issues differently, or otherwise presented their arguments more directly, they cannot take refuge under Rule 59(e).

In addition, Plaintiffs' present argument on this point runs completely counter to their position during the hearing, when counsel confirmed—in response to direct questioning from the Court on this precise issue—that Plaintiffs were not alleging any specific constitutional violations through their claims:

THE COURT: All right. Here you're saying that there's no constitutional violation that's found first, though. Right?

MS. OLSON: We argue that the Public Trust Doctrine is—because it's an attribute of sovereignty and it vested when the federal government was created, that it is constitutionally embedded in the vesting clauses that give the legislature and the executive branch authority over national interests.

THE COURT: I understand that. But you're not saying that somehow what the federal government is doing is unconstitutional, are you?

MS. OLSON: We argue that—

THE COURT: Why didn't you bring a Section 1983 claim or a *Bivens* claim or whatever?

MS. OLSON: Yes, Your Honor, we argue that they are violating their fundamental duties as trustees of the federal Public Trust resources. That is the claim. So it's not brought under a Section 1983 claim, that's correct.

THE COURT: So yes or no, are you arguing that there's a constitutional violation or not?

MS. OLSON: Not in the sense that you're speaking of, Your Honor.

(5/11/12 Transcript at 65:15-66:12). Thus, at best, Plaintiffs failed to cleanly present these arguments when they had the chance. At worst, in doubling back on their theory, Plaintiffs are completely contradicting their prior representations to the Court.⁵ But in either event, Plaintiffs are not entitled to relief under Rule 59(e).

⁵ Indeed, another exchange with Plaintiffs' counsel confirms that Plaintiffs are now pressing an entirely different theory than they argued previously. In an effort to ascertain Plaintiffs' basis for invoking federal question jurisdiction under 28 U.S.C. § 1331, the Court asked counsel during the hearing to identify the specific law or laws of the United States upon which their claims were premised:

THE COURT: If I were to find that [your claim] arose under the laws of the United States, under what laws would I look to to find that it arises under?

Third, Plaintiffs argue that the Court misinterpreted and misapplied the Supreme Court’s decision in *American Electric Power Co. v. Connecticut*. Simply stated, however, this line of attack completely rehashes arguments that Plaintiffs advanced previously, and the Court already considered and rejected Plaintiffs’ efforts to distance this case from *American Electric Power Co.* as “distinctions without a difference.” *Alec L.*, 863 F. Supp. 2d at 16. The Court will not indulge Plaintiffs’ improper reliance on Rule 59(e) by devoting any additional analysis to these recycled arguments at this stage.

Finally, along with their request for relief under Rule 59(e), Plaintiffs also ask the Court for leave to amend their complaint under Federal Rule of Civil Procedure 15(a)(2). As the D.C. Circuit has repeatedly held, however, “once a final judgment has been entered, a court cannot permit an amendment unless the plaintiff ‘first satisfies Rule 59(e)’s more stringent standard’ for setting aside that judgment.” *Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C. Cir. 2004) (quoting *Firestone*, 76 F.3d at 1208. Insofar as Plaintiffs fail to establish any entitlement to relief under Rule 59(e), their request for leave to amend under Rule 15(a) is therefore denied.

CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion for Reconsideration is **DENIED**. Plaintiffs either presented all of these arguments previously, or they failed to seize the opportunity to do so

MS. OLSON: Your Honor, I think you can go to the Supreme Court decisions in *Geer* and *Illinois Central* that establish that the Public Trust Doctrine is a fundamental attribute of sovereignty, and then look to the fact that when the states created the U.S. Constitution, they gave sovereignty to a federal government over natural resources. And the Public Trust case law from the Supreme Court, through state law and federal case law, all consistently finds that the Public Trust obligation and duty is a fundamental attribute of sovereignty that cannot be abridged. It can’t be abdicated by the sovereign, whether it’s a federal sovereign or a state sovereign.

(Dkt. No. 171 at 46:21-47:10). Other than their generalized reliance on the so-called federal public trust doctrine, Plaintiffs failed to invoke—or even reference—any particular constitutional provision or law underpinning their claims.

when they should have. And despite Plaintiffs' apparent misconceptions, Rule 59(e) does not operate as a judicial mulligan. Rule 59(e) offers relief only in narrowly-circumscribed and extraordinary circumstances—circumstances that cannot be found here. At this juncture, Plaintiffs' recourse, if any, lies with the Court of Appeals.

An appropriate Order accompanies this Memorandum Opinion.

Date: May 22, 2013



Digitally signed by Judge Robert L. Wilkins
DN: cn=Judge Robert L. Wilkins,
o=U.S. District Court,
ou=Chambers of Honorable
Robert L. Wilkins,
email=RW@dc.uscour.gov, c=US
Date: 2013.05.22 15:27:39 -04'00'

ROBERT L. WILKINS
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ALEC L., *et al.*,

Plaintiffs,

v.

LISA P. JACKSON, *et al.*,

Defendants,

and

NATIONAL ASSOCIATION OF
MANUFACTURERS, *et al.*

Intervenors.

Civil Action No. 1:11-cv-02235 (RLW)

ORDER

Upon consideration of Defendants' and Defendant-Intervenors' Motions to Dismiss (Docket Nos. 64, 67 & 159), the entire record herein, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the motions to dismiss are GRANTED; and it is further

ORDERED that Plaintiffs' First Amended Complaint is hereby dismissed.

SO ORDERED.

Date: May 31, 2012



Digitally signed by Judge Robert L. Wilkins
DN: cn=Judge Robert L. Wilkins,
o=U.S. District Court,
ou=Chambers of Honorable
Robert L. Wilkins,
email=RW@dc.uscourts.gov, c=US
Date: 2013.05.22 15:27:39 -0400

ROBERT L. WILKINS
United States District Judge

UNITED STATES DISTRICT COURT
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ALEC L., *et al.*,

Plaintiffs,

v.

Civil Action No. 1:11-cv-02235 (RLW)

LISA P. JACKSON, *et al.*,

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Intervenors.

MEMORANDUM OPINION

Five young citizens and two organizations, Kids vs. Global Warming¹ and Wildearth Guardians², bring this action seeking declaratory and injunctive relief for Defendants' alleged failure to reduce greenhouse gas emissions. The Plaintiffs allege that Defendants have violated their fiduciary duties to preserve and protect the atmosphere as a commonly shared public trust resource under the public trust doctrine. Plaintiffs' one-count complaint does not allege that the defendants violated any specific federal law or constitutional provision, but instead alleges violations of the federal public trust doctrine.

¹ Kids vs Global Warming is a non-profit organization whose membership includes thousands of youth from around the country "who are concerned about how human-made climate change is affecting and will continue to affect them and their future." (Am. Compl. at ¶ 48). Kids vs Global Warming has brought this action on behalf of its members. *Id.*

² Wildearth Guardians is a non-profit conservation organization that is dedicated to "protecting and restoring wildlife, wild rivers, and wild places in the American West, and to safeguarding Earth's climate and air quality." (Am. Compl. at ¶ 49). Wildearth Guardians has brought this action on its own behalf and on behalf of its adversely affected members. *Id.*

Plaintiffs bring this suit against Lisa P. Jackson in her official capacity as Administrator of the U.S. Environmental Protection Agency ("EPA"), Kenneth L. Salazar in his official capacity as Secretary of the U.S. Department of the Interior, Thomas J. Vilsack in his official capacity as Secretary of the U.S. Department of Agriculture, Gary F. Locke in his official capacity as Secretary of the U.S. Department of Commerce, Steven Chu in his official capacity as Secretary of the U.S. Department of Energy, and Leon E. Panetta in his official capacity as Secretary of the U.S. Department of Defense. Plaintiffs allege that each of the Defendants, as agencies and officers of the federal government, "have wasted and failed to preserve and protect the atmosphere Public Trust asset." (Am. Compl. ¶¶ 138, 146). Two parties claiming an interest in this action have intervened.³

This matter is before the Court on Defendants' and the Defendant-Intervenors' Motions to Dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and failure to state a claim for which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Defendants and Defendant-Intervenors move for dismissal arguing, *inter alia*, that because Plaintiffs' lone claim is grounded in state common law, the complaint does not raise a federal question to invoke this Court's jurisdiction and, therefore, warrants dismissal on jurisdictional grounds. Having considered the full briefing on these motions, and for the reasons set forth below, Defendants and Defendant-Intervenors' motions are granted and Plaintiffs' Amended Complaint is dismissed with prejudice.

³ Two groups have been allowed to intervene in this action: The National Association of Manufacturers, who represents small and large manufacturers in industrial sectors around the country; and several California companies and trade associations who own and operate, or whose members own and operate, numerous vehicles, engines and equipment that emit greenhouse gases into the atmosphere. Both groups claim that the relief requested by Plaintiffs would adversely affect them and their constituents and were permitted to intervene pursuant to Fed. R. Civ. P. 24(a).

I. BACKGROUND

A. Public Trust Doctrine

The public trust doctrine can be traced back to Roman civil law, but its principles are grounded in English common law on public navigation and fishing rights over tidal lands. PLL Montana, LLC v. Montana, 565 U.S. ----, 132 S. Ct. 1213, 1234 (2012). “At common law, the title and dominion in lands flowed by the tide water were in the King for the benefit of the nation . . . Upon the American Revolution, these rights, charged with a like trust, were vested in the original States within their respective borders.” Phillips Petroleum v. Mississippi, 484 U.S. 469, 473 (1988) (quoting Shively v. Bowlby, 152 U.S. 1 (1894)). Upon entry into the Union, the states received ownership of all lands under waters subject to the ebb and flow of the tide. Id. at 476. The states’ right to use or dispose of such lands, however, is limited to the extent that it would cause “substantial impairment of the interest of the public in the waters,” and the states’ right to the water is subject to “the paramount right of [C]ongress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the states.” Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 435 (1892). Thus, traditionally, the doctrine has functioned as a restraint on the states’ ability to alienate submerged lands in favor of public access to and enjoyment of the waters above those lands.

More recently, courts have applied the public trust doctrine in a variety of contexts. See e.g. District of Columbia v. Air Florida, Inc. 750 F.2d 1077, 1083 (D.C. Cir. 1984) (noting that “the doctrine has been expanded to protect additional water-related uses such as swimming and similar recreation, aesthetic enjoyment of rivers and lakes, and preservation of flora and fauna

indigenous to public trust lands.”).⁴ And while Plaintiffs have cited authority for the application of the doctrine in numerous natural resources, including “groundwater, wetlands, dry sand beaches, non-navigable tributaries, and wildlife” (Pls.’ Opp. at 17-18), they have cited no cases, and the Court is aware of none, that have expanded the doctrine to protect the atmosphere or impose duties on the federal government. Therefore, the manner in which Plaintiffs seek to have the public trust doctrine applied in this case represents a significant departure from the doctrine as it has been traditionally applied.

B. The Relief Requested by Plaintiffs

Plaintiffs seek a variety of declaratory and injunctive relief for their public trust claim.⁵ First, Plaintiffs ask the Court to declare that the atmosphere is a public trust resource and that the United States government, as a trustee, has a fiduciary duty to refrain from taking actions that waste or damage this asset. Plaintiffs also ask the Court to declare that, to date, Defendants have violated their fiduciary duties by contributing to and allowing unsafe amounts of greenhouse gas emissions into the atmosphere. In addition, Plaintiffs ask the Court to further define Defendants’ fiduciary duties under the public trust by declaring that the six Defendant federal agencies have a duty to reduce global atmospheric carbon dioxide levels to less than 350 parts per million during this century.

⁴ Some states have recognized the doctrine as imposing an affirmative duty on the state. See e.g. National Audubon Soc’y v. Superior Court of Alpine Cnty., 33 Cal.3d 419, 441, 189 Cal.Rptr. 346, 360-61, 658 P.2d 709, 725 (1983) (noting that the public trust doctrine “is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands . . .”).

⁵ Based upon the scope of the relief requested by Plaintiffs, Defendants have raised separation of powers and political question doctrine defenses. These defenses are clearly implicated by the totality of the relief sought by the Plaintiffs. However, to the extent that the Court, in its equitable discretion, may fashion a less expansive remedy, these doctrines would not be implicated. Therefore, the Court rules on alternative grounds.

With respect to injunctive relief, Plaintiffs have asked this Court to issue an injunction directing the six federal agencies to take all necessary actions to enable carbon dioxide emissions to peak by December 2012 and decline by at least six percent per year beginning in 2013. Plaintiffs also ask the Court to order Defendants to submit for this Court's approval: annual reports setting forth an accounting of greenhouse gas emissions originated by the United States and its citizens; annual carbon budgets that are consistent with the goal of capping carbon dioxide emissions and reducing emissions by six percent per year; and a climate recovery plan to achieve Plaintiffs' carbon dioxide emission reduction goals.⁶

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, with the ability to hear only the cases entrusted to them by a grant of power contained in either the Constitution or in an act of Congress. See, e.g., Beethoven.com LLC v. Librarian of Congress, 394 F.3d 939, 945 (D.C. Cir. 2005); Hunter v. District of Columbia, 384 F. Supp. 2d 257, 259 (D.D.C. 2005). On a motion to dismiss for lack of subject matter jurisdiction, the plaintiff bears the burden of establishing that the Court has jurisdiction. See Brady Campaign to Prevent Gun Violence United with the Million Mom March v. Ashcroft, 339 F. Supp. 2d 68, 72 (D.D.C. 2004). Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, the Court may dispose of the motion on the basis of the complaint alone, or it may consider materials beyond the pleadings "as it deems appropriate to resolve the question whether it has jurisdiction to hear the case." Scolaro v. D.C. Board of Elections & Ethics, 104 F. Supp. 2d 18, 22 (D.D.C. 2000); see Lopez v. Council on American-Islamic Relations Action Network, Inc., 741 F. Supp. 2d 222, 231 (D.D.C. 2010).

⁶ Plaintiffs also request that the Court retain jurisdiction over the action to ensure Defendants' compliance with the injunctive relief requested.

When determining whether a district court has federal question jurisdiction pursuant to Article III and 28 U.S.C. § 1331, the jurisdictional inquiry “depends entirely upon the allegations in the complaint” and asks whether the claim as stated in the complaint “arises under the Constitution or laws of the United States.” Carlson v. Principal Fin. Group, 320 F.3d 301, 306 (2d Cir. 2003); see also Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). If a federal claim has been alleged, the district court has subject matter jurisdiction unless the purported federal claim is clearly “immaterial and made solely for the purpose of obtaining jurisdiction” or is “wholly insubstantial and frivolous.” Carlson, 320 F.3d at 306 (quoting Bell v. Hood, 327 U.S. 678, 682–83 (1946)).

II. ANALYSIS

Plaintiffs assert that this Court has jurisdiction to review this case under the federal question statute, 28 U.S.C. § 1331, because the public trust doctrine arises from federal law. Defendants contend that the public trust doctrine does not provide a federal cause of action and, therefore, this Court lacks subject matter jurisdiction to adjudicate Plaintiffs’ claim. Thus, the key question here is whether Plaintiffs’ public trust claim is a creature of state or federal common law.

The central premise upon which Plaintiffs rely to invoke the Court’s jurisdiction is misplaced. Plaintiffs contend that the public trust doctrine presents a federal question because it “is not in any way exclusively a state law doctrine.” (Pl.’s Opp. at 13). The Supreme Court’s recent decision in PLL Montana, LLC v. Montana, appears to have foreclosed this argument. PLL Montana, LLC v. Montana, 565 U.S. ----, 132 S. Ct. 1213, 1235 (2012). In that case, the Court while distinguishing the public trust doctrine from the equal footing doctrine, stated that “the public trust doctrine *remains a matter of state law*” and its “contours . . . *do not depend upon*

the Constitution.” Id. at 1235 (emphasis added). The Court went on to state that the public trust doctrine, as a matter of state law, was “subject as well to the federal power to regulate vessels and navigation under the Commerce Clause and admiralty power.” Id.

The parties disagree as to whether the Supreme Court’s declaration regarding the public trust doctrine is part of the holding or, as Plaintiffs urge, merely dictum. The Court, however, need not resolve this issue because “‘carefully considered language of the Supreme Court, even if technically dictum, generally must be treated as authoritative.’” Overby v. Nat’l Ass’n of Letter Carriers, 595 F.3d 1290, 1295 (D.C. Cir. 2010) (quoting United States v. Dorcely, 454 F.3d 366, 375 (D.C. Cir. 2006)). Thus, dicta or not, the Court’s statements regarding the public trust doctrine would nonetheless be binding on this Court.

Even if the Supreme Court’s declaration was not binding, the Court finds it persuasive. Likewise, dictum from this Circuit is also persuasive. The D.C. Circuit has had occasion to state, albeit in dictum, that “[i]n this country the public trust doctrine has developed *almost exclusively as a matter of state law*” and that “the doctrine has functioned as a constraint on states’ ability to alienate public trust lands.” District of Columbia v. Air Florida, Inc. 750 F.2d 1077, 1082 (D.C. Cir. 1984) (emphasis added). The Court also expressed its concerns that a *federal* common-law public trust doctrine would possibly be displaced by federal statutes. Id. at 1085 n.43.

Thus, it appears that Plaintiffs have not raised a federal question to invoke this Court’s jurisdiction under § 1331.⁷ As Plaintiffs’ complaint alleges no other federal cause of action to

⁷ Where no federal question is pleaded, the federal court may nevertheless have diversity jurisdiction. However, the Court lacks diversity jurisdiction in this case, as “[i]t is well established . . . that the United States is not a citizen for diversity purposes and that ‘U.S. agencies cannot be sued in diversity.’” Commercial Union Ins. v. U.S., 999 F.2d 581, 584 (D.C. Cir. 1993) (quoting General Ry. Signal Co. v. Corcoran, 921 F.2d 700, 703 (7th Cir. 1991)).

invoke this Court's original jurisdiction, there is no basis to exercise the Court's supplemental jurisdiction over Plaintiffs' state-law common law claim under 28 U.S.C. § 1367.

Alternatively, even if the public trust doctrine had been a federal common law claim at one time, it has subsequently been displaced by federal regulation, specifically the Clean Air Act. In American Electric Power Company v. Connecticut, the Supreme Court held that: "the Clean Air Act and the EPA actions it authorizes displace *any* federal common law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants." Amer. Elec. Power Co. v. Connecticut, 131 S. Ct. 2527, 2537 (2011) (emphasis added).

The Plaintiffs attempt to escape the holding in the Amer. Elec. Power Co. by arguing that its holding should be limited to common law nuisance claims, while Plaintiffs are proceeding here under a common law public trust theory. Plaintiffs also attempt to distinguish the Amer. Elec. Power Co. case because that case was brought against four private companies and the Tennessee Valley Authority, a federally owned corporation, as opposed to the federal agency defendants in this case. Plaintiffs argue that this distinction is significant because, in Plaintiffs' view, the fiduciary duties of the public trust doctrine can only be imposed on the states and the federal government. According to Plaintiffs, because the plaintiffs in the Amer. Elec. Power Co. case could not bring a public trust claim against the defendants in that case, the holding in that case should be limited to those facts.

The Court views these as distinctions without a difference. The particular contours of the public nuisance doctrine did not in any way affect the Supreme Court's analysis in Amer. Elec. Power Co.. Indeed, the Court's holding makes no mention of the public nuisance doctrine at all, as the Court clearly stated that *any* federal common law right was displaced. Id. Further, there is nothing in the Court's holding to indicate that it should be limited to suits against private entities.

Indeed, the Court described in great detail the process under which federal courts may review the action, or inaction, of federal agencies with respect to their statutory obligations under the Clean Air Act. Id. at 2539.

Moreover, the question at issue in the Amer. Elec. Power Co. case is not appreciably different from the question presented here—whether a federal court may make determinations regarding to what extent carbon-dioxide emissions should be reduced, and thereafter order federal agencies to effectuate a policy of its own making. The Amer. Elec. Power Co. opinion expressed concern that the plaintiffs in that case were seeking to have federal courts, in the first instance, determine what amount of carbon-dioxide emissions is unreasonable and what level of reduction is practical, feasible and economically viable. Amer. Elec. Power Co., 436 U.S. at 2540. The Court explained that “the judgments the plaintiffs would commit to federal judges . . . cannot be reconciled with the decisionmaking scheme Congress enacted.” Id. The Court further explained that Congress designated the EPA as an agency expert to “serve as primary regulator of greenhouse gas emissions” and that this expert agency “is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions.” Id. at 2539. The Court, in holding that the federal common law cause of action was displaced by the Clean Air Act, concluded that federal judges may not set limits on greenhouse gas emissions “in the face of a law empowering EPA to set the same limits, subject to judicial review only to ensure against action arbitrary, capricious, . . . or otherwise not in accordance with the law.” Id.

In the present case, Plaintiffs are asking the Court to make similar determinations regarding carbon dioxide emissions. First, in order to find that there is a violation of the public trust—at least as the Plaintiffs have pled it—the Court must make an initial determination that current levels of carbon dioxide are too high and, therefore, the federal defendants have violated

their fiduciary duties under the public trust. Then, the Court must make specific determinations as to the appropriate level of atmospheric carbon dioxide, as determine whether the climate recovery plan sought as relief will effectively attain that goal. Finally, the Court must not only retain jurisdiction of the matter, but also review and approve the Defendants' proposals for reducing greenhouse gas emissions. Ultimately, Plaintiffs are effectively seeking to have the Court mandate that federal agencies undertake specific regulatory activity, even if such regulatory activity is not required by any statute enacted by Congress.

These are determinations that are best left to the federal agencies that are better equipped, and that have a Congressional mandate, to serve as the "primary regulator of greenhouse gas emissions." *Id.* at 2539. The emissions of greenhouse gases, and specifically carbon dioxide, are subject to regulation under the Clean Air Act. Massachusetts v. E.P.A., 549 U.S. 497, 528-29 (2007). Thus, a federal common law claim directed to the reduction or regulation of carbon dioxide emissions is displaced by the Act. *Id.* at 2537 (noting that the test for legislative displacement is whether the statute "speaks directly to the question at issue"). Therefore, even if Plaintiffs allege a public trust claim that could be construed as sounding in federal common law, the Court finds that that cause of action is displaced by the Clean Air Act.

IV. CONCLUSION

Ultimately, this case is about the fundamental nature of our government and our constitutional system, just as much – if not more so – than it is about emissions, the atmosphere or the climate. Throughout history, the federal courts have served a role both essential and consequential in our form of government by resolving disputes that individual citizens and their elected representatives could not resolve without intervention. And in doing so, federal courts have occasionally been called upon to craft remedies that were seen by some as drastic to redress

those seemingly insoluble disputes. But that reality does not mean that every dispute is one for the federal courts to resolve, nor does it mean that a sweeping court-imposed remedy is the appropriate medicine for every intractable problem. While the issues presented in this case are not ones that this Court can resolve by way of this lawsuit, that circumstance does not mean that the parties involved in this litigation – the plaintiffs, the Defendant federal agencies and the Defendant-Intervenors – have to stop talking to each other once this Order hits the docket. All of the parties seem to agree that protecting and preserving the environment is a more than laudable goal, and the Court urges everyone involved to seek (and perhaps even seize) as much common ground as courage, goodwill and wisdom might allow to be discovered.

For the foregoing reasons, the Defendants’ and Defendant-Intervenors’ motions to dismiss are granted. The Plaintiffs’ First Amended Complaint is hereby dismissed.

SO ORDERED.⁸

Date: May 31, 2012



Digitally signed by Judge Robert L. Wilkins
DN: cn=Judge Robert L. Wilkins,
o=U.S. District Court,
ou=Chambers of Honorable
Robert L. Wilkins,
email=RW@dc.uscourts.gov, c=US
Date: 2013.05.22 15:27:39 -0400'

ROBERT L. WILKINS
United States District Judge

⁸ An order will be issued contemporaneously with this memorandum opinion granting the Defendants’ and Defendant-Intervenors’ motions to dismiss Plaintiffs’ Amended Complaint.