ORAL ARGUMENT NOT YET SCHEDULED

No. 19-1230

Consolidated with Nos. 19-1239, -1241, -1242, -1243, -1245, -1246, and -1249

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNION OF CONCERNED SCIENTISTS et al.,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,

Respondent,

COALITION FOR SUSTAINABLE AUTOMOTIVE REGULATION et al.,

Intervenors for Respondent.

REPLY IN SUPPORT OF MOTION TO COMPLETE ADMINISTRATIVE RECORD

XAVIER BECERRA
Attorney General of California
ROBERT BYRNE
Senior Assistant Attorney General
GARY E. TAVETIAN
DAVID A. ZONANA
Supervising Deputy Attorneys General
JULIA K. FORGIE
M. ELAINE MECKENSTOCK
Deputy Attorneys General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6623
Counsel for State of California, by and through Governor Gavin Newsom, Attorney General Xavier Becerra, and California Air Resources Board

Additional parties and counsel listed on signature pages

Petitioners have moved that this Court order EPA to complete its administrative record with public comments and supporting documents submitted in accordance with the procedures that the agency established for the administrative proceeding at issue. EPA bound itself to consider these materials to the extent practicable before taking final action and, when it took final action, EPA did not find that consideration of any of the materials had been impracticable.

EPA argues that the materials do not belong in the administrative record for three reasons. First, EPA claims the power to exclude these materials from the administrative record by ignoring them notwithstanding its obligation to consider them. Second, EPA contends that it was not bound by its own express adoption of procedures requiring it to consider these materials to the extent practicable. Third, EPA attempts to justify a blanket, post hoc determination that it was impracticable to consider any public comments or supporting documents it received during the 11 months prior to final action. The Court should reject EPA's arguments and order the agency to complete its administrative record before the parties begin briefing the merits of this complex case.

1. EPA cannot exclude from the administrative record materials that the agency bound itself to consider but that were not actually considered.

Congress has defined the administrative record for judicial review to include "the pleadings, evidence, and proceedings before the agency." 28 U.S.C. § 2112(b); *see also* Fed. R. App. P. 16(a)(3). "If a court is to review an agency's action fairly, it should have before it neither more nor less information than did the agency when it made its

decision." *Walter O. Boswell Mem'l Hosp. v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984). Public comments and supporting documents that were "submitted in accordance with agency procedures during the [administrative] process," *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 210–11 (D.C. Cir. 2011), were "before the agency" at the time of its decision and must be included in the record.

EPA asserts (Opp. at 2) that "'before the agency' means material that the agency actually considered." Put another way, EPA claims that a court reviewing an agency's action cannot consider material that the agency was obliged to consider but still failed to consider. That argument is specious. It would nullify the canonical proposition that an agency acts arbitrarily and capriciously if it "d[oes] not consider material in the record" important to its decision. *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)); *see also W. Coal Traffic League v. United States*, 677 F.2d 915, 927 (D.C. Cir. 1982) ("[A]n agency decision may not be reasoned if the agency ignores vital comments regarding relevant factors."). Materials that were presented to the agency in accordance with the procedural ground rules established by the agency are part of the administrative record, whether or not the agency actually considered those materials.

EPA's authorities are inapposite. In *Theodore Roosevelt Conservation Partnership v. Salazar*, this Court refused to consider materials that "were available to commenters" but that "they had never sought to introduce" during the agency proceeding. 616 F.3d

497, 515 (D.C. Cir. 2010). In *Bar MK Ranches v. Yuetter*, the Tenth Circuit held that plaintiffs had not met their burden to show that the certified record "includ[ed] some documents not considered by the agency and fail[ed] to include other documents that were considered by the agency." 994 F.2d 735, 739 (10th Cir. 1993). The court in *Bar MK Ranches* thus never considered whether an agency may exclude materials properly presented to it merely because the agency declined to consider the materials. Nor was that question presented in either of the two district court cases cited by EPA. *See Stand Up for California! v. U.S. Dep't of Interior*, 315 F. Supp. 3d 289, 295 (D.D.C. 2018) (holding that material "unavailable to [the agency] at the time of its decision" was not "before the agency"); *Pac. Shores Subdivision Cal. Water Dist. v. U.S. Army Corps of Eng'rs*, 448 F. Supp. 2d 1, 7 (D.D.C. 2006) (declining to supplement the record absent "evidence that the [agency] decisionmaker(s) were actually aware of the … documents" at issue).

EPA also relies (Opp. at 3) on *Linemaster Switch Corp. v. EPA*, 938 F.2d 1299 (D.C. Cir. 1991), but that case actually supports movants' position. There, this Court declined to consider data the petitioner had "failed to submit … to the proper division of [the agency] or even to flag ... as relevant to" the administrative proceeding. 938 F.2d at 1305. Although some of the data became available only after the formal closing date for public comments, this Court admonished the petitioner for not submitting the new data to EPA anyway because the agency had committed to "consider late-filed comments 'to the extent practicable.'" *Id.* at 1306. This Court's opinion strongly implies that it would have been improper for EPA to renege on its obligation to consider

materials that commenters submitted through the proper channel after the comment closing date.

2. EPA bound itself in this proceeding to consider every public comment that was received in time to be practicably considered by the agency.

The procedures governing public participation for the EPA actions under review were prescribed by statute and by the ground rules that EPA and NHTSA established at the outset of this joint proceeding. Congress mandated that EPA afford the public sufficient time "to meaningfully review" its proposed actions "and provide informed comment." *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019); *see* 5 U.S.C. § 553(c) (requiring federal agencies to "consider[]" "written data, views, or arguments" "presented" by "interested persons" before finalizing rulemaking); *id.* § 555(e); 42 U.S.C. § 7543(b)(1) (requiring "notice and opportunity for public hearing" for actions under Section 209(b) of the Clean Air Act). Beyond that, however, EPA had the discretion to specify when public comments needed to be submitted to assure their consideration.

EPA exercised that discretion by binding itself not only to consider all comments submitted by October 26, 2018, but also to consider any comments submitted after that date to the extent practicable. EPA and NHTSA made the latter commitment the subject of a special section in the Federal Register notice that announced their proposed actions. *See* Proposed Action, 83 Fed. Reg. 42,986, 43,471 (Aug. 24, 2018). EPA's assurance that it would consider all public comments to the extent practicable comported with its "past

… practice" in Clean Air Act preemption-waiver proceedings. *California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles*, 74 Fed. Reg. 32,744, 32,747, 32,781–82 (July 8, 2009); *see also* EPA, Notice of Filing Certified Index to the Administrative Record, ECF 1212736, *Chamber of Commerce v. EPA*, D.C. Cir. No. 09-1237 (Oct. 26, 2009) (certifying a record for a Clean Air Act preemption-waiver proceeding that included comments submitted after the formal comment period).

Agencies must comply with procedural obligations that are "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion." *Lopez v. FAA*, 318 F.3d 242, 247 (D.C. Cir. 2003) (quotation omitted); *accord Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."). EPA's announcement that it would consider all comments submitted after the formal closing date to the extent practicable conferred just such a procedural benefit on commenters.

EPA asserts (Opp. at 4) that it could flout this procedural obligation because the agency made it "in this case" rather than in a rule of general applicability. But EPA offers no support for that distinction. Although agency procedures may be easier to *change* if they have not been incorporated into formal regulations, no agency has license to *ignore* the ground rules it establishes for a proceeding or violate them without explanation—regardless of whether those ground rules are set forth in a formal regulation. *See Morton*,

415 U.S. at 234–35. Here, EPA never made any change to the procedures established at the outset of this administrative proceeding. Instead, the agency simply ignored those procedures. Just as EPA could not have reneged on its duty "in this case" to consider comments submitted by October 26, 2018, the agency could not renege on its duty to consider all comments submitted after that date to the extent practicable.

Because EPA bound itself to consider public comments submitted after October 26, 2018, to the extent practicable, and then made no finding that any such comments had been received too late to practicably consider, all those comments and supporting documents were properly "part[] of the proceedings before the agency," Fed. R. App. P. 16(a)(3), and belong in EPA's administrative record.

3. EPA's post hoc assertion of impracticability is unavailing.

Crucially, when it took final action, EPA did not find that consideration of any public comments and supporting documents submitted after October 26, 2018, had been impracticable. Now, in this Court, EPA asserts for the first time (Opp. at 5) that it "was not practicable" to consider those materials. Counsel's post hoc assertion cannot justify the exclusion of all these materials from EPA's administrative record.

EPA argues (Opp. at 8) that its "certification of the record" for judicial review is "the only necessary statement" of impracticability. But the act of certifying the record for this Court cannot serve as the justification for excluding materials from that record that were properly before the agency at the time of its decision. *Cf. Camp v. Pitts*, 411 U.S. 138, 142 (1973) ("[T]he focal point for judicial review should be the administrative

record *already in existence*, not some new record made initially in the reviewing court." (emphasis added)). Regardless, EPA did not make a finding of impracticability even when it certified the record, *see* ECF 1830413, and EPA cannot rest on an unexplained, blanket assertion of impracticability to constrict the record for judicial review.

Nor can EPA exclude material from the administrative record "on the basis of a post hoc explanation by agency counsel." *Owner-Operator Indep. Drivers Ass'n v. FMCSA*, 494 F.3d 188, 204 n.4 (D.C. Cir. 2007). "[I]n dealing with a determination or judgment which an administrative agency alone is authorized to make, [the court] must judge the propriety of such action solely by the grounds invoked by the agency." *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). That "fundamental rule of administrative law," *id.*, applies not only to EPA's ultimate decision but also to the subsidiary determinations that inform its decision. One such determination is whether a public comment was "received too late for [the agency] to practicably consider." Proposed Action, 83 Fed. Reg. at 43,471. EPA did not make, much less explain, any impracticability determination at the time of decision, and it cannot invent one now in the throes of litigation.

In any event, counsel's impracticability arguments are unpersuasive. Although "over seven thousand" distinct comments were submitted on EPA's and NHTSA's omnibus proposal by October 26, 2018, Opp. at 5, the agencies did not see fit to address "the vast majority of" those comments before taking the actions under review, Final Action, 84 Fed. Reg. 51,310 (Sept. 27, 2019). More fundamentally, EPA fails to explain how, in the absence of any external deadline for these final actions, the overall volume

of comments received could have made it impracticable for the agency to consider any of the relatively small number of additional comments that had been submitted after October 26, 2018.

Further, EPA has admitted that its decision "to move forward" with finalizing the actions under review was prompted, in part, by a step taken by California on July 25, 2019, almost nine months after the comment closing date. Final Action, 84 Fed. Reg. at 51,310–11. *Contra* Opp. at 7 (asserting, without support, that "EPA would have been well into finalizing" these actions by July 23, 2019). EPA fails to establish that it was impracticable to consider public comments received before (in some cases, long before) the agency had even decided to finalize these actions. In particular, EPA does not try to explain how it was practicable to consider, cite, and rely on parts of a major government report published in November 2018 and yet impracticable to consider the December 2018 comments explaining that other parts of the same report undercut EPA's rationale for its actions. *See* Mot. at 10. Nor does EPA show that it was impracticable to consider a May 2019 comment by the California Air Resources Board—the regulatory body whose authority EPA had targeted—casting doubt on a fundamental premise of EPA's proposal. *See id.* at 10–11; *see also id.* at 11 (citing other public comments from the spring of 2019 addressing the extraordinary risks to the State of California from climate change).

Instead, EPA catalogues (Opp. at 6–7) other comments submitted in the summer of 2019, closer to the date of final action.* The agency made no finding that it was impracticable to consider those comments either. But even had EPA done so, that would not explain why the agency categorically refused to consider *any* comments submitted after October 26, 2018. The exclusion of *all* those comments underscores that EPA's current arguments are post hoc rationalizations for a blanket decision to ignore "late" comments—a decision that EPA evidently reached on some entirely different, and entirely unexplained, basis.

* * *

For the foregoing reasons, and the reasons stated in the motion to complete the administrative record, this Court should order EPA to complete the record with public comments and supporting documents submitted from October 27, 2018, to September 19, 2019. Resolution of this motion will provide certainty about the scope of the administrative record for judicial review and maximize the efficiency of merits briefing in this already complex case.

* EPA does not dispute (Opp. at 7) that its unlawful delay in responding to a September 2018 FOIA request was the cause of any "untimel[iness]" in a comment submitted by 12 States on July 23, 2019, addressing EPA's response to that request. *See* Mot. at 9 n.5. It is improper for EPA to withhold relevant information from the public until after the close of the formal comment period and then omit comments on that information from the administrative record on the ground that EPA could not practicably consider them.

Dated: March 16, 2020

Respectfully submitted,

For Petitioners in Cases No. 19-1239, 19-1246:

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General of California
ROBERT BYRNE
Senior Assistant Attorney General
GARY E. TAVETIAN
DAVID A. ZONANA
Supervising Deputy Attorneys General
JESSICA BARCLAY-STROBEL
MEREDITH J. HANKINS
JENNIFER KALNINS TEMPLE
M. ELAINE MECKENSTOCK
CAROLYN NELSON ROWAN
JONATHAN A. WIENER
Deputy Attorneys General

/s/ Julia K. Forgie
JULIA K. FORGIE
Deputy Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6623
Julia.Forgie@doj.ca.gov

Attorneys for Petitioner State of California, by and through its Governor Gavin Newsom, Attorney General Xavier Becerra, and California Air Resources Board

Additional Counsel on Following Pages

FOR THE STATE OF COLORADO

PHIL WEISER
Colorado Attorney General

/s/ Eric R. Olson
ERIC R. OLSON
Solicitor General
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
Telephone: (720) 508-6562
eric.olson@coag.gov

Attorneys for Petitioner State of Colorado

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut
MATTHEW I. LEVINE
Assistant Attorney General

/s/ Scott N. Koschwitz
SCOTT N. KOSCHWITZ
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
Telephone: (860) 808-5250
Fax: (860) 808-5386
Scott.Koschwitz@ct.gov

Attorneys for Petitioner State of Connecticut

FOR THE STATE OF DELAWARE

KATHLEEN JENNINGS
Attorney General of the State of Delaware

/s/ Kayli H. Spialter
KAYLI H. SPIALTER
CHRISTIAN WRIGHT
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
Telephone: (302) 395-2604
Kayli.spialter@delaware.gov

Attorneys for Petitioner State of Delaware

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General of the District of Columbia

/s/ Loren L. AliKhan
LOREN L. ALIKHAN
Solicitor General
Office of the Attorney General for the District of Columbia
One Judiciary Square
441 4th Street, NW, Suite 630 South
Washington, D.C. 20001
Telephone: (202) 727-6287
Fax: (202) 730-1864
Loren.AliKhan@dc.gov

Attorneys for Petitioner District of Columbia

FOR THE STATE OF HAWAII

CLARE E. CONNORS
Attorney General

/s/ William F. Cooper
WILLIAM F. COOPER
Deputy Attorney General
State of Hawaii Office of the Attorney General
425 Queen Street
Honolulu, HI 96813
Telephone: (808) 586-4070
Bill.F.Cooper@Hawaii.gov

Attorneys for Petitioner State of Hawaii

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois
MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division
JASON E. JAMES
Assistant Attorney General

/s/ Daniel I. Rottenberg
DANIEL I. ROTTENBERG
Assistant Attorney General
69 W. Washington St., 18th Floor
Chicago, IL 60602
Telephone: (312) 814-3816
DRottenberg@atg.state.il.us

Attorneys for Petitioner State of Illinois

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ Laura E. Jensen
LAURA E. JENSEN
Assistant Attorney General
6 State House Station
Augusta, ME 04333
Telephone: (207) 626-8868
Fax: (207) 626-8812
Laura.Jensen@maine.gov

Attorneys for Petitioner State of Maine

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General of Maryland

/s/ Roberta R. James
ROBERTA R. JAMES
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230
Telephone: (410) 537-3748

JOHN B. HOWARD, JR.
JOSHUA M. SEGAL
STEVEN J. GOLDSTEIN
Special Assistant Attorneys General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Telephone: (410) 576-6300

Attorneys for Petitioner State of Maryland

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General
CHRISTOPHE COURCHESNE
Assistant Attorney General
Chief, Environmental Protection Division
CAROL IANCU
Assistant Attorney General
MEGAN M. HERZOG
Special Assistant Attorney General

/s/ Matthew Ireland
MATTHEW IRELAND
Assistant Attorney General
Office of the Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
Telephone: (617) 727-2200
matthew.ireland@mass.gov

Attorneys for Petitioner Commonwealth of Massachusetts

FOR THE PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General of Michigan

/s/ Neil D. Gordon
NEIL D. GORDON
GILLIAN E. WENER
Assistant Attorneys General
Michigan Department of Attorney General
Environment, Natural Resources and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
Telephone: (517) 335-7664
gordonn1@michigan.gov

Attorneys for Petitioner People of the State of Michigan

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General of Minnesota

/s/ Peter N. Surdo
PETER N. SURDO
Special Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN, 55101
Telephone: (651) 757-1061
Peter.Surdo@ag.state.mn.us

Attorneys for Petitioner State of Minnesota

FOR THE STATE OF NEVADA

AARON D. FORD
Attorney General of Nevada

/s/ Heidi Parry Stern
HEIDI PARRY STERN
Solicitor General
DANIEL P. NUBEL
Deputy Attorney General
Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
HStern@ag.nv.gov

Attorneys for Petitioner State of Nevada

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL
Attorney General of New Jersey

/s/ Lisa J. Morelli
LISA J. MORELLI
Deputy Attorney General
25 Market St., PO Box 093
Trenton, NJ 08625-0093
Telephone: (609) 376-2745
lisa.morelli@law.njoag.gov

Attorneys for Petitioner State of New Jersey

FOR THE STATE OF NEW MEXICO

HECTOR BALDERAS
Attorney General of New Mexico

/s/ William Grantham
WILLIAM GRANTHAM
Assistant Attorney General
State of New Mexico Office of the Attorney General
Consumer & Environmental Protection Division
201 Third Street NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
wgrantham@nmag.gov

Attorneys for Petitioner State of New Mexico

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of New York
YUEH-RU CHU
Chief, Affirmative Litigation Section
Environmental Protection Bureau
AUSTIN THOMPSON
Assistant Attorney General

/s/ Gavin G. McCabe
GAVIN G. MCCABE
Assistant Attorney General
28 Liberty Street, 19th Floor
New York, NY 10005
Telephone: (212) 416-8469
gavin.mccabe@ag.ny.gov

Attorneys for Petitioner State of New York

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge
STEVE NOVICK
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4593
Paul.Garrahan@doj.state.or.us
Steve.Novick@doj.state.or.us

Attorneys for Petitioner State of Oregon

FOR THE STATE OF NORTH CAROLINA

JOSHUA H. STEIN
Attorney General
DANIEL S. HIRSCHMAN
Senior Deputy Attorney General
FRANCISCO BENZONI
Special Deputy Attorney General

/s/ Asher P. Spiller
ASHER P. SPILLER
TAYLOR CRABTREE
Assistant Attorneys General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6400

Attorneys for Petitioner State of North Carolina

FOR THE COMMONWEALTH OF PENNSYLVANIA

JOSH SHAPIRO
Attorney General of Pennsylvania

/s/ Michael J. Fischer
MICHAEL J. FISCHER
Chief Deputy Attorney General
JACOB B. BOYER
Deputy Attorney General
Office of Attorney General
1600 Arch St. Suite 300
Philadelphia, PA 19103
Telephone: (215) 560-2171
mfischer@attorneygeneral.gov

Attorneys for Petitioner Commonwealth of Pennsylvania

FOR THE STATE OF RHODE ISLAND

PETER F. NERONHA
Attorney General of Rhode Island

/s/ Gregory S. Schultz
GREGORY S. SCHULTZ
Special Assistant Attorney General
Office of Attorney General
150 South Main Street
Providence, RI 02903
Telephone: (401) 274-4400
gschultz@riag.ri.gov

Attorneys for Petitioner State of Rhode Island

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General

/s/ Nicholas F. Persampieri
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Telephone: (802) 828-3171
nick.persampieri@vermont.gov

Attorneys for Petitioner State of Vermont

FOR THE COMMONWEALTH OF VIRGINIA

MARK R. HERRING
Attorney General
PAUL KUGELMAN, JR.
Senior Assistant Attorney General
Chief, Environmental Section

/s/ Caitlin C. G. O'Dwyer
CAITLIN C. G. O'DWYER
Assistant Attorney General
Office of the Attorney General
Commonwealth of Virginia
202 North 9th Street
Richmond, VA 23219
Telephone: (804) 786-1780
godwyer@oag.state.va.us

Attorneys for Petitioner Commonwealth of Virginia

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

/s/ Emily C. Nelson
EMILY C. NELSON
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504
Telephone: (360) 586-4607
emily.nelson@atg.wa.gov

Attorneys for Petitioner State of Washington

FOR THE STATE OF WISCONSIN

JOSHUA L. KAUL
Attorney General of Wisconsin

/s/ Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53702-7857
Telephone: (608) 266-7741
Fax: (608) 267-2223
vandermeusejl@doj.state.wi.us

Attorneys for Petitioner State of Wisconsin

FOR THE CITY OF LOS ANGELES

MICHAEL N. FEUER
Los Angeles City Attorney
MICHAEL J. BOSTROM
Assistant City Attorney

/s/ Michael J. Bostrom
MICHAEL J. BOSTROM
Assistant City Attorney
200 N. Spring Street, 14th Floor
Los Angeles, CA 90012
Telephone: (213) 978-1882
Fax: (213) 978-2286
Michael.Bostrom@lacity.org

Attorneys for Petitioner City of Los Angeles

FOR THE CITY OF NEW YORK

JAMES E. JOHNSON
New York City Corporation Counsel
CHRISTOPHER G. KING
ROBERT L. MARTIN
Senior Counsel
SHIVA PRAKASH
Assistant Corporation Counsel

/s/ Christopher G. King
CHRISTOPHER G. KING
Senior Counsel
New York City Law Department
100 Church Street
New York, New York
Telephone: (212) 356-2074
Fax: (212) 356-2084
cking@law.nyc.gov

Attorneys for Petitioner City of New York

FOR THE CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

/s/ Robb Kapla
ROBB KAPLA
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Telephone: (415) 554-4647
robb.kapla@sfcityatty.org

Attorneys for Petitioner City and County of San Francisco

For Petitioners in Cases No. 19-1230, 19-1243:

/s/ Matthew Littleton
MATTHEW LITTLETON
SEAN H. DONAHUE
Donahue, Goldberg, Weaver & Littleton
1008 Pennsylvania Avenue SE
Washington, DC 20003
(202) 683-6895
matt@donahuegoldberg.com

VICKIE L. PATTON
PETER M. ZALZAL
ALICE HENDERSON
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7215
vpatton@edf.org

Counsel for Environmental Defense Fund

ANCHUN JEAN SU
Center For Biological Diversity
1411 K Street NW, Suite 1300
Washington, DC 20005
(202) 849-8399
jsu@biologicaldiversity.org

MAYA GOLDEN-KRASNER
Center For Biological Diversity
660 South Figueroa Street, Suite 1000
Los Angeles, CA 90017
(213) 785-5402
mgoldenkrasner@biologicaldiversity.org

Counsel for Center For Biological Diversity

ARIEL SOLASKI
JON A. MUELLER
Chesapeake Bay Foundation, Inc.
6 Herndon Avenue
Annapolis, MD 21403
(443) 482-2171
asolaski@cbf.org

Counsel for Chesapeake Bay Foundation, Inc.

SHANA LAZEROW
Communities For A Better Environment
6325 Pacific Boulevard, Suite 300
Huntington Park, CA 90255
(323) 826-9771
slazerow@cbecal.org

Counsel for Communities For A Better Environment

EMILY K. GREEN
Conservation Law Foundation
53 Exchange Street, Suite 200
Portland, ME 04102
(207) 210-6439
egreen@clf.org

Counsel for Conservation Law Foundation

MICHAEL LANDIS
The Center For Public Interest Research
1543 Wazee Street, Suite 400
Denver, CO 80202
(303) 573-5995 ext. 389
mlandis@publicinterestnetwork.org

Counsel for Environment America

ROBERT MICHAELS
ANN JAWORSKI
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
(312) 795-3713
rmichaels@elpc.org

Counsel for Environmental Law & Policy Center

IAN FEIN
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
(415) 875-6100
ifein@nrdc.org

DAVID D. DONIGER
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 289-6868
ddoniger@nrdc.org

Counsel for Natural Resources Defense Council, Inc.

SCOTT L. NELSON
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Counsel for Public Citizen, Inc.

JOANNE SPALDING
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5725
joanne.spalding@sierraclub.org

PAUL CORT
REGINA HSU
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
(415) 217-2077
pcort@earthjustice.org

VERA PARDEE
726 Euclid Avenue
Berkeley, CA 94708
(858) 717-1448
pardeelaw@gmail.com

Counsel for Sierra Club

TRAVIS ANNATOYN
Democracy Forward Foundation
1333 H Street NW
Washington, DC 20005
(202) 601-2483
tannatoyn@democracyforward.org

Counsel for Union Of Concerned Scientists

For Petitioners in Case No. 19-1241:

/s/ Brian Tomasovic
BARBARA BAIRD, Chief Deputy Counsel
BRIAN TOMASOVIC
KATHRYN ROBERTS
South Coast Air Quality Mgmt. District
21865 Copley Dr.
Diamond Bar, CA 91765
Telephone: (909) 396-3400
Fax: (909) 396-2961

Counsel for South Coast Air Quality Management District

/s/ Brian C. Bunger
BRIAN BUNGER, District Counsel
RANDI WALLACH
Bay Area Air Quality Mgmt. District
375 Beale Street, Suite 600
San Francisco, CA 94105
Telephone: (415) 749-4720
Fax: (415) 749-5103

Counsel for Bay Area Air Quality Management District

/s/ Kathrine Pittard
KATHRINE PITTARD, District Counsel
Sacramento Metropolitan Air Quality Mgmt. District
777 12th Street
Sacramento, CA 95819
Telephone: (916) 874-4907

Counsel for Sacramento Metropolitan Air Quality Management District

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **Reply in Support of Motion to Complete Administrative Record** is printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word, it contains 2,426 words.

/s/ Julia K. Forgie
JULIA K. FORGIE

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2020, I caused a copy of the foregoing **Reply in Support of Motion to Complete Administrative Record** to be filed with the Clerk of the Court using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Julia K. Forgie
JULIA K. FORGIE