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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF CALIFORNIA; GAVIN C. NEWSOM, in his official capacity as Governor of the State of California; THE CALIFORNIA AIR RESOURCES BOARD; MARY D. NICHOLS, in her official capacity as Chair of the California Air Resources Board and as Vice Chair and board member of the Western Climate Initiative, Inc.; JARED BLUMENFELD, in his official capacity as Secretary for Environmental Protection and as a board member of the Western Climate Initiative, Inc.; KIP LIPPER, in his official capacity as a board member of the Western Climate Initiative, Inc.; and RICHARD BLOOM, in his official capacity as a board member of the Western Climate Initiative, Inc.,

Defendants,

Case No. 2:19-cv-02142-WBS-EFB

INTERVENORS EDF AND NRDC'S SUPPLEMENTAL BRIEF ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Date: March 9. 2020
Time: 1:30 p.m.

The Hon. William B. Shubb

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2 ENVIRONMENTAL DEFENSE FUND and NATURAL RESOURCES DEFENSE COUNCIL; and INTERNATIONAL EMISSIONS TRADING ASSOCIATION,
3
4 Defendant-Intervenors

5 (additional counsel)

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As directed by the Court in its February 26, 2020 order, Defendant-Intervenors Environmental Defense Fund and Natural Resources Defense Council submit this supplemental brief on Plaintiff's and Defendants' cross-motions for summary judgment.[1] Dkt. 80. Intervenors fully support the Court's conclusion that Plaintiff's claims should not be adjudicated "piecemeal." *Id.* at 2. The claims are not currently presented together solely because Plaintiff, for reasons known only to it, unilaterally decided that its claims under the Compact and Treaty Clause should be resolved first, and with great haste. The Court plainly has broad discretion to structure the litigation as it sees fit, and Intervenors suggest that the Court exercise that discretion to require all of Plaintiff's claims to be heard together.

There is no reason that all four claims cannot be adjudicated together. Indeed, Plaintiff has demonstrated that its claims are related. Its opening and reply briefs in support of its motion on the Compact and Treaty Clause claims both lean heavily on cases applying the foreign affairs preemption doctrine despite the fact that Plaintiff has decided not to move for summary judgment on that claim. *See* Dkt. 12 at 10-11, 29-30 (citing *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S 363 (2000), *Hines v. Davidowitz*, 312 U.S. 52 (1941), and *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012)); Dkt. 78 at 13-14, 16, 27-29, 32, 38 (citing *Garamendi*, *Crosby*, *Hines*, *Movsesian*, *United States v. Pink*, 315 U.S. 203 (1942), and *Zschernig v. Miller*, 389 U.S. 429 (1968)). For example, in response to Intervenors' arguments that Plaintiff lacks standing to assert its Compact and Treaty Clause claims (Dkt. 48 at 19-27), Plaintiff relies almost exclusively on foreign affairs preemption cases, arguing that the State's alleged involvement in "foreign policy" caused it injury. Dkt. 78 at 16-17 (citing *Zschernig*, *Hines*, *Pink*, *Movsesian*, and *Garamendi*). Plaintiff's asserted injury is based wholly on the notion that the federal government solely occupies that field. *Id.* Moreover, Intervenors will likely argue that Plaintiff similarly lacks standing to assert its foreign affairs preemption and foreign Commerce Clause claims because Plaintiff cannot show that the coordination of California and Quebec's emissions markets is the cause of any injury to Plaintiff, whatever the constitutional basis, or lack thereof, of its claims.

[1] Intervenors have not filed their own motion for summary judgment, but read the Court's order as directing all parties to file supplemental briefs.

Intervenors did not cross-move for summary judgment on all of Plaintiff's claims because Plaintiff's accelerated briefing and hearing schedule made such a comprehensive motion impracticable.[2] Yet it is hard to see the urgency that would justify that accelerated litigation of half of Plaintiff's claims. California and Quebec's coordination has been ongoing for more than six years, Dkt. 48 at 18, and the current Administration was in office for three of those years before it filed suit. There is no reason that the Court should not defer resolution of the current cross-motions until the remaining claims are presented.[3]

The Court may do so under the authority "necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962)). Under this inherent power, district courts have broad discretion to continue a hearing date in the interests of justice or judicial economy. *See NML Capital Ltd. v. Republic of Argentina*, No. 2:14-CV-1573-RFB-VCF, 2014 WL 7012488, at *4 (D. Nev. Dec. 12, 2014) (continuing hearing date and noting that "[t]he court's power to manage and control its docket in this fashion is one of the court's inherent powers") (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936), and *Atchison, Topeka & Santa Fe Ry. v. Hercules, Inc.*, 146 F.3d 1071, 1074 (9th Cir.1998)); *Abascal v. Consulate Gen. of Spain*, No. CIV.A. 12-1961, 2013 WL 4039427, at *1 (E.D. La. Aug. 7, 2013) (continuing hearing date and noting that "a district court has the inherent power to 'control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants'") (quoting *Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233, 243 (5th Cir. 2009), and *Landis*, 299 U.S. at 254–55).

Intervenors recommend that the Court exercise that authority to defer argument and decision on the Compact and Treaty Clause claims until the remaining claims are presented for decision, by further motions for summary judgment or otherwise. Intervenors further suggest that the Court set a scheduling conference to discuss how the parties intend to bring those claims forward for resolution.

[2] And given that Defendants cross-moved on the Compact and Treaty Clause claims, it was unnecessary for Intervenors to file a motion on those same claims.

[3] Particularly given the risk that Plaintiff's claims could imperil a wide variety of state agreements, *see* Dkt. 48 at 38-40 (Intervenors' opposition to motion for summary judgment); Dkt. 62 (brief of state amici), Intervenors submit that the Court should avoid a rush to judgment.

DATED: March 2, 2020

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By: /s/Matthew D. Zinn
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