No. S241948

IN THE SUPREME COURT OF CALIFORNIA

CALIFORNIA CHAMBER OF COMMERCE et al.,
Plaintiffs and Appellants,

v.

STATE AIR RESOURCES BOARD et al.,
Defendants and Respondents,

NATIONAL ASSOCIATION OF MANUFACTURERS,
Intervener and Appellant,

ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

MORNING STAR PACKING COMPANY et al.,
Plaintiffs and Appellants,

v.

STATE AIR RESOURCES BOARD et al.,
Defendants and Respondents,

ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

After a decision by the Court of Appeal
Third Appellate District, Division One
Case Nos. C075930 and C075954

Appeal from the Sacramento County Superior Court,
Case Nos. 34-2013-80001464 and 34-2012-80001313
The Honorable Timothy M. Frawley, Judge, Presiding

INTERVENERS AND RESPONDENTS' CONSOLIDATED ANSWER TO PETITIONS FOR REVIEW

[Counsel listed on following page]

* Matthew D. Zinn
(SBN 214587)
Catherine H. Malina
(SBN 299241)
Shute, Mihaly &
Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
zinn@smwlaw.com

Attorneys for Interveners and Respondents
Environmental Defense Fund
and Natural Resources Defense
Council

Erica Morehouse Martin
(SBN 274988)
Timothy J. O'Connor
(SBN 250490)
Environmental Defense Fund
1107 9th Street, Suite 1070
Sacramento, CA 95814
Telephone: (916) 492-4680
Facsimile: (916) 441-3142
emorehouse@edf.org

Attorneys for Intervener and Respondent
Environmental Defense Fund

David Pettit
(SBN 067128)
Alexander L. Jackson
(SBN 267099)
Natural Resources Defense
Council
1314 2nd Street
Santa Monica, CA 90401
Telephone: (310) 434-2300
Facsimile: (310) 434-2109
ajackson@nrdc.org

Attorneys for Intervener and Respondent
Natural Resources Defense
Council

Sean H. Donahue
(SBN 264284)
Donahue & Goldberg
1111 14th St., NW Suite 510A
Washington, DC 20005
Telephone: (202) 277-7085
Facsimile: (202) 315-3582
sean@donahuegoldberg.com

Attorneys for Intervener and Respondent
Environmental Defense Fund

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

California Cases

California Constitution

California Statutes

Other Authorities

INTRODUCTION

As part of its cap-and-trade program to reduce the greenhouse gas emissions fueling climate change, Defendant California Air Resources Board ("ARB") holds quarterly auctions of emission allowances, each of which authorizes the holder to emit one ton of greenhouse gases. Cap and trade minimizes the cost of controlling greenhouse gas emissions by creating a market in tradable emission allowances. The auction is one mechanism, of several, that ARB selected to distribute emission allowances to market participants. Plaintiffs contend that the price paid by bidders at auction is in fact a cleverly disguised tax subject to the supermajority vote requirement of Proposition 13. Both the superior court and the Court of Appeal correctly rejected that theory.

Despite Plaintiffs' alarmist rhetoric, the Court of Appeal's decision ("Opinion" or "Op.") does not satisfy this Court's criteria for review. To be sure, the cap-and-trade program, and the problem of climate change that it targets, are enormously important. But the *legal issue* presented by the petitions is not. Plaintiffs challenge the Court of Appeal's construction of the undefined term "tax" in the original version of Article XIIIA of the California Constitution. But that provision was superseded in 2010 when the voters adopted

Proposition 26, which included an express definition of "tax." And the Opinion applies that former law to a unique regulatory mechanism that is unlikely to be duplicated. The case therefore does not present an important legal question for this Court to resolve.

The Court of Appeal's Opinion also does not create a conflict of authority. From the outset, Plaintiffs have attempted to shoehorn the sale of emission allowances at auction into the cases, such as *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, involving charges imposed to fund regulatory activities or mitigation. The Court of Appeal, including the dissent, rightly refused to do so. Finding no Proposition 13 case on point, the court relied on longstanding legal principles of taxation to hold that auctioning emission allowances does not impose a tax because (1) participation in the auction is not compulsory, and (2) winning bidders receive consideration for their payment—a valuable asset that can be used for compliance, banked, or sold on the private market. Indeed, those features have enticed *unregulated* parties to opt into the auction to pay the putative "tax." The case thus generates no legal inconsistency for this Court to correct.

The benefits of reviewing the Opinion, if any, would therefore be meager and short-lived. And to make matters worse, that review

would be costly. This litigation has cast a shadow of uncertainty over the cap-and-trade program and the market for emission allowances, which has interfered with the program's efficient operation. Further prolonging the case would allow that interference to continue, for precious little benefit.

The Court should therefore deny the petitions.

ARGUMENT

I. This case does not present an important question of law because the Opinion applies a superseded version of Article XIIIA.

Review of the Opinion is not "necessary . . . to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1); see also *Southern Cal. Ch. of Associated Builders and Contractors, Inc. v. Cal. Apprenticeship Council* (1992) 4 Cal.4th 422, 431, fn. 3 ["[T]his court limits its review to issues of statewide importance."].) The legal issue presented by the petitions becomes increasingly academic day by day. Remarkably, Plaintiffs ignore the fact that the

constitutional provision they rely on, enacted by Proposition 13 in 1978, was superseded *seven years ago.*[1]

The Court of Appeal applied the Proposition 13 version of Article XIIIA because it was in effect when AB 32 was enacted in 2006. (Op. at 28-29, 49; see also NAM Pet. at 7, fn. 2.) The court's decision, like so much of the Proposition 13 jurisprudence, interprets the undefined term "tax" in Section 3. (Op. at 30-32; see Cal. Const., former art. XIIIA, § 3 [requiring approval by a two-thirds majority for "changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto"]; *Sinclair Paint, supra*, 15 Cal.4th 866, 874 ["'tax' has no fixed meaning"].) Lacking an explicit definition, the Court of Appeal concluded that "the term 'tax' has different meanings in different contexts" and thus looked to the "Hallmarks

---

[1] Plaintiff California Chamber of Commerce ("Chamber") alone also insists that the courts below erred in holding that ARB had statutory authority to adopt the auction. (Chamber Pet. at 37-39.) Intervener National Association of Manufacturers ("NAM") and Plaintiff Morning Star Packing Co. ("MS") apparently recognized that this was not an issue worth briefing. Indeed, even the dissent below ("Dis.") agreed with the majority (and the superior court) that AB 32 gave ARB sufficient statutory authority to use an auction to distribute emission allowances. (Dis. at 1.)

of a Tax" derived from prior cases to evaluate a charge unlike any previously considered by a court. (Op. at 37-39.)

Enacted in November 2010, Proposition 26 added to Article XIIIA, Section 3 the express definition of "tax" that Proposition 13 lacked. It now specifies that "[a]s used in this section, 'tax' means any levy, charge, or exaction of any kind imposed by the State," subject to enumerated exceptions. (Cal. Const., art. XIIIA, § 3(b).)

With that express definition now in place, the Opinion cannot be binding precedent for the application of Proposition 26. (See *People v. Mendoza* (2000) 23 Cal.4th 896, 915 [case decided under an 1856 statute "cannot be regarded as authority for proper construction of the quite different code section enacted in 1872"] (quoting *People v. Valentine* (1946) 28 Cal.2d 121, 144); see also Op. at 28-29, 49.) Rather, the Opinion would be binding precedent only for that small—and diminishing—group of cases to which the pre-Proposition 26 version of Article XIIIA remains applicable. While Proposition 13 recedes in the rearview mirror, this Court is already at work reviewing the swiftly accumulating Proposition 26 cases. (See, e.g., *Citizens for Fair REU Rates v. City of Redding* (2015) 233 Cal.App.4th 402, review granted April 29, 2016, S224779; *Jacks v. City of Santa Barbara* (2015) 234 Cal.App.4th 925, review granted

June 10, 2015, S225589; *City of San Buenaventura v. United Water Conservation Dist.* (2015) 235 Cal.App.4th 228, review granted June 24, 2015, S226036.)

In sum, the constitutional language construed by the court below is largely a dead letter. It can still apply only to those charges authorized seven or more years ago. Indeed, the appellate decisions applying the Proposition 13 version of Articles XIIIA or XIIIC are dwindling. (See *Cal. Building Industry Assn. v. State Water Resources Control Bd.* (2015) 235 Cal.App.4th 1430, review granted July 22, 2015, S226753; *Brooktrails Township Community Services Dist. v. Bd. of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195, 206 [applying pre-Proposition 26 version of Article XIIIC because challenged charge already existed when Proposition 26 was enacted].)

Moreover, even if Proposition 13 remained in effect, the Opinion would offer little guidance for future cases because it applies that superannuated law to a unique regulatory program. The auction is a mechanism for distributing valuable emission allowances created by the cap-and-trade program and serves several other functions to enhance the operation of that program, such as promoting the discovery of allowance prices, fairly treating new entrants to

regulated industries, and preventing the program from creating new windfall profits for regulated firms. (Op. at 6-9, 16, fn. 11; EDF/NRDC Br. at 17-18.) It is thus unlike any program previously evaluated under Proposition 13, and the Opinion is tailored to that program.[2]

Despite Plaintiffs' speculation (see, e.g., Chamber Reply Br. at 63-64; NAM Reply Br. at 34-35; MS Reply Br. at 23-23, 37-38), there is no reason to expect a proliferation of ersatz regulatory auctions. Unlike Plaintiffs' Rube-Goldberg-esque vehicle mileage auction (see Op. at 49-50), *decades* of academic literature supported the use of

---

[2] Plaintiffs underscore the amount of revenue that the auction has generated from the sale of emission allowances. (See CC Pet. at 15-17; NAM Pet. at 10-12; MS Pet. at 30.) But this confuses the significance of the challenged program, which mirrors the staggering scale of the crisis of climate change, with the significance of the *legal question* presented. In any event, this Court has previously declined to review Proposition 13 cases involving charges that were designed to generate enormous sums. (See, e.g., *Cal. Taxpayers' Assn. v. Franchise Tax Bd.* (2010) 190 Cal.App.4th 1139, 1148 ("*Cal. Taxpayers*") [tax underpayment penalty that would generate $1 billion in the first year alone], review denied March 16, 2001, 2011 Cal. LEXIS 2699; *Cal. Building Industry Assn. v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 128 [indirect emission charge that would fund $400 million in mitigation projects in a single air pollution control district], review denied January 13, 2010, 2010 Cal. LEXIS 390.)

cap and trade, including an auction of emission allowances, as an efficient tool to stem climate change. (See Op. at 16; Burtraw Amicus Br. at 4-7.) Of course, if regulatory auctions were to flower across the state, and courts upheld them under the new definition of a tax in Proposition 26, this Court could readily address any abuse by promptly reviewing a decision so applying the Opinion.

II. Review is not necessary to ensure legal uniformity because the Opinion does not create a split of authority.

Review of the Opinion is also not "necessary to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).) The Court of Appeal's Opinion is entirely consistent with the existing case law under Proposition 13. Because, as the Court of Appeal recognized, the cap-and-trade auction is utterly unlike any program or charge previously considered (Op. at 35-37), the court properly refused to force the case into the existing categories of charges previously evaluated under Proposition 13. Rather, the Opinion is another step—and for the reasons just discussed, perhaps the final step—in the evolution of the Proposition 13 jurisprudence: an adaptation of principles distilled from the prior cases to suit new circumstances.

"'[T]ax' has no fixed meaning, and . . . the distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts." (*Sinclair Paint, supra,* 15 Cal.4th 866, 874.) This Court in *Sinclair Paint* identified several categories of non-tax charges that had evolved over the nearly 20 years since Proposition 13 was adopted. (See *id.* at 874-75 [describing development fees, special benefits assessments, and regulatory fees].) Yet the Court has never suggested that those categories represent the *only* kinds of government charges that are not taxes, and the courts of appeal have explicitly rejected that notion. (See *Cal. Taxpayers, supra,* 190 Cal.App.4th 1139, 1146.) On the contrary, throughout Proposition 13's history, courts have faced charges that fell outside the most common categories of recognized non-tax charges, but nevertheless upheld them. (See, e.g., *ibid.* [penalty for underpayment of taxes]; *Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 739 [business district improvement assessment]; *Alamo Rent-a-Car, Inc. v. Bd. of Supervisors of Orange County* (1990) 221 Cal.App.3d 198, 205 [off-airport car rental charge].)

Sinclair Paint recapitulated that evolution. There this Court upheld a new species of "regulatory fees"—those imposed to fund mitigation to offset the effect of the payers' activities, rather than to

fund the administrative costs of regulating the payers—and did so though there were *no previous cases* applying the State tax limitation in Article XIIIA, Section 3. (*Sinclair Paint,* 15 Cal.4th at 866, 873.)

Plaintiffs have never identified a single case in which a court has considered a charge or regulatory mechanism anything like the auction, let alone held that it imposes a tax. Instead, from the beginning, they have peremptorily insisted that *Sinclair Paint* controls, based on the theory that any charge that is "regulatory" in some respect must be defended, if at all, as a *Sinclair Paint* fee. (See, e.g., Chamber Opening Br. at 37; MS Opening Br. at 11.) Thus, they argue, any such charge must be calibrated to the amount necessary to fund the regulatory activity.

The Court of Appeal's rejection of that facile argument does not create a conflict with *Sinclair Paint* or the other regulatory fee cases. Proposition 13 does not establish a regime "in which a 'tax' is the general rule and a 'fee' the limited exception." (*Cal. Taxpayers, supra,* 190 Cal.App.4th 1139, 1146.) *Sinclair Paint* addresses charges imposed to *fund* regulatory activities. (See, e.g., *Cal. Building Industry Assn. v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 131; *San Diego Gas and Electric Co. v.*

San Diego County Air Pollution Control Dist. (1988) 203 Cal.App.3d 1132, 1148.) The auction does not *fund* regulation—it *is* regulation. It is a mechanism for distributing emission allowances that purchasers can use or sell and is designed to facilitate a variety of operational goals of the cap-and-trade program. Even the dissent below agreed that *Sinclair Paint* was not controlling in this case. (Dis. at 1-2.)

Instead, the Court of Appeal looked to the general principles that courts have historically applied to define a tax. The Opinion thus lies in "the classic tradition of the common law, which adapts functional principles from precedent as changing social and economic conditions require." (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 717 (Kaufman, J., concurring and dissenting).) The court recognized that a charge cannot be a tax if it is not compulsory and is demanded in exchange for a valuable asset. (Op. at 4-5.) Greenhouse gas sources covered by cap and trade are not obligated to purchase emission allowances at auction. They can obtain allowances on the private market—the "trade" in "cap and trade"—they can use offsets for a portion of their compliance burden, and/or they can simply reduce their emissions. (Op. at 39.)

Moreover, successful bidders receive valuable intangible assets, which they will account for on their books. (Burtraw amicus at 11.) No tax, regulatory fee, or any other exaction provides such a quid pro quo. The taxes cited by Plaintiffs, such as the sales tax (see, e.g., Chamber Pet. at 29-30), provide nothing to the payer that it would not have without the tax in place: without a sales tax, retailers could still sell goods. By contrast, without cap and trade, no valuable emission allowances would exist to be acquired and then used or sold. Cap and trade *creates* the value embodied in the allowances. (Op. at 44; EDF/NRDC Br. at 22-23.)

Plaintiffs have not shown that the Court of Appeal's reliance on these principles conflicts with any other case. Rather, they assert that the court erred in its application of them to these circumstances. (See, e.g., NAM Pet. at 31-36.) But even if the Court of Appeal was mistaken as a factual matter in concluding that the auction is not compulsory or that it distributes valuable assets, such mistakes would not constitute the *legal inconsistency* that might justify review. (See *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129 [a "fact-specific issue does not present an issue worthy of review"].) For example, the petitions laud the dissent for focusing on the Rabo declaration filed by Morning Star (Dis. at 2-8), but wheth-

er the Opinion properly construed a declaration is not a question worthy of this Court's review. (See *Metcalf, supra,* 42 Cal.4th 1121, 1129 [sufficiency of the evidence is not an issue worthy of review].)

In sum, the Opinion does not conflict with the existing body of Proposition 13 case law. Rather, the court dutifully applied the principles of those cases to a truly new factual scenario. This Court therefore need not grant the petitions to preserve legal uniformity.

III. Review would prolong the disruption of the cap-and-trade program caused by this litigation.

Given that the Opinion applies longstanding legal principles to novel facts, and does so in construing a superseded constitutional provision, granting review would provide none of the benefits of certainty and uniformity on important legal issues that this Court seeks. And any slight benefit would come at a significant cost: further extending the shadow cast by this case over the cap-and-trade program.

The uncertainty about the auction's legality caused by this litigation has interfered with the program's operation. (See, e.g., Megerian and Vartabedian, *California's cap-and-trade program faces daunting hurdles to avoid collapse*, L.A. Times (June 14, 2016) ["Analysts suggested that legal uncertainty around cap and trade

has damaged faith in a system that, like other markets, requires investors' confidence to operate smoothly."]; Walters, *Could California's 'cap-and-trade' auction meltdown happen again?,* Sac. Bee (June 13, 2016); Burtraw, *Ignore cap-and-trade's detractors, California's carbon-pricing works,* L.A. Times (June 23, 2016).) As the case ground on in the Court of Appeal, bidding in the auction declined, based in part on the risk that the auction could be invalidated. (See ARB, *California Cap-and-Trade Program—Summary of Joint Auction Settlement Prices and Results* (May 2017) <https://www.arb.ca.gov/cc/capandtrade/auction/results _summary.pdf>.) In particular, after the Court of Appeal requested supplemental briefing in April 2016, demand for allowances at the next auction plummeted nearly ten-fold. (*Ibid.* [approximately 68 million current-vintage allowances sold in the February 2016 auction, but only seven million sold in the May 2016 auction].)

In stark contrast, in the May 2017 auction, which occurred shortly after the Opinion was issued, participation skyrocketed nearly seven-fold. (*Ibid.* [11 million current-vintage allowances sold in the February 2017 auction, but 75 million sold in the May 2017 auction; all such allowances offered for sale were sold].) Market participants and observers viewed this result as a direct response to

the Opinion's having lifted the cloud of doubt about the auction's constitutionality. (See Megerian, *State's cap-and-trade auction sees a rebound,* L.A. Times (May 25, 2017) ["Previous auction results also had been weakened by legal and political troubles involving cap and trade. The state received some relief from the legal problem when an appeals court in Sacramento rejected arguments from business groups that the program is an unconstitutional tax."]; Kasler, *California climate program has struggled. Why the billion-dollar rebound?*, Sac. Bee (May 24, 2017) ["A key factor in the market weakness was a pending court case challenging the constitutionality of the auctions. . . . 'The court ruling certainly is the big difference; it took away one big question mark . . . .'"].)

To be clear, the practical impact of the continuing litigation on the program, standing alone, could hardly justify refusing review of an unsettled legal quandary of statewide consequence. But the Opinion does not create such a quandary. Accordingly, any minor benefits of review would be outweighed by the costs of further protracting the litigation and the uncertainty it creates.

CONCLUSION

The Court of Appeal's Opinion is likely to be one of the last judicial decisions to apply Proposition 13. It applies that former law

to the price paid by bidders in a unique regulatory auction; a charge utterly unlike the fees that populate the prior Proposition 13 cases. The Opinion therefore does not satisfy any of the Court's criteria for review. Granting review could only perpetuate litigation that has unnecessarily interfered with the operation of this program. The Court should therefore deny the petitions.

DATED: June 9, 2017

SHUTE, MIHALY & WEINBERGER LLP

By: _____
MATTHEW D. ZINN

Attorneys for Intervenors and Respondents
Environmental Defense Fund and Natural Resources Defense Council

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.504(d) of the California Rules of Court, I hereby certify that the total number of words in this brief, as calculated by the word-processing program used to produce it, is 3,203.

DATED: June 9, 2017

SHUTE, MIHALY &
WEINBERGER LLP

By: _____
MATTHEW D. ZINN

Attorneys for Intervenors and
Respondents
Environmental Defense Fund and
Natural Resources Defense
Council

PROOF OF SERVICE

California Chamber of Commerce v. State Air Resources Board
Case No. S241948
Supreme Court of the State of California

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On June 12, 2017, I served true copies of the following document(s) described as:

INTERVENERS AND RESPONDENTS' CONSOLIDATED ANSWER TO PETITIONS FOR REVIEW

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 12, 2017, at San Francisco, California.

Sara L. Breckenridge

SERVICE LIST
California Chamber of Commerce v. State Air Resources Board
Case No. S241948
Supreme Court of the State of California

Court of Appeal of the State of California
Third Appellate District
914 Capirol Mall,4th Floor
Sacramento, CA 95814

Via E-Submission

Hon. Timothy M. Frawley
Superior Court of California
County of Sacramento
720 9th Street
Sacramento, CA 95814

Via U.S. Mail

Xavier Becerra
Attorney General of California
Robert E. Asperger
Deputy Attorney General
Office of the State Attorney General
P.O. Box 944255
1300 I Street, Suite 125
Sacramento, CA 94244
Telephone: (916) 445-9555
bob.asperger@doj.ca.gov

Attorneys for Defendants and Respondents
CALIFORNIA AIR RESOURCES BOARD, et al.

Gavin G. McCabe
Molly K. Mosley
David A. Zonana
Supervising Deputy Attorneys General
M. Elaine Meckenstock
Deputy Attorney General
Office of the Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612
Telephone: (510) 622-2145
Facsimile: (510) 622-2270
Gavin.McCabe@doj.ca.gov
David.Zonana@doj.ca.gov

Attorneys for Defendants and Respondents
CALIFORNIA AIR RESOURCES BOARD, et al.

James R. Parrinello
Christopher Elliott Skinnell
Nielsen Merksamer Parrinello
Gross & Leoni LLP
2350 Kerner Blvd., Suite 250
San Rafael, CA 94901
Telephone: (415) 389-6800
Facsimile: (415) 388-6874
jparrinello@nmgovlaw.com

Attorneys for Plaintiffs and Appellants
CALIFORNIA CHAMBER OF COMMERCE, et al.

Steven A. Merksamer
Arthur George Scotland
Kurt R. Oneto
Nielsen Merksamer Parrinello
Gross & Leoni LLP
1415 L Street, Suite 250
Sacramento, CA 95814
Telephone: (916) 327-7852
Facsimile: (916) 327-2247
smerksamer@nmgovlaw.com
rmartland@nmgovlaw.com
koneto@nmgovlaw.com

Attorneys for Plaintiffs and Appellants
CALIFORNIA CHAMBER OF COMMERCE, et al.

Anthony Lee Francois
James S. Burly
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
rsr@pacificlegal.org
tha@pacificlegal.org

Attorneys for Plaintiffs and Appellants
Morning Star Packing Co., et al.

Sean A. Commons
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 896-6010
Facsimile: (213) 896-6600
scommons@sidley.com

Attorneys for Inervener and Appellant
NATIONAL ASSOCIATION OF MANUFACTURERS

Roger R. Martella, Jr.
Paul J. Zidlicky
Eric D. McArthur
Matthew D. Krueger
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
rmartella@sidley.com
pzidlicky@sidley.com
emcarthur@sidley.com
mkrueger@sidley.com

Attorneys for Intervener and Appellant
NATIONAL ASSOCIATION OF MANUFACTURERS

Sean H. Donahue
Donahue & Goldberg, LLP
1111 14th St., NW Suite 510A
Washington, DC 20005
Telephone: (202) 277-7085
Email:
sean@donahuegoldberg.com

Attorneys for Intervener and Respondent
ENVIRONMENTAL DEFENSE FUND

Erica Morehouse Martin
Timothy J. O'Connor
ENVIRONMENTAL DEFENSE FUND
1107 9th St., Suite 1070
Sacramento, CA 95814
Telephone: (916) 492-4680
Facsimile: (916) 441-3142
Email: emorehouse@edf.org
Email: toconnor@edf.org

Attorneys for Intervener and Respondent
ENVIRONMENTAL DE-FENSE FUND

David Petit
Alexander J. Jackson
Natural Resources Defense Council
1314 2nd Street
Santa Monica, CA 90401
Telephone: (310) 434-2300
Facsimile: (310) 434-2399
dpettit@nrdc.org
ajackson@nrdc.org

Attorneys for Intervener and Respondent
NATURAL RESOURCES DEFENSE COUNCIL, INC

895986.6