

1 KAMALA D. HARRIS
Attorney General of California
2 SALLY MAGNANI
Senior Assistant Attorney General
3 SUSAN S. FIERING
Supervising Deputy Attorney General
4 State Bar No. 121621
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2142
Fax: (510) 622-2270
7 E-mail: Susan.Fiering@doj.ca.gov
Attorneys for Defendants/Respondents Governor
8 *Edmund G. Brown Jr. et al.*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

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12
13 **SIERRA CLUB, ET AL,**

14 Plaintiffs/Petitioners,

15 v.

16
17 **GOVERNOR EDMUND G. BROWN JR., ET AL,**

18 Defendants/Respondents

19 **CALIFORNIA CHAMBER OF COMMERCE,**

20 Plaintiffs/Petitioners,

21 v.

22 **GOVERNOR EDMUND G. BROWN JR. ET AL,**

23 Defendants/Respondents
24

No. RG07356881

Consolidated with San Diego Superior Court
Case No. 37-2008-00096549-CU-WM-CTL

STIPULATION FOR ENTRY OF
PARTIAL CONSENT JUDGMENT AND
ORDER THEREON IN CASE NO.
RG07356881

25
26 Plaintiffs/petitioners Sierra Club; United Steel, Paper and Forestry, Rubber, Manufacturing,
27 Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC; Natural
28 Resources Defense Council, Inc.; California Labor Federation, AFL-CIO; Environmental Law

1 Foundation; Environment California; Environmental Working Group; and Catherine Houston
2 (jointly "Plaintiffs"), and defendants/respondents Edmund G. Brown Jr., Governor of the State of
3 California; Matthew Rodriguez, Secretary of the California Environmental Protection Agency;
4 Dr. George Alexeeff, Director of the Office of Environmental Health Hazard Assessment (jointly
5 "Defendants") enter into this Stipulation for Entry of Partial Consent Judgment as follows:

6
7 **1. Introduction**

8 1.1 On December 4, 2007, the Plaintiffs filed a Complaint for Injunctive and
9 Declaratory Relief and Verified Petition for Writ of Mandate against the Defendants and against
10 the Chairperson and Members of the Carcinogen Identification Committee ("CIC"). (Case
11 No.RG07356881, Alameda County Superior Court.) On February 5, 2008, the Plaintiffs filed a
12 First Amended Complaint and Verified Petition for Writ of Mandate against the same parties.
13 The Complaint and First Amended Complaint are referred to herein jointly as "Complaint." The
14 Complaint alleges that the Defendants violated a mandatory duty and abused their discretion
15 under Health and Safety Code section 25249.5 *et seq.* ("Proposition 65") by failing to revise and
16 republish the list of chemicals that are known to the state to cause cancer via the independent
17 review by the CIC; failing to consider and list chemicals via the CIC's independent review,
18 including perfluorooctanoic acid and its salts ("PFOA"); failing to list chemicals via the
19 Authoritative Bodies listing mechanism; and failing to list chemicals identified in California
20 Labor Code sections 6382(b)(1) and 6382(d). The Complaint sought both declaratory and
21 injunctive relief. On September 8, 2008, the Court sustained the demurrer of the CIC without
22 leave to amend as to the first cause of action. The Court overruled the remainder of the demurrer.

23 1.2 The Plaintiffs and Defendants ("Parties") stipulate that (a) this Court has
24 jurisdiction over the allegations contained in the Complaint; (b) this Court has personal
25 jurisdiction over the Parties for the purposes of enforcing the terms of this Partial Consent
26 Judgment; (c) venue is proper in the County of Alameda; and (d) this Court has jurisdiction to
27 enter this Partial Consent Judgment as a full settlement and resolution of the claims and
28 allegations in the Complaint, except as expressly reserved herein.

1 1.3 Except as expressly stated herein, the Parties enter into this Partial Consent
2 Judgment pursuant to a settlement of disputed claims as alleged in the Complaint, for the purpose
3 of avoiding prolonged and costly litigation, and to resolve all claims arising from the facts alleged
4 in the Complaint. By execution of this Partial Consent Judgment, the Parties do not admit any
5 fact, conclusion of law, or violation of law. Neither this Partial Consent Judgment, nor
6 Defendants' compliance with this Judgment, shall be construed as an admission of any fact,
7 conclusion of law, issue of law or violation of law. Except as explicitly set forth herein, nothing
8 in this Partial Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
9 defense the Parties may have in this or any other pending or future legal proceedings.

10 **2. Definitions**

11 2.1 "Effective Date" shall mean the date on which the Court enters the Partial Consent
12 Judgment.

13 2.2 "Labor Code Listings" and "Labor Code Listing Mechanism" shall mean the
14 listing of chemicals causing cancer and reproductive toxicity as identified by reference in Labor
15 Code sections 6382(b)(1) and 6382(d), as set forth in Health and Safety Code section 25249.8(a).

16 2.3 "Authoritative Bodies" shall mean any entity identified by the State's Qualified
17 Experts, as set forth in Health and Safety Code section 25249.8(b) and enacted into regulation in
18 California Code of Regulations, title 27, section 25306(l) and (m).

19 2.4 "Authoritative Bodies Listings" and "Authoritative Bodies Listing Mechanism"
20 shall mean the listing of chemicals formally identified by an Authoritative Body as causing
21 cancer or reproductive toxicity, as set forth in Health and Safety Code section 25249.8(b).

22 2.5 "State's Qualified Experts," "Carcinogen Identification Committee" and
23 "Developmental and Reproductive Toxicant ('DART') Identification Committee" have the same
24 meaning as set forth in California Code of Regulations, title 27, section 25102(c) and (t).

25 **3. Injunctive Relief**

26 3.1 Labor Code Listings

27 3.1.1 OEHHA shall restart the regulatory process to adopt a regulation describing the
28

1 procedure for listing chemicals via the Labor Code Listing Mechanism within three months after
2 all outstanding legal issues concerning the Labor Code listing mechanism are fully and finally
3 resolved, including any appeals. Outstanding legal issues include the issue reserved pursuant to
4 section 6 below

5 3.2 Authoritative Bodies Listings

6 3.2.1 Comment Periods: Within thirty days of the Effective Date of the Partial Consent
7 Judgment, OEHHA shall eliminate the current informal 60 day “data call-in” public comment
8 period. OEHHA agrees not to reinstate an informal public comment period for a period of three
9 years from the Effective Date, after which nothing in this agreement shall prohibit OEHHA from
10 resuming the practice of offering an informal public comment period.

11 3.2.2 Posting on website: For a period of three years and six months after the Effective
12 Date, for each chemical that OEHHA has identified as meeting the criteria for potential
13 Authoritative Body Listing, OEHHA shall post on its website the date on which each step in the
14 evaluation process has been completed, and the next step to be completed.

15 3.2.3 Actions as to Specific Chemicals:

16 3.2.3.1 Within six months of the Effective Date of the Partial
17 Consent Judgment, OEHHA shall decide whether to issue a Notice of Intent to List (“NOIL”) for
18 each of the following chemicals:

- 19 a. Beta-myrcene
20 b. Pulegone
21 c. 2,4-D and certain esters and salts
22 d. Atrazine, propazine, simazine, DACT, DEA, DIA
23 e. Trichloroethylene
24 f. Methyl isobutyl ketone
25
26 g. Hydrogen cyanide and cyanide salts
27 h. Nitrite in combination with amines or amides
28

- 1 i. Emissions from coal combustion
2 j. Emissions from high-temperature unrefined rapeseed-oil
3 k. Tetraconazole
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5 3.2.3.2 Within one year of the Effective Date of the Partial Consent Judgment,
6 OEHHA shall decide whether to issue an NOIL for each of the following chemicals:

- 7 a. Ethylene glycol
8 b. Genistein
9 c. Metam potassium
10 d. N,N-Dimethyl-p-toluidine

11 3.2.3.3 Except as set forth in section 3.2.6, for those chemicals listed above,
12 OEHHA shall make a decision about whether to list a chemical within one year of the
13 close of the public comment period on the NOIL for that chemical.

14 3.2.4 Chemicals not listed above:

15 3.2.4.1 It is the Defendants' position that Proposition 65 does not establish any
16 mandatory time-frame for considering or deciding whether to issue an NOIL and whether
17 to list chemicals under the Authoritative Bodies Listing Mechanism and nothing in this
18 provision establishes a mandatory time frame under Proposition 65 for OEHHA to
19 complete the evaluation of and make a decision about whether to list a chemical under the
20 Authoritative Body Listing Mechanism. Plaintiffs disagree with this position and contend
21 that OEHHA is required to list chemicals at the latest within one year of an Authoritative
22 Body's action. In an effort to resolve this litigation, OEHHA agrees, for a period of three
23 years and six months from the Effective Date of the Partial Consent Judgment (a)
24 consistent with its current policy, to diligently and frequently review the relevant
25 Authoritative Body websites, lists, and documents to identify chemicals that have been
26 formally identified by the Authoritative Body; (b) consistent with its current policy, to
27 request the records from the Authoritative Body promptly upon learning of the
28 Authoritative Body's action.

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2 3.2.4.2 OEHHA further agrees as follows: except as described in section 3.2.6, for
3 those chemicals for which OEHHA obtains the records of the Authoritative Body no later
4 than six months after the Effective Date of the Partial Consent Judgment, OEHHA shall
5 decide whether to issue the NOIL no later than 18 months after the Effective Date.

6 Further, OEHHA shall decide whether to list each chemical within one year after the close
7 of the public comment period on the NOIL. Except as described in section 3.2.6, for those
8 chemicals for which OEHHA obtains the records of the authoritative body after six
9 months from the Effective Date of the Partial Consent Judgment, OEHHA shall decide
10 whether to issue the NOIL within a year of obtaining the records of the Authoritative
11 Body and shall decide whether to list the chemical within one year after the close of the
12 public comment period on the NOIL. In the event that OEHHA is not able to comply with
13 the time periods set forth above, OEHHA shall post a notice on its website, explaining the
14 reason for any delay, and provide a date for anticipated completion of the decision-making
15 process, and provide members of the CIC and DART IC with any website notices
16 explaining delays. OEHHA's obligations pursuant to this provision shall terminate at the
17 conclusion of three years and six months after the Effective Date of this agreement, and
18 nothing in this provision shall require OEHHA to take actions beyond that time period.

19 3.2.5 Nothing in this Section shall apply to boron, boric acid, borate salts, or boron
20 oxide.

21 3.2.6 OEHHA represents that it believes that it will be able to meet the time
22 commitments set forth above. Nevertheless, the Parties recognize that contingencies may arise in
23 the future that would change OEHHA's ability to meet those commitments. Contingencies that
24 may prevent OEHHA from making a decision in the times specified above include, but are not
25 limited to, difficult scientific issues that require a significant amount of analysis and review, or
26 the receipt of public comments that are either too voluminous or require specific scientific
27 expertise to evaluate or otherwise require OEHHA to expend excessive resources. In the event
28 that OEHHA believes it will not be able to meet the time commitments set forth above, it will

1 notify Plaintiffs, and the Parties shall meet and confer as appropriate. The Parties may stipulate
2 in writing to extend any of the time commitments set forth herein, without further Court approval.
3 If the parties do not agree to stipulate to extend the time frames, OEHHA may ask the Court to
4 extend or waive any of the above time commitments for good cause shown. Plaintiffs may
5 oppose that request.

6 3.3 Carcinogen Identification Committee (“CIC”) Listings

7 3.3.1 For a period of three years from the Effective Date, OEHHA shall shorten the
8 informal public comment periods from 60 days to 45 days for the data call-in period (at the
9 beginning of the hazard identification development process) and for review of the final Hazard
10 Identification Materials for chemicals to be presented to the CIC for its evaluation.

11 3.3.2 OEHHA maintains that it has been working on proposed amendments to
12 regulations to establish more specific educational and scientific qualifications for appointment to
13 the CIC and DART IC. OEHHA shall solicit input from all interested parties, including the
14 Plaintiffs. OEHHA shall propose the amendments within six months of the Effective Date of the
15 Partial Consent Judgment. The proposal shall begin with an informal workshop prior to starting
16 the formal regulatory process. OEHHA shall initiate the formal process within 90 days after the
17 conclusion of the workshop.

18 3.3.3 OEHHA shall make a proposal to the CIC at a 2013 meeting regarding steps to
19 streamline the preparation of the Hazard Identification Materials and other procedures. OEHHA
20 shall follow-up with the CIC on an annual basis to determine if the streamlined procedures are
21 successful and whether additional procedures are desirable.

22 **4. Dismissal of Claims against CIC**

23 Within ten (10) days after the effective date of this Partial Consent Judgment, Plaintiffs
24 shall dismiss with prejudice all claims against the chair and members of the CIC named in the
25 Complaint: David A. Eastmond, James S. Felton, Solomon Hamburg, Martin L. Hopp, Darryl
26 Hunter, Joseph R. Landolph, Juliet Singh, William L. Spangler, and Anna H. Wu.

1 **5. Attorneys' Fees and Costs**

2 This Partial Consent Judgment does not address attorneys' fees and expenses or costs,
3 which Plaintiffs may seek after the Court determines the reserved issue set forth in section 6
4 below and enters final judgment. Prior to any such application, Plaintiffs and Defendants will
5 meet and confer in good faith in an attempt to settle the issue of attorneys' fees and costs.
6 Nothing in this provision shall be construed to establish the Plaintiffs' entitlement to attorneys'
7 fees and costs or to waive the Defendants' right to argue against such fees and costs.

8 **6. Reserved Issue**

9 6.1 The parties agree that nothing in the Partial Consent Judgment shall resolve the issue
10 set out below, and that this issue will be resolved by the Court, including through an appeal, if
11 taken:

12 6.1.1 The Court has pending before it the Plaintiffs' motion for judgment on the pleadings
13 requiring OEHHA to list all IARC Group 3 chemicals for which IARC finds sufficient evidence
14 of carcinogenicity in animals. The Defendants have opposed the motion. The parties agree that
15 this issue is not resolved in the Partial Consent Judgment and will remain to be resolved in this
16 litigation, including any appeal, if taken.

17 **7. Dispute Resolution and Compliance**

18 The parties shall engage in good faith efforts to resolve any dispute concerning compliance
19 prior to seeking review by the Court. Upon motion of any Party, the Court may schedule a
20 hearing for the purpose of reviewing compliance with this Decree. The parties shall be required
21 to give notice to each other twenty (20) days before moving for review by the Court.

22 **8. Enforcement**

23 Subject to the limitation in paragraph 14, the Court shall have all available equitable
24 powers, including injunctive relief, to enforce this Partial Consent Judgment.

25 **9. Release**

26 Except as otherwise provided in this Partial Consent Judgment, this Partial Consent
27 Judgment is a final and binding settlement in full between the Plaintiffs and Defendants and their
28

1 present and future directors, employees, agents, administrators, successors, representatives, and
2 assigns of any and all claims raised in the Complaint that have arisen as of the Effective Date or
3 that could have been raised in the Complaint as of the Effective Date based on the allegations of
4 the Complaint. Plaintiffs also agree for a period of three years and six months from the Effective
5 Date, not to bring a lawsuit raising the claims in the Complaint that Defendants violated a
6 mandatory duty and abused their discretion by delaying the listing of chemicals pursuant to the
7 Authoritative Bodies listing process, with the exception of Bisphenol A. Plaintiffs agree that they
8 will bring no lawsuit with respect to the delay in listing Bisphenol A (“BPA”) for a period of six
9 months from the Effective Date. This release does not preclude any Plaintiff or Plaintiffs from
10 bringing any claim challenging a final decision not to list any specific chemical made after the
11 Effective Date. This release does not include any claims arising from any alleged failure to
12 comply with the CIC listing provision based on new facts arising after the Effective Date.
13 Finally, this release does not include any motion or other proceeding Plaintiff may bring to
14 enforce this Partial Consent Judgment, subject to the limitation in paragraph 14.

15 **10. Entire Agreement**

16 This Partial Consent Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
21 deemed to exist or to bind any of the Parties.

22 **11. Authorization**

23 Each signatory to this Partial Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to enter into this Partial Consent Judgment on behalf of the Party
25 represented and legally to bind that Party.
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12. Modification

Except as provided herein, this Partial Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court; by an order of the Court on noticed motion from Plaintiffs or Defendants in accordance with law; or by the Court in accordance with its inherent authority to modify its own orders. Nothing in this provision shall permit the Plaintiffs to seek to modify the Partial Consent Judgment to extend the Defendants' obligations beyond the time periods set out in sections 3.2 and 3.3 or to modify the period of court jurisdiction provided in paragraph 14.

13. Entry of Judgment Required

This Partial Consent Judgment shall be null and void, and be without any force or effect, unless entered by the Court in this matter.

14. Retention of Jurisdiction and Termination of Consent Judgment

This Court shall retain jurisdiction over this matter and the Parties to this Partial Consent Judgment for a period of four years and six months from the Effective Date in order to implement all of the terms of this Partial Consent Judgment. The Court's jurisdiction of this Partial Consent Judgment shall terminate at the conclusion of four years and six months from the Effective Date and shall not be extended for any reason whatsoever.

15. Governing Law and Interpretation

The terms of this Partial Consent Judgment shall be governed by the laws of the State of California and, except as otherwise provided herein, apply within the State of California. All Parties to this Partial Consent Judgment, through their respective counsel, have participated in its drafting and, consequently, any ambiguity shall not be construed for or against any party.

16. Counterparts and Facsimile

This Partial Consent Judgment may be executed in counterparts and with facsimile or scanned signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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17. **Court Approval**

This Partial Consent Judgment shall be submitted to the Court for entry by noticed motion.
If this Partial Consent Judgment is not approved by the Court, it shall be of no force or effect.

Dated:

MATTHEW RODRIQUEZ
Secretary, California Environmental
Protection Agency


June 5, 2013



Dated:

GEORGE ALEXEEFF, PH.D.
Director, Office of Environmental Health
Hazard Assessment

June 4, 2013



Dated:

FOR SIERRA CLUB

Dated:

FOR UNITED STEEL WORKERS

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17. **Court Approval**

This Partial Consent Judgment shall be submitted to the Court for entry by noticed motion.
If this Partial Consent Judgment is not approved by the Court, it shall be of no force or effect.

Dated:

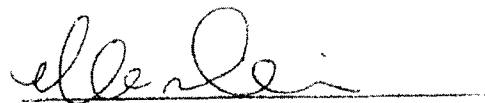
MATTHEW RODRIQUEZ
Secretary, California Environmental
Protection Agency

Dated:

GEORGE ALEXEEFF, PH.D.
Director, Office of Environmental Health
Hazard Assessment

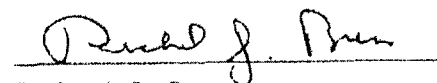
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FOR SIERRA CLUB



Dated: May 28, 2013

FOR UNITED STEEL WORKERS

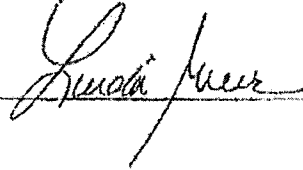


Richard J. Brean
General Counsel

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Dated: 5/21/2013

FOR NATURAL RESOURCES DEFENSE
COUNCIL



Dated:

FOR CALIFORNIA LABOR FEDERATION

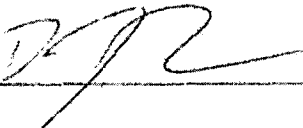
Dated: 5/29/13

FOR ENVIRONMENTAL LAW FOUNDATION



Dated: 6/20/13

FOR ENVIRONMENT CALIFORNIA



Dated:

FOR ENVIRONMENTAL WORKING GROUP

Dated:

CATHERINE HOUSTON

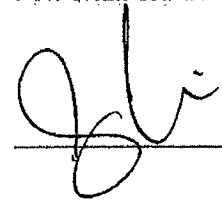
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Dated:

FOR NATURAL RESOURCES DEFENSE
COUNCIL

Dated: 07.01.13

FOR CALIFORNIA LABOR FEDERATION



Dated:

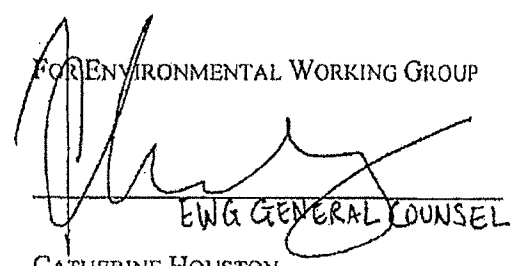
FOR ENVIRONMENTAL LAW FOUNDATION

Dated:

FOR ENVIRONMENT CALIFORNIA

Dated: May 22, 2013

FOR ENVIRONMENTAL WORKING GROUP



EWG GENERAL COUNSEL

Dated:

CATHERINE HOUSTON

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Dated:

FOR NATURAL RESOURCES DEFENSE
COUNCIL

Dated:

FOR CALIFORNIA LABOR FEDERATION

Dated:

FOR ENVIRONMENTAL LAW FOUNDATION

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FOR ENVIRONMENT CALIFORNIA

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CATHERINE HOUSTON

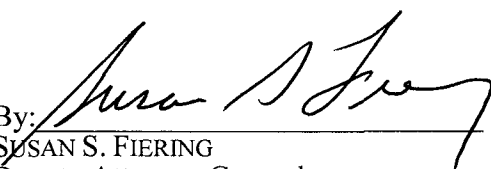
Catherine Houston

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APPROVED AS TO FORM:

Dated: 7/3/13

KAMALA D. HARRIS
Attorney General of California
SALLY MAGNANI
Senior Assistant Attorney General
SUSAN S. FIERING
Supervising Deputy Attorney General

By: 
SUSAN S. FIERING
Deputy Attorney General
*Attorneys for Governor Edmund G. Brown
et al.*

Dated:

STEPHEN P. BERZON
JONATHAN WEISSGLASS
DANIELLE LEONARD
ALTSHULER BERZON LLP

By: _____
DANIELLE E. LEONARD
Attorneys for Plaintiffs Sierra Club et al.

Dated:

NATURAL RESOURCES DEFENSE COUNCIL

By: _____
MICHAEL E. WALL

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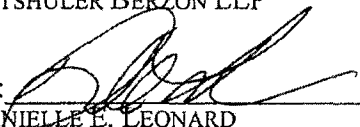
Dated:

KAMALA D. HARRIS
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SALLY MAGNANI
Senior Assistant Attorney General
SUSAN S. FIERING
Supervising Deputy Attorney General

By: _____
SUSAN S. FIERING
Deputy Attorney General
*Attorneys for Governor Edmund G. Brown
et al.*

Dated: 7-3-13

STEPHEN P. BERZON
JONATHAN WEISSGLASS
DANIELLE LEONARD
ALTSHULER BERZON LLP

By: 
DANIELLE E. LEONARD
Attorneys for Plaintiffs Sierra Club et al.

Dated: 21 May 2013

NATURAL RESOURCES DEFENSE COUNCIL

By: 
MICHAEL E. WALL