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 Santa Barbara Air Pollution Control District, and
 Puget Sound Clean Air Agency*

(Additional Counsel listed on inside page)

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

STATE OF ALASKA)	Case No. 3:12-cv-00142-SLG
)	
)	
Plaintiff,)	
)	MOTION TO INTERVENE
v.)	ON BEHALF OF DEFENDANTS
)	
HILLARY RODHAM CLINTON, in her official)	(Fed. R. Civ. P. 24)
capacity as United States Secretary of State,)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.)	
)	
Defendants.)	
)	

Dennis Marshall (SBN 116347)
William M. Dillon (SBN 114482)
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The South Coast Air Quality Management District, Santa Barbara Air Pollution Control District, and Puget Sound Clean Air Agency (“Proposed Defendant-Intervenors”), political subdivisions of the State of California and Washington, respectively, hereby move to intervene as of right in this action on behalf of defendants Hillary Rodham Clinton, Secretary of State, et al. (“the United States”), pursuant to Federal Rules of Civil Procedure 24(a)(2). In the alternative, proposed Defendant-Intervenors respectfully move for leave to intervene by permission pursuant to Federal Rule of Civil Procedure 24(b).

This Motion is based on the Memorandum in Support of Motion to Intervene and the Declarations of Dr. Elaine Chang, Louis D. Van Mullem, Jr., and Andrew Green, submitted herewith. Pursuant to D.Ak. LR 7.4(b) and Fed. R. Civ. P. 24(c), proposed Defendant-Intervenors lodge with this Motion, a Proposed Order, and Proposed Answer of Defendant-Intervenors.

Counsel for federal Defendants Hillary Rodham Clinton, *et al.* has advised undersigned counsel for proposed Defendant-Intervenors that federal Defendants take no position on this motion. Counsel for Plaintiff State of Alaska has advised undersigned counsel for proposed

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Defendant-Intervenors that Plaintiff State of Alaska cannot determine what position to take on this motion prior to Plaintiff's counsel's review of the documents submitted herewith.

Respectfully submitted this 1st day of November, 2012.

KURT R. WIESE, General Counsel
BARBARA BAIRD, District Counsel
WILLIAM B. WONG, Principal Deputy

/s/ Barbara Baird

By Barbara Baird (SBN 81507)
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DATED: November 1, 2012

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DENNIS MARSHALL, COUNTY COUNSEL
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By: s/ William M. Dillon (consent)

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DATED: November 1, 2012

PUGET SOUND CLEAN AIR AGENCY
JENNIFER A. DOLD

By: s/ Jennifer A. Dold (consent)

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2012, a copy of the foregoing MOTION TO INTERVENE ON BEHALF OF DEFENDANTS, with accompanying attachments, ([PROPOSED] ANSWER and {PROPOSED] ORDER), was served electronically on Seth M. Beausang, Sarah Helen Burt, Gary M. Guarino, Robert J. Maguire, Mark A. Nitzynski, and Colin Casey O'Brien.

Respectfully submitted this November 1, 2012

s/ Barbara Baird

Barbara Baird

Motion for admission *Pro Hac Vice* pending

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA)
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Plaintiff,)
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v.) Case No. 3:12-cv-00142-SLG
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HILLARY RODHAM CLINTON, in her official)
capacity as United States Secretary of State,)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, et al.)
)
)
Defendants.)
_____)

[PROPOSED] ORDER GRANTING MOTION TO INTERVENE

Upon consideration of the Motion to Intervene filed by the South Coast Air Quality Management District, Santa Barbara Air Pollution Control District, and Puget Sound Clean Air Agency, all supporting documents, and good cause having been shown, it is hereby ORDERED that the motion for [as of right] / [permissive] intervention is GRANTED.

DATED: _____

The Honorable Sharon L. Gleason
United States District Judge

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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

STATE OF ALASKA)	Case No. 3:12-cv-00142-SLG
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Plaintiff,)	
)	[PROPOSED] ANSWER OF
v.)	DEFENDANT-INTERVENORS
)	TO SECOND AMENDED
)	COMPLAINT FOR
HILLARY RODHAM CLINTON, in her official)	DECLARATORY AND
capacity as United States Secretary of State,)	INJUNCTIVE RELIEF
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.)	
)	
)	
Defendants.)	
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PUGET SOUND CLEAN AIR AGENCY*

Proposed Defendant-Intervenors South Coast Air quality Management District, Santa Barbara Air Pollution Control District, and Puget Sound Clean Air Agency, (Defendant-Intervenors) hereby admit, deny, and affirmatively allege the following in answer to the Second Amended Complaint on file herein:

I. INTRODUCTION

1. Defendant-Intervenors admit that: (1) the ECA extends 200 miles from the East and West coasts of the United States and Canada, the southeast and southcentral coasts of Alaska, and the coast of Hawaii, and (2) [certain] marine vessels in the ECA are now required to use fuel with a sulfur content that does not exceed 1,000 pm. Except as herein specifically admitted, Defendant-Intervenors lack sufficient information and belief to enable them to answer, and based thereon deny generally and specifically each and every remaining allegation contained therein.

2. Defendant-Intervenors deny generally and specifically each and every allegation contained in Paragraph 2..

3. Defendant-Intervenors deny the allegations of the first sentence of Paragraph 3. Defendant-Intervenors lack sufficient information and belief to enable them to answer the remainder of allegations of paragraph 3, and based thereon deny generally and specifically each and every allegation contained therein.

4. Defendant-Intervenors deny the allegations of the first sentence of Paragraph 4. Defendant-Intervenors lack sufficient information and belief to enable them to answer the allegations of the second sentence of paragraph 4, and based thereon deny generally and specifically each and every allegation contained therein. Defendant-Intervenors assert that the remainder of the allegations of this paragraph constitute legal

conclusions not requiring any answer, but if answer is required deny them. Further, the requirements of APPS speak for themselves and Defendant-Intervenors deny any allegations inconsistent with the terms thereof.

5. The allegations contained in paragraph 5 constitute legal conclusions not requiring any answer, but if answer is required, defendant denies them.

6. The allegations contained in paragraph 6 constitute legal conclusions not requiring any answer, but if answer is required, defendant denies them.

II. PARTIES

7. Defendant-Intervenors lack sufficient information and belief to enable it to answer the allegations of paragraph 7, and based thereon denies generally and specifically each and every allegation contained therein.

8. Defendant-Intervenors lack sufficient information and belief to enable it to answer the allegations of paragraph 8, and based thereon denies generally and specifically each and every allegation contained therein.

9. Defendant-Intervenors admit the allegations of the first sentence of paragraph 9. The allegations of sentences 2 through 4 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

10. Defendant-Intervenors lack sufficient information and belief to enable it to answer regarding whether Administrator Jackson is enforcing the ECA in Alaska, and based thereon denies it. The remainder of the allegations of Paragraph 10 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

11. Defendant-Intervenors lack sufficient information and belief to enable it to answer regarding whether DHS is enforcing the ECA in Alaska, and based thereon denies it. The remainder of the allegations of Paragraph 11 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

12. Defendant-Intervenors lack sufficient information and belief to enable it to answer regarding whether Secretary Napolitano is enforcing the ECA in Alaska, and based thereon denies it. The remainder of the allegations of Paragraph 12 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

13. Defendant-Intervenors lack sufficient information and belief to enable it to answer regarding whether the Coast Guard and EPA have entered into a Memorandum of Understanding agreeing to jointly implement and enforce the ECA and whether the Coast Guard is enforcing the ECA in Alaska, and based thereon denies it. The remainder of the allegations of Paragraph 13 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

14. Defendant-Intervenors lack sufficient information and belief to enable it to answer regarding whether Admiral Papp is responsible for all world-wide Coast Guard activities and whether Admiral Papp is enforcing the ECA in Alaska, and based thereon denies it. The remainder of the allegations of Paragraph 14 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

III. JURISDICTION

15. Defendant-Intervenors deny, generally and specifically, each and every allegation contained in paragraph 15. Further, the Defendant-Intervenors affirmatively allege that this Court lacks subject matter jurisdiction over any challenge to EPA's rulemaking, because 42 U.S.C. § 7607(b) vests exclusive jurisdiction to review EPA rules under the Clean Air Act in the appropriate federal Court of Appeals. Moreover, Defendant-Intervenors affirmatively allege that any challenge to EPA's rule, which was adopted in April 2010, is barred by the 60-day statute of limitations in 42 U.S.C. § 7607(b).

16. Defendant-Intervenors lack sufficient information and believe to enable it to answer whether EPA and the Coast Guard began enforcing the ECA in Alaska waters on August 1, 2012, and based thereon denies such allegation. The remainder of the allegations of this paragraph constitutes legal conclusions that requiring any answer, but if answer is required, Defendant-Intervenors deny them. Further, Defendant-Intervenors allege that Alaska had an adequate remedy at law to seek judicial review of EPA's rule under 42 U.S.C. §7607(b), and the fact the plaintiff failed to comply with the statute of limitations does not make the remedy inadequate.

IV. VENUE

17. Defendant-Intervenors deny the allegations of paragraph 17. Further, Defendant-Intervenors affirmatively allege that jurisdiction and venue are not proper because the exclusive forum for challenging an EPA rulemaking under the Clean Air Act is the appropriate Court of Appeal, which in the case of a rule of national applicability

such as this would be the D.C. Circuit Court of Appeals, as set forth in 42 U.S.C. § 7607(b).

V. BACKGROUND

18. Defendant-Intervenors admit the allegations of paragraph 18.

19. The allegations of paragraph 19 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

20. Defendant-Intervenors admit the allegations of the first four sentences of paragraph 20. Except as herein specifically admitted, Defendant-Intervenors deny generally and specifically each and every allegation contained therein.

21. The allegations of paragraph 21 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that Appendix III speaks for itself and deny any allegations inconsistent with the terms thereof.

22. Defendant-Intervenors admit that Congress passed APPS in 1980 and that it has been amended several times, most recently in 2008. The remainder of the allegations of paragraph 22 constitutes legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that APPS is a statute which speaks for itself and deny any allegations inconsistent with the terms thereof.

23. The allegations of paragraph 23 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that APPS is a statute that speaks for itself and deny any allegations inconsistent with the terms thereof.

24. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 24, and on that basis deny them.

25. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 25, and on that basis deny them.

26. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 26, and on that basis deny them. The last sentence of paragraph 26 constitutes a legal conclusion not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

27. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 27, and on that basis deny them.

28. The allegations of paragraph 28 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that Appendix III speaks for itself, and deny any allegations inconsistent with the terms thereof.

29. The allegations of paragraph 29 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that Appendix III speaks for itself and deny any allegations inconsistent with the terms thereof.

30. Defendant-Intervenors admit that on August 28, 2009, EPA published a Notice of Proposed Rulemaking (“NPRM”) on its website. The remainder of the allegations of paragraph 30 constitute characterizations of the content of EPA’s NPRM, which speaks for itself, and Defendant-Intervenors deny them to the extent they are inconsistent with the NPRM.

31. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 31, and on that basis deny them.

32. Defendant-Intervenors admit that in December 2009, EPA responded to comments on the NPRM. The remainder of the allegations of paragraph 32 constitutes legal argument not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors assert that EPA's response and the final rule speak for themselves, and Defendant-Intervenors deny any allegations inconsistent with the terms thereof.

33. Defendant-Intervenors admit that on April 30, 2010, EPA published its Final Rule. The remainder of the allegations of paragraph 33 constitutes legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

34. The allegations of paragraph 34 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

35. The allegations of paragraph 35 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

36. The allegations of paragraph 36 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

37. The allegations of paragraph 37 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

38. The allegations of paragraph 38 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them. Moreover, Defendant-Intervenors deny the allegations of the second sentence of Paragraph 39.

39. The allegations of paragraph 39 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

40. Defendant-Intervenors admit that in December 2009, EPA published a Regulatory Impact Analysis in connection with its rulemaking. The remainder of the allegations of paragraph 40 constitutes characterizations of the contents of EPA's Regulatory Impact Analysis, which speaks for itself, and Defendant-Intervenors deny them to the extent they are inconsistent with the NPRM.

41. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 41, and on that basis deny them.

42. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 42, and on that basis deny them.

43. Defendant-Intervenors lack sufficient information to enable them to form a belief as to the truth of the allegations of paragraph 43, and on that basis deny them.

CLAIMS FOR RELIEF

First Cause of Action

44. Defendant-Intervenors incorporate by reference their responses to paragraphs 1-43 of the Second Amended Complaint above.

45. The allegations of paragraph 45 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

46. The allegations of paragraph 46 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

Second Cause of Action

47. Defendant-Intervenors incorporate by reference their responses to paragraphs 1-46 of the Second Amended Complaint above.

48. The allegations of paragraph 48 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

49. The allegations of paragraph 49 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

50. The allegations of paragraph 50 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

51. The allegations of paragraph 51 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

52. The allegations of paragraph 52 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

53. The allegations of paragraph 53 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

Third Cause of Action

54. Defendant-Intervenors incorporate by reference their responses to paragraphs 1-53 of the Second Amended Complaint above.

55. The allegations of paragraph 55 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

56. The allegations of paragraph 56 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

57. The allegations of paragraph 57 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

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Fourth Cause of Action

58. Defendant-Intervenors incorporate by reference their responses to paragraphs 1-57 of the Second Amended Complaint above.

59. The allegations of paragraph 59 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

60. The allegations of paragraph 60 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

61. The allegations of paragraph 61 constitute legal conclusions not requiring any answer, but if answer is required, Defendant-Intervenors deny them.

XII. RELIEF

Section XII consists of Plaintiffs’ request for relief, to which no response is required, but if a response is required Defendant-Intervenors deny each allegation in this section and deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction over the subject matter of some or all of Plaintiffs’ claims.

2. The Complaint is barred by the applicable statutes of limitations including but not limited to 42 U.S.C. § 7607.

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3. Plaintiff has failed to state a claim upon which relief may be granted.

Respectfully submitted this 1st day of November, 2012.

KURT R. WIESE, General Counsel
BARBARA BAIRD, District Counsel
WILLIAM B. WONG, Principal Deputy

/s/ Barbara Baird

By Barbara Baird
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DATED: November 1, 2012

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