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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**ROCKY MOUNTAIN FARMERS
UNION, et al.,**

Plaintiffs,

v.

**RICHARD W. COREY, in his official
capacity as Executive Officer of the
California Air Resources Board, et al.,¹**

Defendants.

(And Related Consolidated Action)

Case No. 1:09-cv-02234- LJO-BAM

Consolidated with:

Case No: 1:10-cv-163-LJO-DLB

SCHEDULING CONFERENCE ORDER

The Court held a scheduling conference in this matter on August 28, 2014 before Magistrate Judge Gary Austin.² Plaintiffs' counsel Timothy Jones, John Kinsey, Stuart Drake, Shannon Broome, and Paul Zidlicky appeared personally and John O'Quinn, Howard Rubin, and Roger Martella appeared telephonically. Defendants' counsel Margaret Meckenstock and David Zonana appeared personally and Gavin McCabe and appeared telephonically. Intervenors' counsel Joanne Spalding appeared personally, and Sean Donahue, Jennifer Sorenson, Larrisa Koehler, and Tim O'Connor appeared telephonically.

¹ Richard W. Corey succeeded James N. Goldstene as Executive Officer of the California Air Resources Board. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Richard W. Corey, in his official capacity, is substituted for James N. Goldstene as a defendant in this action.

² The case was thereafter assigned to the undersigned.

1 **BACKGROUND**

2 The Plaintiffs in this consolidated action challenge the California low-carbon fuel standard
3 regulation (“LCFS”).³ The Plaintiffs allege that the LCFS violates the dormant Commerce
4 Clause by discriminating against out-of-state fuels, by regulating extraterritorially, and by unduly
5 burdening interstate commerce. The Plaintiffs further allege that the LCFS is preempted by the
6 federal Energy Independence and Security Act of 2007 (“EISA”).
7

8 The parties anticipate that the case will be resolved through cross-motions for summary
9 judgment. Doc. 303 at 2, 6.⁴ However, the parties have indicated that they anticipate filing a
10 number of preliminary motions before briefing their summary judgment motions. These
11 preliminary motions include: (1) Plaintiffs’ motions to amend their complaints; (2) Defendants’
12 motions to dismiss any amended complaints that are filed; and (3) Defendants’ motion to stay the
13 proceedings given that the LCFS is currently under review and revision by the California Air
14 Resources Board.
15

16 At the August 28, 2014 scheduling conference, the parties jointly proposed that these
17 preliminary motions be filed and ruled upon in a specific order. Plaintiffs’ motions to amend
18 their complaints would be filed first, followed by Defendants’ motions to dismiss any amended
19 complaints, followed by Defendants’ motion to stay. The parties’ prefer this progression because
20 the claims at issue in the case will be clear once the motions to amend and to dismiss are
21 resolved, which, in turn, would facilitate adjudication of the anticipated motion to stay.
22

23 ³ Case No. 1:09-cv-2234-LJO-BAM, Rocky Mountain Farmers Union, et al. v. Richard W. Corey, in his official
24 capacity as Executive Officer of the California Air Resources Board, et al., was consolidated with Case No. 1:10-cv-
25 163-LJO-DLB, National Petrochemical & Refiners Association, et al. v. Richard W. Corey, in his official capacity as
26 Executive Officer of the California Air Resources Board, et al. The cases were consolidated for all purposes except
27 for judgment and appeal. *See* Doc. 106. The lead case is Case No. 1:09-cv-2234-LJO-BAM. The Conservation Law
28 Foundation, Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club intervened on the
side of government Defendants in both cases. At the Scheduling Conference held on August 28, 2014, the Court was
informed that the National Petrochemical & Refiners Association has changed its name to the American Fuel and
Petrochemical Manufactures Association (“AFPM”).

⁴ Unless otherwise indicated, citations to “Doc.” refer to items in this Court’s docket for the lead case (1:09-cv-02234).

1 The Court will not set a briefing schedule for the parties' cross-motions for summary
2 judgment at this juncture. As discussed below, the Court will set a briefing schedule for the
3 anticipated summary judgment motions at a hearing to be held after the above-referenced
4 preliminary motions are resolved. The Court will also address discovery issues and set discovery
5 deadlines, if necessary, at that time.
6

7 **BRIEFING SCHEDULE FOR PRELIMINARY MOTIONS**

8 Having considered the parties' joint scheduling-conference statement, the agreements
9 reached by the parties at the scheduling conference, and the arguments presented by the parties at
10 the scheduling conference, the Court herein sets briefing schedules for the preliminary motions
11 identified by the parties. These motions shall be heard by District Judge Lawrence J. O'Neill. At
12 this time, the Court will not set dates for hearings on the motions. If, upon review of the papers,
13 the District Court determines that hearings would be beneficial, it will schedule them and notify
14 the parties accordingly.
15

16 **A. Plaintiffs' Motions to Amend Their Complaints**

- 17
- 18 • Plaintiffs' Motions to Amend the Complaints shall be filed no later than September 26, 2014;
 - 19 • Oppositions by Defendants and Intervenors shall be filed no later than October 10, 2014;⁵
 - 20 • Plaintiffs' Replies shall be filed no later than October 17, 2014.
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28 ⁵ Defendants and Intervenors have indicated that they anticipate submitting joint briefs to the Court in this matter.

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B. Defendants’ Responses/Motions to Dismiss Re. Any Amended Complaints Filed Pursuant to Plaintiffs’ Motions to Amend

- Defendants’ Responses/Motions to Dismiss regarding any amended complaints shall be filed no later than fourteen (14) days after the date of filing of the amended complaints;
- Oppositions to Defendants’ Motions to Dismiss shall be filed no later than thirty (30) days after the date of filing of the Motions to Dismiss;
- Replies shall be filed no later than fourteen (14) days after the date of filing of any Oppositions.

C. Defendants’ Motion to Stay

- Defendants’ Motion to Stay shall be filed fourteen (14) days after the date of issuance of the Court’s order on Defendants’ Motions to Dismiss;
- Oppositions to the Motions to Stay shall be filed no later than twenty-one (21) days after the date of filing of the Motion to Stay;
- Replies shall be filed no later than thirty (30) days after the date of filing of any Oppositions.

The Court adopts the parties’ stipulation that November 27-28, 2014 and December 24-January 1, 2015 shall not be counted in determining deadlines within the framework of the briefing schedules outlined above. The briefing schedules may be adjusted by stipulation of the parties to the extent they are impacted by the periods that are to be excluded in calculating applicable filing deadlines.

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D. Further Scheduling Conference Re. Summary Judgment Motions & Discovery

A further scheduling conference will be held on June 18, 2015 at 8:30 a.m. in Courtroom 8 before Magistrate Judge Barbara A. McAuliffe, to set a briefing schedule for the parties' cross-motions for summary judgment and to address related discovery issues and set requisite discovery deadlines. In the event that the preliminary motions referenced above are not resolved before June 2015, the Court may continue the scheduling conference *sua sponte* or at the parties' request. If the motions are resolved, the parties may request that the scheduling conference be advanced.

IT IS SO ORDERED.

Dated: September 4, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE