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8 *Mary D. Nichols, Chairperson of the California Air*
Resources Board, and James Goldstene,, Executive
Officer of the California Air Resources Board

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA- SACRAMENTO DIVISION

12
13 **CALIFORNIA DUMP TRUCK OWNERS**
14 **ASSOCIATION,**

15 Plaintiff,

16 v.

17 **MARY D. NICHOLS, Chairperson of the**
18 **California Air Resources Board, and**
19 **JAMES GOLDSTENE, Executive Officer of**
the California Air Resources Board,

20 Defendant,

21 **NATURAL RESOURCES DEFENSE**
22 **COUNCIL, INC.,**

23 Defendant-Intervenor.

2:11-CV-00384-MCE-GGH

DECLARATION OF LUCINA NEGRETE
IN SUPPORT OF DEFENDANTS MARY
NICHOLS AND JAMES GOLDSTENE'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

Date: December 15, 2011

Time: 2:00 p.m.

Courtroom: 7

Judge The Honorable Morrison C.
England, Jr.

Trial Date June 3, 2013

Action Filed: February 11,2011

24 I, Lucina Negrete, declare:

25 1. The facts stated in this declaration are true of my own personal knowledge, and if
26 called as a witness in this matter I could and would testify competently thereto.
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1 2. The opinions stated in this declaration are based on my education, experience, and
2 knowledge of air pollution health impacts, health risk assessments and emissions control.

3 3. I received my Bachelor of Arts degree in Applied Mathematics and Statistics at
4 California State University in Sacramento, California in 1988. I am the Chief of the Innovative
5 Strategies Branch, Mobile Source Division of the California Air Resources Board (the Board). I
6 have held this position since 2011. Overall, I have worked in the field of air pollution for over 22
7 years. I have worked with the Board since 1989. Other positions I have held with the Board
8 include: Manager, Air Quality Improvement Program Section from 2008 to 2011; Manager, On-
9 Road Planning and Regulatory Development Section from 2003-2008; Air Pollution Specialist
10 from 1989 to 1991 and 1997 to 2003. Between 1991 and 1997, I worked at Dames and Moore as
11 a Project Scientist and at Woodward Clyde as a Senior Staff Scientist.

12 4. In my present capacity as Chief of the Innovative Strategies Branch, I oversee the AB
13 118 Air Quality Improvement Program (AQIP) and the Providing Loan Assistance for California
14 Equipment (PLACE) program, which is one of several incentive and financing projects funded
15 under the AQIP. I also oversee the Lower Emission School Bus Program designed to reduce
16 children's exposure to toxics by providing incentives to public school districts to clean up school
17 buses in California.

18 5. AQIP is a voluntary incentive program administered by the Board to reduce smog
19 and toxic diesel particulate pollution with concurrent reductions in greenhouse gas emissions.
20 The AQIP, created under the California Alternative and Renewable Fuel, Vehicle Technology,
21 Clean Air, and Carbon Reduction Act of 2007 (Assembly Bill 118; Chapter 750, Statutes of
22 2007), provides \$30-\$40 million per year (depending on revenues) through 2015 to fund clean
23 vehicle and equipment projects, as well as air quality research and training.

24 6. The Legislature directed an appropriation of fiscal year (FY) 2008-09 AQIP funds for
25 use in establishing a truck loan assistance program to aid small business fleet owners affected by
26 the Board's In-Use Truck and Bus Regulation and the Heavy-Duty Vehicle Greenhouse Gas
27 (GHG) Emission Reduction Regulation. The AQIP's PLACE program is a \$35 million ~~truck~~ loan
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1 assistance program created in mid-2009 pursuant to Health and Safety Code Section 44274.7.
2 The PLACE program expands the Board's portfolio of air quality grant programs, providing
3 additional opportunities to fund heavy-duty vehicle projects and to maximize a finite amount of
4 State funding available for air quality incentives. On its own or coupled with the Board's
5 traditional grant programs, the program aids small business owners that face difficulty obtaining
6 affordable financing, particularly during California's economic downturn and tight credit market.
7 This innovative financial assistance program is an integral tool in bridging the financing gap for
8 fleet owners that receive other Board grant funding but still require some level of financing, for
9 fleet owners that do not receive grant funding due to program oversubscription, or for projects
10 that do not meet grant program requirements.

11 7. To implement the PLACE program as authorized by statute, the Board developed
12 three complementary loan assistance components: the Truck Loan Assistance Program, the Pilot
13 Revolving Loan/Lease-to-Own Program, and the Pilot Direct Loan Program. The first two
14 programs have already demonstrated success through tangible results. The third program is
15 expected to be fully operational by early 2012 and is expected to demonstrate similar, if not
16 better, results.

17 Truck Loan Assistance Program

18 8. The first component of the Board's PLACE program is a truck loan assistance
19 program designed to meet the specific needs of the heavy-duty vehicle sector and is implemented
20 in partnership with the California Pollution Control Financing Authority (CPCFA). CPCFA is a
21 state agency within the California State Treasurer's Office that provides private activity tax-
22 exempt bond financing to California businesses for the acquisition, construction, or installation of
23 qualified pollution control, waste disposal, waste recovery facilities, and the acquisition and
24 installation of new equipment. Financing is performed in conjunction with allocation from the
25 California Debt Limit Allocation Committee (CDLAC). This loan assistance program is modeled
26 after CPCFA's highly successful California Capital Access Program (CalCAP) in which loan
27 guarantees are the foundation of a stable financing structure that enables lenders to provide
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1 competitive rate loans to small businesses that fall just outside of conventional underwriting
2 standards.

3 9. Loan guarantees are advantageous for two primary reasons. First, by reducing the
4 financial risk to lenders, they create opportunities for borrowers that fall below normal lending
5 criteria and may not qualify for any financing. Second, they provide an inherent benefit of fund
6 leveraging to significantly increase the overall amount of funds available to fleet owners for loans

7 10. The PLACE Truck Loan Assistance Program relies on the existing CalCAP loan
8 guarantee structure. CalCap provides a form of loan insurance that can provide up to 100 percent
9 coverage on certain loan defaults. By providing a loan guarantee, CalCAP encourages
10 participating financial institutions to make loans to small businesses that fall just outside of most
11 conventional underwriting standards.

12 11. Since 1994, participating financial institutions throughout California have used
13 CalCAP to fund nearly 9,000 loans totaling over \$2 billion for small businesses that need
14 assistance in obtaining affordable financing. Through its proven and successful loan guarantee
15 model, CalCAP has achieved a historical fund leveraging ratio of approximately 7:1 with a loan
16 default rate of about four percent.

17 12. Under CalCAP, lenders set all interest rates, terms and conditions of the loans, and
18 decide which loans to enroll into CalCAP. When a lender's first loan is enrolled, CPCFA
19 establishes a loan loss reserve account for that lender using funds from CalCAP's Small Business
20 Assistance Fund. Each time a loan is enrolled under CalCAP, premiums are paid into the lender's
21 loan loss reserve account by the borrower and lender, while CPCFA contributes a matching
22 amount into the account. For example, if the lender and borrower each pay a 2 percent premium
23 (of the enrolled loan amount), CalCAP will typically pay 4 percent. The more loans a lender
24 makes, the more dollars are deposited into its loan loss reserve account to cover potential losses
25 resulting from loan defaults.

26 13. Based on its existing financial infrastructure and historically low default rate,
27 CalCAP's loan guarantee model provided the ideal framework for the Board in its first effort to
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1 offer financing assistance to small fleet owners. By partnering with the CPCFA, the Board was
2 able to quickly and efficiently develop a loan assistance program utilizing the proven CalCAP
3 structure and CPCFA's legislative authority to implement financing programs. Under CalCAP's
4 Independent Contributor Program, the Board provides the funds to cover lenders', borrowers',
5 and CPCFA's contributions to each loan loss reserve account as loans are enrolled in the
6 program. Through an interagency agreement between the Board and CPCFA, the Board has
7 provided \$21.3 million to CPCFA to directly implement the program, while the Board performs
8 general program oversight and administration.

9 14. At the program's inception in April 2009, the Board contributed 14 percent of each
10 enrolled loan amount (i.e., the premium to "guarantee" the loan) into a CalCAP loan loss reserve
11 account at the lending institution issuing the loan. In October 2010, the Board authorized
12 CalCAP to increase the premium contribution to 20 percent on the next \$5 million worth of loans
13 for each participating lender. This program modification was intended to increase the number of
14 lending institutions participating in the program and to encourage more loans to the trucking
15 sector severely affected by California's volatile economic climate and tight credit market.

16 15. Prior to that program change, the truck loan assistance program was first modified in
17 November 2009 with the passage of Senate Bill 832 (Chapter 643, Statutes of 2009) that allowed
18 truck manufacturing and dealer finance companies to participate in the Board program. CPCFA
19 staff spearheaded this successful legislative effort to expand the CalCAP financial institution
20 definition to include these finance entities in addition to the traditional banks, credit unions, and
21 community development financial institutions already eligible to participate as lenders in the
22 program. The newly-added financing entities have a unique knowledge of the trucking industry
23 and are able to utilize their established relationships with fleet owners to market the truck loan
24 assistance program to eligible borrowers. When the program began, less than 15 lenders
25 statewide were participating in the Board's truck loan assistance program; today, that number has
26 more than doubled. These CalCAP lenders are located throughout the State and provide a broad
27 range of access points for a small fleet owner to obtain financing through the program.
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1 16. Most recently on October 4, 2011, Governor Brown signed Senate Bill 225 (SB 225;
2 Chapter 492, Statutes of 2011), which authorizes CPCFA to offer Terminal Rental Adjustment
3 Clause (TRAC) leases, in addition to traditional loans, in the Board/CPCFA truck loan assistance
4 program. A TRAC lease is specifically designed for financing commercial tractors and/or
5 trailers. TRAC leases are a popular financing instrument with many trucking fleets because, as
6 stated previously, lease payments are typically lower than traditional loan payments and because
7 TRAC leases specifically allow for a pre-negotiated, fixed purchase price option upon lease
8 expiration. Through the Board's experience with leases in the pilot revolving loan/lease-to-own
9 program, the Board believes that TRAC leases would be a benefit to the Board/CPCFA truck loan
10 assistance component by providing financing flexibility to small business fleet owners.

11 Pilot Revolving Loan/Lease-to-Own Program

12 17. To gain experience with other loan assistance mechanisms distinct from the CalCAP
13 loan guarantee program model and to provide additional financing opportunities to small fleet
14 owners in need of upgrading their fleets, the Board awarded a \$714,000 grant through the State's
15 competitive bidding process to Cascade Sierra Solutions (CSS) to implement a pilot revolving
16 loan/lease-to-own program. CSS is an Oregon based non-profit organization dedicated to saving
17 fuel and reducing emissions from heavy-duty diesel engines. CSS works directly with regional air
18 quality agencies and equipment manufacturers throughout the U.S. to identify proven fuel saving
19 and emission reduction technologies, promote equipment solutions that comply with regional air
20 quality regulations, and finance clean efficient equipment upgrades through available grants, tax
21 incentives, and low interest lending. The success of the pilot revolving loan/lease-to-own model
22 provided the Board valuable experience with other financing tools for potential use in future
23 program development with the goal of expanding financing opportunities for eligible borrowers.

24 18. Under this grant agreement, CSS began implementation of this program in July 2009
25 and completed work within a year. Like the CalCAP truck loan assistance program, this
26 component was designed to assist small fleet owners in financing cleaner heavy-duty vehicles and
27 equipment. Unlike the truck loan assistance program, this component was not limited to the use
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1 of loans as the financing instrument but also incorporated leases. Leases generally offer lower
2 monthly payments than traditional loans but still allow the small fleet owner to own the vehicle or
3 equipment at the end of the lease upon meeting all the lease terms and conditions.

4 19. The CSS financing program utilized a revolving loan model and did not rely on loan
5 guarantees to provide truckers with broader access to affordable financing. Under the revolving
6 loan model, CSS used its Board grant to establish a revolving loan account and to leverage
7 additional funds from other sources, which it used to acquire new vehicles and equipment at a
8 discount through the power of volume purchasing. CSS then passed on the savings to small fleet
9 owners financing new vehicles and Board-verified exhaust retrofits through a lease-to-own
10 financing instrument.

11 Pilot Direct Loan Program

12 20. In early June 2011, the Board issued a request for proposal (RFP) to select a qualified
13 financial institution, through the State competitive bidding process, to assist the Board in
14 implementing a pilot direct loan program for small trucking fleets. In late June 2011, the Board
15 awarded the contract to the Crossroads Equipment Lease and Finance, LLC (Crossroads), with
16 the expectation that program implementation would begin once the program contract was
17 finalized and approved by the California Department of General Services (DGS), and once
18 financial evaluation, processing, and tracking systems were fully established. DGS approved the
19 contract on October 4, 2011, and the Board expects financing to be available to eligible borrowers
20 starting in early 2012.

21 21. The intent of this pilot program is the same as that of the other on-road PLACE
22 programs: to assist small trucking firms in upgrading their fleets to achieve early compliance
23 with the Board's In-Use Truck and Bus Regulation and/or the Heavy-Duty Vehicle GHG
24 Emission Reduction Regulation. This component differs from the other components in that the
25 program structure does not rely on the independent underwriting standards of individual financial
26 institutions. Instead, this pilot program structure provides the Board with direct control in
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1 determining loan terms and loan approvals for the purpose of providing the greatest financing
2 flexibility to trucking fleets that otherwise would not qualify for conventional financing.

3 22. In this pilot program, Crossroads will be responsible for developing the credit risk
4 evaluation model, evaluating loan applications for program eligibility and credit risk, providing
5 loan approval recommendations to the Board, preparing loan documents, and implementing an
6 asset recovery plan in the case of loan defaults. The Board will be responsible for general
7 program oversight and administration, including issuing final loan approval, determining
8 financing interest rates and other loan terms, and processing and tracking billing statements and
9 loan payments. In this regard, the Board is anticipating that it will provide financing for up to
10 seven years at an interest rate of approximately 9 percent. This is in contrast to the average
11 weighted interest rate of approximately 11 percent for three to five year loans that private
12 financial institutions have been offering under other Board programs. At the \$12 million funding
13 level, the Board estimates it will issue about 100 loans for the purchase of 2010 or newer model
14 year trucks and about 200 loans for the purchase and installation of Board-verified exhaust
15 retrofits, although actual borrower demand will dictate the financing split between truck and
16 retrofit purchases.

17 Success of the Board's PLACE programs

18 23. The target borrower for all of the several PLACE truck loan assistance programs is
19 the small fleet owner seeking early compliance that is unable to obtain affordable financing in
20 today's tight credit market, but is not considered a very poor credit risk. To be eligible for
21 consideration in any of the aforementioned programs fleet owners must have 40 or fewer heavy-
22 duty vehicles in their fleets and meet the following basic CalCAP small business requirements in
23 effect at the time the program was developed:

- 24 • The trucking company qualifies as a small business (< 100 employees);
25 • The trucking company generates \$10 million or less in annual revenue (averaged over
26 three years); and
27 • The trucking company has a "primary economic" effect in California.
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1 24. Outreach for the PLACE program has been and continues to be a part of the
2 Board's overall, coordinated outreach to educate affected trucking fleets on regulatory
3 compliance and the various Board incentive programs available to assist with early
4 compliance. CPCFA also conducts specific outreach for the Board/CPCFA Truck Loan
5 Assistance component to educate and enroll lenders in the program in order to provide a broad
6 range of access points throughout California where truckers can apply for loans. Examples of
7 outreach efforts include mailing more than 300,000 postcards and a California truck stop
8 refueling station "pump topper" advertisement campaign. The Board has also internally
9 reorganized and created a new Compliance Assistance and Outreach Branch to efficiently relay
10 information and training to the public.

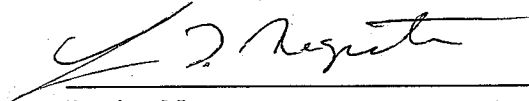
11 25. As of the end of September 2011, the truck loan assistance program has leveraged
12 about \$8.8 million in funding to provide over \$57 million in loans to small truck fleet owners
13 statewide for the purchase of over 900 cleaner trucks and nearly 350 Board-verified exhaust
14 retrofits. The majority of the truck purchases occurred in the southern California region while the
15 Board-exhaust retrofit upgrades occurred primarily in the southern California region and the Bay
16 Area. Of the 1,100 loans already issued in the program, approximately 75 percent were issued to
17 truck owner-operators and to minority-owned businesses. Note: To date, the greatest share of
18 on-road PLACE funding has been allocated to and expended through the Board/CPCFA Truck
19 Loan Assistance Program. Vocational trucking data, total number of potential applicants and
20 applicant denials are not available under this program, which is a component of CPCFA's highly
21 successful California Capital Access Program (CalCAP). While participating lenders are required
22 to report certain data to CPCFA on the borrowers financed through the program, the data does not
23 include the aforementioned categories. Accordingly, the Board cannot provide specific
24 information regarding the number of dump truck owners that have applied for and qualified for
25 funding under the various PLACE programs.

26 26. With \$25 million in funding currently available for the several on-road PLACE
27 Programs, the Board expects the programs to provide about \$98 million in loans over the next two
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1 years to assist small business truck owners in upgrading their fleets. The funding is not targeted
2 to or restricted to specific trucking vocations but is available statewide to eligible owners of small
3 trucking fleets subject to the In-Use Truck and Bus Regulation and the Tractor-Trailer
4 Greenhouse Gas Regulation. Over half the funding (about \$13 million) is allocated to the
5 continuing Board/CPCFA Truck Loan Assistance Program, which has the inherent benefit of fund
6 leveraging through the use of loan guarantees. Under this program component, the \$13 million is
7 leveraged with private funds from participating lenders at a rate of about 6.5:1 to provide \$86
8 million in financing to the trucking sector. The remaining \$12 million in PLACE funding is
9 allocated to the Pilot Direct Loan Program, which is expected to be operational in early 2012.
10 This innovative pilot program structure establishes the Board as the direct lender with control in
11 determining extremely competitive loan terms and loans approvals in order to better serve small
12 trucking fleets that otherwise would not qualify for conventional financing. The Pilot Direct
13 Loan Program structure enables the Board to utilize \$12 million to directly provide financing to
14 borrowers with riskier credit profiles than those approved through traditional lenders.

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I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct and that this Declaration was executed in Sacramento, California on November 30, 2011.



Lucina Negrete