



Analysis

As of: Jul 30, 2012

**ROCKY MOUNTAIN FARMERS UNION, REDWOOD COUNTY MINNESOTA
CORN AND SOYBEAN GROWERS, PENNY NEWMAN GRAIN, INC.,
GROWTH ENERGY, RENEWABLE FUELS ASSOCIATION, REX NEDEREND,
FRESNO COUNTY FARM BUREAU, NISEI FARMERS LEAGUE, and
CALIFORNIA DAIRY CAMPAIGN, Plaintiffs, vs. JAMES N. GOLDSTENE,
Executive Officer of the California Air Resources Board, Defendants. and related
intervenor and consolidated actions.**

**CASE NO. CV-F-09-2234 LJO DLBconsolidated withCASE NO. CV-F-10-163 LJO
DLB**

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

2012 U.S. Dist. LEXIS 7320

**January 23, 2012, Decided
January 23, 2012, Filed**

PRIOR HISTORY: *Rocky Mt. Farmers Union v. Goldstene, 2011 U.S. Dist. LEXIS 149593 (E.D. Cal., Dec. 29, 2011)*

COUNSEL: [*1] For Rocky Mountain Farmers Union, Redwood County Minnesota Corn and Soybeans Growers, Penny Newman Grain, Inc., Rex Nederend, Fresno County Farm Bureau, Nisei Farmers League, California Dairy Campaign (1:09-cv-02234), Plaintiffs: John P. Kinsey, LEAD ATTORNEY, Timothy Jones, Wanger Jones Helsley PC, Fresno, CA.

For Growth Energy (1:09-cv-02234), Plaintiff: John P. Kinsey, LEAD ATTORNEY, Timothy Jones, Wanger Jones Helsley PC, Fresno, CA; John C. O'Quinn, PHV, Stuart A C Drake, PHV, LEAD ATTORNEYS, PRO HAC VICE, Kirkland and Ellis LLP (Washington),

Washington, DC.

For Renewable Fuels Association (1:09-cv-02234), Plaintiff: Bryan M. Killian, PHV, LEAD ATTORNEY, PRO HAC VICE, Bingham McCutchen LLP (Washington, DC), Washington, DC; Charles H. Knauss, PHV, LEAD ATTORNEY, PRO HAC VICE, Katten Muchin Rosenman LLP, Washington, DC; John P. Kinsey, LEAD ATTORNEY, Timothy Jones, Wanger Jones Helsley PC, Fresno, CA; Thomas R. Lotterman, PHV, LEAD ATTORNEY, PRO HAC VICE, Bingham McCutchen LLP, Washington, DC.

For National Petrochemical & Refiners Association, American Trucking Associations, Center for North American Energy Security (1:09-cv-02234), Plaintiffs: Marie L Fiala, LEAD ATTORNEY, Sidley [*2] Austin

LLP, San Francisco, CA; James W. Coleman, PHV, PRO HAC VICE, Paul J. Zidlicky, PHV, PRO HAC VICE, Roger R. Martella, PHV, PRO HAC VICE, Sidley Austin LLP (D.C.), Washington, DC.

For The Consumer Energy Alliance (1:09-cv-02234), Plaintiff James W. Coleman, PHV, PRO HAC VICE, Paul J. Zidlicky, PHV, PRO HAC VICE, Roger R. Martella, PHV, PRO HAC VICE, Sidley Austin LLP (D.C.), Washington, DC; Marie L Fiala, Sidley Austin LLP, San Francisco, CA.

For James N. Goldstene, In his official capacity as Executive Officer of the California Air Resources Board (1:09-cv-02234), Defendant: Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Gavin Geraghty McCabe, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For Environmental Defense Fund (1:09-cv-02234), Defendant: Gavin Geraghty McCabe, LEAD ATTORNEY, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Timothy Joseph O'Connor, LEAD ATTORNEY, Environmental Defense Fund, San [*3] Francisco, CA; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For Mary D. Nichols, Daniel Sperling, Ken Yeager, Dorene D'Adamo, Barbara Riordan, John R. Balmes, Lydia H. Kennard, Sandra Berg, Ron Roberts, John G. Telles, in his official capacity as member of the California Air Resources Board, Ronald O. Loveridge, in his official capacity as member of the California Air Resources Board, Arnold Schwarzenegger, in his official capacity as Governor of the State of California, Edmond G. Brown, Jr., in his official capacity as Attorney General of the State of California (1:09-cv-02234), Defendants: Gavin Geraghty McCabe, LEAD ATTORNEY, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For Natural Resources Defense Council, Inc. (1:09-cv-02234), Intervenor Defendant: Gavin Geraghty McCabe, LEAD ATTORNEY, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Mark William Poole, LEAD ATTORNEY, California Department [*4] of Justice, San Francisco, CA; Nancy S. Marks, PHV, LEAD ATTORNEY, PRO HAC VICE, Natural Resources Defense Council, Inc., New York, NY; Vivian H. Wang, PHV, LEAD ATTORNEY, PRO HAC VICE, Feldman McLaughlin Thiel LLP, Zephyr Cove, NV; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For Sierra Club (1:09-cv-02234), Intervenor Defendant: David Pettit, LEAD ATTORNEY, Natural Resources Defense Council, Santa Monica, CA; Gavin Geraghty McCabe, LEAD ATTORNEY, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Patrick Gallagher, LEAD ATTORNEY, Devorah Ancel, Sierra Club Environmental Law Program, San Francisco, CA; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For Conservation Law Foundation (1:09-cv-02234), Intervenor Defendant: David Pettit, LEAD ATTORNEY, Natural Resources Defense Council, Santa Monica, CA; Gavin Geraghty McCabe, LEAD ATTORNEY, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA; Jane West, PHV, LEAD ATTORNEY, PRO HAC VICE, Conservation Law Foundation, [*5] Portland, ME; Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Margaret Elaine Meckenstock, Office of the Attorney General (San Francisco), San Francisco, CA.

For State of Oregon (1:09-cv-02234), Amicus: Seth Throop Karpinski, LEAD ATTORNEY, Oregon Department of Justice, Salem, OR.

For Brazillian Sugar Cane Industry Association (UNICA) (1:09-cv-02234), Amicus: Allison Rumsey, LEAD ATTORNEY, PRO HAC VICE, Jonathan Martel, LEAD ATTORNEY, Arnold & Porter Llp, Washington, DC; Rachel Lena Chanin, Arnold & Porter LLP, San Francisco, CA.

For Oregon Petroleum Association (1:09-cv-02234), Amicus: John Stuart Poulos, LEAD ATTORNEY,

Pillsbury Winthrop Shaw Pittman LLP, Sacramento, CA; Thomas C. Sand, PHV, LEAD ATTORNEY, PRO HAC VICE, Miller Nash LLP, Portland, OR.

For State of Nebraska (1:09-cv-02234), Amicus: John P. Kinsey, LEAD ATTORNEY, Wanger Jones Helsley PC, Fresno, CA; Kevin L. Griess, PHV, PRO HAC VICE, Nebraska Attorney General's Office, Lincoln, NE.

For Clean Energy Fuels, Inc. (1:09-cv-02234), Amicus: Robert Lenz Meylan, LEAD ATTORNEY, Murphy Rosen Meylan & Davitt LLP, Santa Monica, CA.

For National Petrochemical & Refiners Association, American Trucking [*6] Associations, Center for North American Energy Security, The Consumer Energy Alliance (1:10-cv-00163), Plaintiffs: James W. Coleman, PHV, Paul J. Zidlicky, PHV, Roger R. Martella, PHV, LEAD ATTORNEYS, PRO HAC VICE, Sidley Austin LLP (D.C.), Washington, DC; Marie L Fiala, LEAD ATTORNEY, Sidley Austin LLP, San Francisco, CA.

For James Goldstene, in his official capacity as Executive Officer of the California Air Resources Board (1:10-cv-00163), Defendant: Mark William Poole, LEAD ATTORNEY, California Department of Justice, San Francisco, CA; Gavin Geraghty McCabe, California Dept. Of Justice, Office Of Attorney General, San Francisco, CA.

For Mary D Nichols, Daniel Sperling, Ken Yeager, Dorene D'Adamo, Barbara Riordan, John R. Balmes, Lydia H. Kennard, Sandra Berg, Ron Roberts, John G. Telles, in his official capacity as member of the California Air Resources Board, Ronald O. Loveridge, in his official capacity as member of the California Air Resources Board, Arnold Schwarzenegger, in his official capacity as Governor of the State of California, Edmund G. Brown, Jr., in his official capacity as Attorney General of the State of California (1:10-cv-00163), Defendants: Mark William Poole, [*7] LEAD ATTORNEY, California Department of Justice, San Francisco, CA.

For Natural Resources Defense Council, Inc. (1:10-cv-00163), Intervenor Defendant: David Pettit, LEAD ATTORNEY, Natural Resources Defense Council, Santa Monica, CA.

For Conservation Law Foundation (1:10-cv-00163), Intervenor Defendant: David Pettit, LEAD ATTORNEY, Natural Resources Defense Council, Santa Monica, CA;

Jane West, PHV, PRO HAC VICE, Conservation Law Foundation, Portland, ME.

For Sierra Club (1:10-cv-00163), Intervenor Defendant: David Pettit, LEAD ATTORNEY, Natural Resources Defense Council, Santa Monica, CA; Patrick Gallagher, Sierra Club Environmental Law Program, San Francisco, CA.

For Environmental Defense Fund (1:10-cv-00163), Intervenor Defendant: Timothy Joseph O'Connor, LEAD ATTORNEY, Environmental Defense Fund, San Francisco, CA.

For State of Oregon (1:10-cv-00163), Amicus: Seth Throop Karpinski, LEAD ATTORNEY, Oregon Department of Justice, Salem, OR.

For Brazillian Sugar Cane Industry Associates (UNICA) (1:10-cv-00163), Amicus: Allison Rumsey, LEAD ATTORNEY, PRO HAC VICE, Jonathan Martel, LEAD ATTORNEY, Arnold & Porter Llp, Washington, DC; Rachel Lena Chanin, Arnold & Porter LLP, San Francisco, CA.

For [*8] Oregon Petroleum Association (1:10-cv-00163), Amicus: John Stuart Poulos, LEAD ATTORNEY, Pillsbury Winthrop Shaw Pittman LLP, Sacramento, CA; Thomas C. Sand, PHV, LEAD ATTORNEY, PRO HAC VICE, Miller Nash LLP, Portland, OR.

JUDGES: Lawrence J. O'Neill, UNITED STATES DISTRICT JUDGE.

OPINION BY: Lawrence J. O'Neill

OPINION

AMENDED ORDER ON MOTION TO STAY PRELIMINARY INJUNCTION AND JUDGMENTS PENDING APPEAL (Docs. 273 and 274)

BACKGROUND

In these consolidated actions, Plaintiffs challenge California's Low Carbon Fuel Standard ("LCFS"). Plaintiffs argued that the LCFS was unconstitutional both because it violated the dormant *Commerce Clause* of the United States Constitutional and was preempted by *Section 211(o)* of the Clean Air Act, in violation of the *Supremacy Clause*. Defendants argued that the LCFS is

an even-handed and authorized fuel regulation that is permitted by the Clean Air Act and exempt from *Commerce Clause* scrutiny.

On December 29, 2011, this Court issued three orders addressing the parties' summary judgment and adjudication motions. In the first, this Court, *inter alia*, rejected the defendants' arguments that *Section 211(c)(4)(B)* of the Clean Air Act authorized the LCFS to remove it from both preemption and [*9] *Commerce Clause* scrutiny. In the second order, this Court, *inter alia*, found that the LCFS violated the dormant *Commerce Clause* in its treatment of ethanol. In addition, and based on this Court's conclusion that the LCFS violated the dormant *Commerce Clause*, this Court granted an injunction requested by the Rocky Mountain Plaintiffs, enjoining defendants from further enforcing the LCFS. In the third order, this Court, *inter alia*, found that the LCFS violates the dormant *Commerce Clause* in its treatment of crude oils. In the latter orders, the Court directed the clerk of court to enter judgment in favor of the plaintiffs and against defendants on their *Commerce Clause* claims. The Court further certified the judgments for appeal, pursuant to *Fed. R. Civ. P. 54(b)*.

On January 5, 2012, defendants filed a notice of appeal, appealing from this Court's grant of an injunction and from the judgments entered.

Over two weeks after filing the appeal, on January 20, 2012, defendants moved to stay the judgments entered against them and to suspend the preliminary injunction pending appeal. Defendants separately moved to shorten time to hear these motions on an expedited schedule. Having considered [*10] defendants' moving papers, and applicable jurisdictional authorities, this Court issues the following order.

DISCUSSION

"Once a notice of appeal is filed, the district court is divested of jurisdiction over matters being appealed." *Natural Res. Def. Counsel v. Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (citing *Griggs v. Provident Consumer Discount Co.*, 459 US 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982)). This exclusive jurisdiction rule is not absolute. Pursuant to *Fed. R. Civ. P. 62(c)*, this Court retains jurisdiction during the pendency of an appeal to "suspend, modify, restore, or grant an injunction during the pendency of an appeal upon such terms for bond or other terms that secure the

opposing party's rights." *Id.*; *see also, Fed. R. App. P. 8(a)(1)(C)*.

The limited grant of jurisdiction pursuant to *Fed. R. Civ. P. 62(c)* "does not restore jurisdiction to the district court to adjudicate anew the merits of the case." *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 (9th Cir. 1982). This Court retains jurisdiction under this rule only to preserve the status quo pending appeal. *Natural Res. Def. Counsel*, 242 F.3d at 1166; *Small v. Operative Plasterers' & Cement Masons' Int'l Ass'n Local 200, AFL-CIO*, 611 F.3d 483, 495 (9th Cir. 2010); [*11] *see also, Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000) ("A district court lacks jurisdiction to modify an injunction once it has been appealed except to maintain the status quo among the parties."). Once the appeal has been filed, this Court has no jurisdiction to act on the merits of the case or to alter the status of the appeal. *A&M Records Inc. v. Napster, Inc.*, 284 F.3d 1091 (9th Cir. 2002).

Pursuant to this authority, this Court lacks jurisdiction to grant defendants' motion to stay the injunction and judgments pending appeal. Defendants' motion to suspend the preliminary injunction is based on defendants' arguments that they are likely to succeed on the merits of their claims on appeal and that they-and not plaintiffs-will experience irreparable harm pending appeal if the preliminary injunction is not stayed. Defendants' arguments are based on issues that this Court resolved in its orders, and are the issues that are currently pending appeal. Thus, Defendants' motion improperly seeks to re-litigate issues this Court resolved in its order granting the preliminary injunction and orders on the summary judgment motions. As set forth [*12] above, however, this Court lacks jurisdiction to act on the merits of the case or alter the status of the appeal. *A&M Records*, 284 F.3d at 1099. Defendants' motion, if granted, would alter the status of the appeal, as it would require this Court to reconsider and reverse the core issues of the appeal. This Court lacks jurisdiction to grant this relief. *Id.*; *c.f., Natural Resources Def. Counsel*, 242 F.3d at 1167 (injunction modifications that "left unchanged" core questions before appellate court were permissible).

Defendants cite *Fed. R. Civ. P. 62* for their position that this Court may suspend the preliminary injunction pending appeal; however, defendants ignore the narrow

limitations of this rule. *Fed. R. Civ. P. 62(c)* allows this Court to grant *only* such relief as may be necessary to preserve the status quo pending the appeal. *Small, 611 F.3d at 495*. For example, this Court may renew an injunction that expires during the pendency of an appeal. *Mayweathers v. Newland, 258 F.3d 930, 935 (9th Cir. 2001)* (during pendency of appeal, district court properly issued "new" injunction to replace expired one). The current status quo pending appeal is the preliminary injunction which enjoins [*13] defendants from enforcing the LCFS. Defendants' motion does not seek to preserve the status quo. Rather, defendants seek to alter the status quo by suspending the preliminary injunction to allow California to enforce the LCFS. This request goes even farther than requesting the current status quo to roll back to the pre-injunction status quo. At the time of the injunction, California enforced the LCFS under the 2011 regulations. Pursuant to the LCFS, the regulated parties' required reductions *increased* significantly in 2012. It appears that defendants are requesting an order that would not only change the status quo by allowing California to enforce the LCFS, but to allow enforcement that imposes higher restrictions than had been imposed previously. Defendants cite no authority, and this Court finds none, to support the proposition that this Court has jurisdiction to grant this type of relief. *See Small, 611 F.3d at 495* (district court lacked jurisdiction to modify judgment that modified aspects of the case involved in the appeal and changed status quo).

Finally, defendants have failed to establish that this Court has jurisdiction to suspend or stay the preliminary injunction pursuant [*14] to letter of the rule. *Fed. R. Civ. P. 62(c)* allows this Court to suspend an injunction

during the pendency of an appeal "on terms for bond or other terms that secure the opposing party's rights." Defendants propose no such terms that would secure the plaintiffs' rights. Because this Court found that the LCFS violates the dormant *Commerce Clause*, this Court cannot conceive of terms which would preserve plaintiffs' rights while allowing enforcement of an unconstitutional law. Indeed, in this Court's opinion, an order to suspend the preliminary injunction and to allow continued enforcement of an unconstitutional law would itself violate-and not secure-the plaintiffs' rights. Because there are no terms that would secure the plaintiffs' rights which allowing the preliminary injunction to be suspended, this Court must deny defendants' motion.

CONCLUSION AND ORDER

For the foregoing reasons, this Court:

1. GRANTS defendants' motion to hear the motions on an expedited schedule (Doc. 273); but
2. DENIES defendants' motion to stay enforcement of the preliminary injunction and judgments of this Court (Doc. 274).

IT IS SO ORDERED.

Dated: January 23, 2012

/s/ Lawrence J. O'Neill

UNITED STATES DISTRICT [*15] JUDGE

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