Nos. C075930 and C075954

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CALIFORNIA CHAMBER OF COMMERCE et al.,
Plaintiffs and Appellants,
v.
CALIFORNIA AIR RESOURCES BOARD et al.,
Defendants and Respondents.
NATIONAL ASSOCIATION OF MANUFACTURERS,
Intervener and Appellant,
ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

MORNING STAR PACKING COMPANY et al.,
Plaintiffs and Appellants,
v.
CALIFORNIA AIR RESOURCES BOARD et al.,
Defendants and Respondents.
ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

Appeal from Judgment Entered in Favor of Respondents
Hon. Timothy Frawley, Judge, Sacramento County Sup. Court
Case Nos. 34-2012-80001313 and 34-2013-80001464

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS; PROPOSED BRIEF OF *AMICUS CURIAE* THE NATURE CONSERVANCY

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND STATEMENT OF INTERESTS OF *AMICUS CURIAE*

TO THE HONORABLE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT:

Amicus curiae The Nature Conservancy makes this application to file the accompanying brief pursuant to California Rules of Court, Rule 8.200, subd. (c)(2).[1] This brief will assist the Court by sharing information on the effects of climate change in California. It will also shed further light on the role that auctions play in advancing AB 32 goals. The brief draws on The Nature Conservancy's expertise in environmental policymaking to support the argument that the cap-and-trade auction is not a tax, but is instead a well-recognized regulatory tool for pricing the use of a public resource in a manner that is equitable, cost-effective, and that enhances environmental performance.

Founded in 1951, The Nature Conservancy ("Conservancy") is the leading not-for-profit conservation organization working around the world to protect ecologically important lands and waters on which all life depends. With more than one million members, the Conservancy addresses the most pressing conservation issues involving fresh water, oceans, and conservation lands in all 50 states and more than 35 countries worldwide and views climate change as one of the biggest threats to its mission. The Conservancy submitted comment letters to the Air Resources Board supporting AB 32 and has been a vocal proponent of AB 32, as well as of emissions auctions. The Conservancy believes a cap-and-trade program

[1] UCLA Law students Giovanni Saarman and Tommy Huynh contributed significantly to this brief through the UCLA Environmental Law Clinic, as did Jesse Lueders, Emmett/Frankel Fellow in Environmental Law and Policy at UCLA School of Law.

using auctions is a critical tool to reduce greenhouse gas emissions in California while maximizing economic, environmental, and other benefits for the state.

The decision of this Court will directly affect The Nature Conservancy and its interests within and outside of California. Proposed *amicus* may assist the Court's decision through its expertise in and perspective on conservation policy. Accordingly, *amicus* respectfully requests the permission of the Justices to file this brief.

Dated: May 15, 2015

By: _____
Cara A. Horowitz
Frank G. Wells Environmental Law Clinic
Counsel for *Amicus* The Nature Conservancy

Pursuant to California Rules of Court, Rule 8.200, subd. (c)(3), *amicus* declares that no party or counsel for a party in the pending appeal authored the accompanying brief in whole or in part. Furthermore, no party, counsel for party, or other person or entity made a monetary contribution intended to fund the preparation or submission of the accompanying brief.

Dated: May 15, 2015

By: _____
Cara A. Horowitz
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AMICUS CURIAE BRIEF

I. Introduction

As the California legislature found and declared in enacting the California Global Warming Solutions Act of 2006 (AB 32), climate change threatens the state's economy, its natural resources, and the health of its people. The legislature charged the California Air Resources Board ("ARB") with reducing these threats by designing programs to limit the state's greenhouse gas ("GHG") emissions in a way that maximizes economic, environmental, and other benefits for California. In response, ARB adopted a cap-and-trade program that distributes allowances through a mix of free allocations and public auctions. Industry challengers now charge that the auction component of this program is invalid, claiming, among other things, that it violates a constitutional prohibition that applies only to "taxes enacted for the purpose of increasing revenues."[2]

California's purpose in employing auctions, however, was not to increase revenue. Instead, it was to improve the function of its regulatory program through the transparent and fair pricing of the right to use a public resource. The record demonstrates that in designing its allowance distribution method, ARB undertook a rigorous effort to maximize achievement of its statutory mandates. Through transparent and fair pricing, auctions serve important, enumerated AB 32 objectives related to cost-effectiveness, equity, and environmental performance, goals that ARB concluded—and economists agree—would not have been as well-served by

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[2] Former Cal. Const., art. XIII A, Section 3 (as of 2006). Plaintiffs also claim that the auction is invalid on statutory grounds. This brief addresses Plaintiffs' constitutional arguments. The statutory arguments must also fail, for reasons addressed in the briefs of the State Respondents and the briefs of Interveners and Respondents Environmental Defense Fund and Natural Resources Defense Council.

alternative program designs. For these reasons, along with others addressed by the Respondent and Intervener briefs, the auction is not an invalid tax.

II. Climate change harms public health, natural resources, and the economy in California, and its effects are severe

California is experiencing the effects of climate change across many dimensions, with harms to human health and welfare, ecological health, and the economy. Many studies and reports have documented these effects. Of note, a report issued by the Office of Environmental Health Hazard Assessment ("OEHHA") (a department of the California Environmental Protection Agency) identifies and analyzes 36 climate change "indicators" in California. It details significant climate change threats to the state, including impacts being felt now and those expected in the near future.[3]

Among the key impacts of climate change in California are rising temperatures and extreme heat. Annual statewide air temperatures in California have been rising since 1895.[4] In this time, California average temperature has risen at a rate of about 1.5 degrees Fahrenheit (°F) per century.[5] Minimum temperatures have increased by 1.99°F, while maximum temperatures have risen 1.01°F, reflecting greater increases in average nighttime temperatures.[6] Heat waves—periods of extreme high temperature—are expected to be an increasing problem in California. Heat waves present serious health risks: in July 2006, at least 140 people died in

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[3] Office of Envtl. Health Hazard Assessment, Cal. Envtl. Prot. Agency, Indicators of Climate Change in California (2013) (hereafter OEHHA), *available at* http://oehha.ca.gov/multimedia/epic/pdf/ClimateChangeIndicatorsReport2013.pdf.

[4] OEHHA, *supra* note 3, at page 38; *citing* Western Regional Climate Center, California Climate Tracker (2013), *available at* http://www.wrcc.dri.edu/monitor/cal-mon/index.html. This trend is consistent with the global increases noted by the IPCC. *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

a California heat wave.[7] Certain populations are especially susceptible to these extreme high temperatures, including the elderly, poor, chronically ill, and socially isolated.[8] Forty-six percent of the people killed in the 2006 heat wave lived alone.[9]

Droughts in California are also expected to worsen in the coming decades.[10] Many areas of California rely on spring runoff from snowpack to meet their water supply needs during the summer dry season.[11] Snowmelt has historically contributed about 35 percent of the state's reservoir capacity.[12] Over the last century, however, warmer winter and spring weather means that water previously stored as snowpack is now falling increasingly as rain.[13] As a result, spring runoff is decreasing. During the twentieth century, rivers in the Sierra Nevada mountain range experienced a drop in spring runoff between 5 and 13 percent.[14] The current drought makes clear how damaging this trend may be. Recent measurements show 2015 snowpack water content at five percent of historic average levels, the lowest in 65 years of recorded history.[15] In

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[7] San Diego Foundation, Climate Change Related Impacts in the San Diego Region by 2050 (2008), pp.82- 83 (available at https://cdip.ucsd.edu/themes/media/docs/publications/news_articles/Focus2050_whitepaper_final.pdf).
[8] *Ibid.*
[9] *Ibid.*
[10] OEHHA, *supra* note 3, at page 226; *citing* Michael D. Mastrandrea et al., California Climate Change Center, Current and Future Impacts of Extreme Events in California (2009), *available at* http://www.energy.ca.gov/2009publications/CEC-500-2009-026/CEC-500-2009-026-F.PDF.
[11] OEHHA, *supra* note 3, at page 29.
[12] *Id.* at page 77.
[13] *Id.* at page 72.
[14] *Ibid.*
[15] Cal. Dept. of Water Res., Sierra Nevada Snowpack Is Virtually Gone; Water Content Now Is Only 5 Percent of Historic Average, Lowest Since

April 2015, after months of prolonged severe drought, the Governor ordered unprecedented cuts in municipal water consumption across the state.[16]

Wildfires are also increasing in frequency and severity in California and surrounding states. From 1987 to 2003, wildfires in the western United States occurred nearly four times more frequently than on average, and the total area burned was more than six times the level seen between 1970 and 1986.[17] Between these same two periods, the length of the yearly fire season in the western United States extended by 78 days (a 64 percent increase), and the average duration of individual fires grew from one week to about five weeks.[18] In 2008, wildfires burned a record 1.4 million acres (over 2,000 square miles) of California land.[19] In 2013, the Yosemite Rim Fire burned over 400 square miles of Yosemite National Park and the surrounding area.[20] Conditions associated with climate change, such as higher spring and summer temperatures and reduced snowpack, have been identified as factors contributing to the increase in California wildfires.[21]

1950 (Apr. 1, 2015), *available at* http://www.water.ca.gov/news/newsreleases/2015/040115snowsurvey.pdf.

[16] Exec. Order B-29-15 (Apr. 1, 2015).

[17] OEHHA, *supra* note 3, at page 139; *citing* A.L. Westerling et al., *Warming and earlier spring increase western U.S. Forest wildfire activity*, Science 313(5789): 940-943 (2006), *available at* http://www.sciencemag.org/content/313/5789/940.abstract.

[18] *Ibid.*

[19] *Id.* at page 137; *citing* California Department of Forestry and Fire Protection ("CalFire"), California's Forests and Rangelands: 2010 Assessment (2010), *available at* http://frap.fire.ca.gov/data/assessment2010/pdfs/california_forest_assessment_nov22.pdf.

[20] InciWeb: Incident Information System, *Rim Fire* (Oct. 25, 2013) http://inciweb.nwcg.gov/incident/3660 (as of May 6, 2015).

[21] OEHHA, *supra* note 3, at page 138; *citing* CalFire, *supra* note 19.

Climate change threatens major sectors of California's agriculture, including the fruit, nut, wine, and dairy industries. Impacts such as changes in temperature and water supply, the timing of seasons, and expanding ranges of pests, pathogens, and weeds may all affect yields for a variety of crops and products.[22] California's fruit production industry is one example. Fruit trees generally require a dormancy period of between 200 and 1,500 hours below 45°F in order to produce fruit.[23] Further, recent studies have recognized a cancelling effect when conditions alternate between temperatures above and below 45°F, indicating the need for sustained periods of time below this temperature.[24] Measurements taken in Orland, California over the past half century show a steady average decline in the number of hours during which the temperature falls below this level.[25] Other regions of fruit tree agriculture in California also have shown significant drops in chilling periods. Models indicate that by the middle or end of the century, California's climate will be unable to support some key California fruit tree varieties.[26]

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[22] California Climate Change Center, Our Changing Climate: Assessing the Risks to California (2006) pages 8-9.

[23] OEHHA, *supra* note 3, at page 56; *citing* Dennis Baldocchi & Simon Wong, California Climate Change Center, An Assessment of the Impacts of Future CO_2 and Climate on Californian Agriculture (2006), *available at* http://www.energy.ca.gov/2005publications/CEC-500-2005-187/CEC-500-2005-187-SF.PDF.

[24] *Id.* at page 54; *citing* E. Luedeling et al., *Sensitivity of winter chill models for fruit and nut trees to climatic changes expected in California's Central Valley* (2009) 133 Agriculture, Ecosystems & Environment 23, *available at* http://www.sciencedirect.com/science/article/pii/S0167880909001248.

[25] *Id.* at page 55; *citing* Baldocchi & Wong, *supra* note 23.

[26] *Id.* at page 54; *citing* E. Luedeling et al., *Climatic changes lead to declining winter chill for fruit and nut trees in California during 1950–2099* (2009) PLoS ONE 4(7): e6166, *available at* http://dx.doi.org/10.1371%2Fjournal.pone.0006166.

Sea level rise poses other serious dangers. In 2012, a committee convened by the National Research Council at the request of the California Department of Water Resources and other state agencies forecasted sea levels along most of California's coast to rise 1.6 to 11.8 inches by 2030, 4.7 to 24 inches by 2050, and 16.5 to 65.7 inches by 2100, relative to 2000 measurements.[27] Sea level rise entails potentially serious consequences for California's coast and low-lying areas, including flooding, loss of wetlands, erosion of cliffs and beaches, saltwater contamination of groundwater aquifers and drinking water, and damage to roads, bridges, and other property and infrastructure.[28]

Lastly, climate change harms the state's biodiversity and species. Plant and animal species' survival is often linked closely to their habitat, and many species are at risk of extinction from climate change. In California, scientists have already observed changes to many ecosystems that may be attributed to warming. Plant species in Deep Canyon in the Santa Rosa Mountains are growing at higher elevations, with a variety of trees and small plants now distributed an average of 213 feet higher upslope than 30 years ago.[29] Small mammals in Yosemite are responding analogously, with many species abandoning historic habitats to live at higher elevation.[30] Plant and animal life may also be harmed by increasing

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[27] *Id.* at pages 90-91; *citing* Commission on Sea Level Rise in California, Oregon and Washington, National Research Council, Sea-Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future (The National Academies Press 2012).

[28] *Id.* at page 89.

[29] OEHHA, *supra* note 3, at page 157; *citing* Anne E. Kelly & Michael L. Goulden, *Rapid shifts in plant distribution with recent climate change* (2008) 105 Proceedings of the National Academy of Sciences 11823, *available at* http://www.pnas.org/content/105/33/11823.abstract.

[30] *Id.* at page 177; *citing* Craig Moritz et al., *Impact of a century of climate change on small-mammal communities in Yosemite National Park, USA*

wildfires, flooding, and ocean acidification and warming. The complicated interrelations among species in an ecosystem mean that impacts to vulnerable species may be felt by many other species in turn.

These threats are among those that motivated the passage of AB 32, and they underscore the importance of developing successful, equitable, cost-effective policies for achieving emissions reductions.

III. California enacted AB 32 to limit these impacts by cutting greenhouse gas emissions while meeting other enumerated statutory objectives, including equity and cost-effectiveness

AB 32 charges ARB with returning the state to its 1990 levels of greenhouse gas emissions by the year 2020; with maintaining that statewide emissions limit indefinitely; and with "continu[ing] reductions in greenhouse gases beyond 2020."[31] The Legislature found and declared that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California."[32] The Legislature's aims included "continu[ing] [the state's] tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases."[33]

AB 32 tasks ARB with developing regulatory tools to achieve these goals via the "maximum technologically feasible and cost-effective greenhouse gas emission reductions."[34] The statute gives significant discretion to ARB. But it also directs the agency toward a series of objectives alongside emission reductions. In other words, achieving the

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(2008) 322 Science 261, *available at* http://www.sciencemag.org/content/322/5899/261.

[31] Cal. Health & Safety Code §§ 38550; 38551(a), (b) (West 2014).

[32] *Id.* at § 38501(a).

[33] *Id.* at § 38501(c).

[34] *Id.* at § 38560.

2020 emissions limit was not, and could not be, the agency's only aim. The statute requires ARB, in designing its program, to (among other things):

- minimize costs;
- maximize cost-effectiveness;
- encourage early action to reduce emissions;
- distribute emissions allowances in an equitable manner; and
- maximize total benefits to California.[35]

Among the measures that AB 32 authorizes are "market-based compliance mechanisms," which include a cap-and-trade system for limiting greenhouse gas emissions. The statute requires that for any market-based system, ARB "shall" "[d]esign the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize total benefits to California, and encourages early action to reduce greenhouse gas emissions."[36] It also specifically instructs ARB to "maximize additional environmental and economic benefits for California" from the market-based program.[37]

IV. ARB adopted an auction in order to advance important AB 32 goals related to cost, equity, and environmental performance

In designing its cap-and-trade program, ARB concluded that distributing allowances via a mix of free allocations and public auctions would cut emissions equitably and cost-effectively, improving market function while avoiding windfall profits for regulated parties. The decision-making record shows that ARB made this choice because doing so

[35] *Id.* at § 38562(a)-(b)(1).
[36] *Id.* at § 38562(b)(1).
[37] *Id.* at § 38570(b)(3).

would, in its view, best achieve its regulatory aims and the statutory directives.[38] ARB concluded that a blended distribution method would outperform other allocation strategies in several ways that were important to AB 32 implementation—most notably, by promoting program equity, cost-effectiveness, and environmental performance.

The statute requires that ARB distribute allowances "in a manner that is equitable."[39] ARB found that including an auction would promote equity by "treat[ing] new entrants fairly."[40] Anticipating that the cap-and-trade program would lead to the founding of new businesses to meet greater demand for low-carbon services and products, ARB concluded that "[a]uctioning allowances would treat these potential new businesses equitably relative to previously established firms," by giving them an open and transparent source of allowances equally available to all market participants.[41]

ARB also concluded that auctions would limit opportunities for "windfall gains," which, it explained, "occur when industries are given free allowances and are able to profitably pass through" the value of those allowances to consumers, in the form of higher prices.[42] It noted that windfall gains do not simply account for additional costs borne by industry. Instead, ARB explained that they enrich industry "potentially more than"

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[38] Office of Climate Change, Air Res. Bd., Cal. Envtl. Prot. Agency, Proposed Regulation to Implement the California Cap-and-Trade Program, Staff Report: Initial Statement of Reasons (2010) (hereinafter "Initial Statement of Reasons"), at AR C-93 to C-99. *See also id.* at AR C-27 to C-28; C-33 to C-34; C-68; C-1721 to C-1722; and C-1775 to C-1776. *See also* State Respondents' brief at pages 49-53.
[39] Cal. Health & Safety Code § 38562(b)(1).
[40] Initial Statement of Reasons, AR C-1776.
[41] *Ibid.*
[42] *Id.* at AR C-1721.

would be justified by cost impacts alone, at the expense of consumers.[43] Because "[a]uctioning allowances will prevent windfalls to those sectors otherwise able to pass the cost through to consumers," ARB stated that it "has addressed windfalls in the proposed regulation by relying on allowance auctioning."[44]

In considering ways to avoid windfall profits, ARB took note of the example of the European Union's Emissions Trading System, one of the world's earliest and most studied greenhouse gas cap-and-trade programs. ARB noted that businesses in that program earned windfall profits by increasing consumer prices to reflect the implicit costs of allowances, even though businesses were given allowances for free—an inequitable outcome from the perspective of consumers and other market players.[45]

On the question of cost, AB 32 states that ARB "shall" design its emission reduction programs, including cap-and-trade, to "minimize costs" and to achieve the "maximum . . . cost-effective reductions."[46] Auctions would minimize costs and maximize economic efficiencies, ARB concluded. Incorporating at least some public auctions would reduce costs and help establish an economically-efficient, "smooth functioning" allowance market.[47] Moreover, blending free allocation with auctions helps to signal a market price for allowances, which facilitates efficient allowance transfers between businesses in the private market by reducing search costs (incurred in finding a business willing to sell an allowance) and bilateral

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[43] *Id.* at AR C-1722.
[44] *Ibid.* ("Auctioning allowances will prevent windfalls"); *see also* ARB Final Statement of Reasons at AR H-1746 ("Providing excessive free allocation to firms with a high level of cost pass-through ability would have led to windfall profits").
[45] Initial Statement of Reasons, AR C-1721 to C-1722.
[46] Cal. Health & Safety Code §38562(a), (b)(1).
[47] Initial Statement of Reasons, AR C-1775.

bargaining transaction costs (incurred in actually negotiating a sale).[48] On this point, ARB considered the experience of a prominent sulfur dioxide emissions trading program that had been set up under the Clean Air Act. ARB noted that in the sulfur dioxide context, auctions were found to have reduced both the price volatility of allowances and the transaction costs of secondary allowance transfers.[49] By adopting an allowance distribution method that incorporated auctions in California, ARB learned from this success.

Shrinking the state's GHG emissions sooner rather than later yields important environmental benefits, and AB 32 requires that ARB's program "encourage early action to reduce emissions."[50] ARB found that auctions would further this goal.[51] Prices in an auction allow regulated businesses to see how much others value allowances, which provides a reliable price signal for the cost of reductions and encourages earlier investment in pollution reduction. As described by a group of the country's leading economists in an *amicus* brief being filed in this case in support of Respondents, "[b]y setting a price for emissions, the auctioning of allowances encourages larger firms to invest in innovation of pollution abatement technology."[52] For these reasons, businesses will have stronger, earlier incentives to improve their abatement technology with auctions than without. This will promote early emissions reductions.

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[48] *Ibid*; *see also Proposed Brief of Economists Burtraw et al. in support of Respondents* at Section II.2 (anticipating "considerable efficiency gains" in California from the use of auctions, and noting that "[a]uctions further contribute to an efficient market by accelerating the discovery of a market-clearing price").

[49] Initial Statement of Reasons, at AR C-1775.

[50] Cal. Health & Safety Code § 38562(b)(1).

[51] Initial Statement of Reasons, at AR C-94.

[52] *Proposed Brief of Economists Burtraw et al.* at Section II.3.

ARB concluded that a mix of free allocations and auctions would also accomplish all of the following: (1) "reward[] efficient firms";[53] (2) promote administrative transparency and efficient program implementation while simultaneously limiting potential for rent-seeking behavior;[54] (3) reduce administrative costs;[55] and (4) reduce the cost of emissions reductions.[56] For all of these reasons, ARB found that a blended distribution strategy would meet AB 32's multifaceted goals:

> Staff has designed the proposed cap-and-trade program, including the allowance allocation system, to minimize the cost of implementation and compliance and to maximize the overall benefits. The allowance allocation system is equitable within and across sectors of the California economy, and its primary reliance on efficiency benchmarks and auction encourages early action to reduce emissions. . . . Staff's evaluation of the cap-and-trade program is consistent with [the] requirements of AB 32.[57]

To be sure, ARB was not blind to the fact that auctions would raise proceeds, and it anticipated ways to use those proceeds that would further the aims of AB 32. But its focus was on the benefits to California, described herein and in other briefs in support of ARB, that accrue from the act of pricing the use of a public resource in a transparent and fair way, through auctions.[58]

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[53] Initial Statement of Reasons, at AR C-1776.
[54] *Ibid.*
[55] *Ibid.*
[56] *Ibid.*
[57] *Id.* at AR C-94 and C-99.
[58] ARB's conclusions about the role of auctions in advancing statutory goals are well justified. The proposed *amicus* brief of leading economists supporting the state concludes that "(1) auction systems are more equitable, (2) auction systems are more economically efficient and (3) auction systems augment the environmental benefits that cap-and-trade programs seek to achieve." *Proposed Brief of Economists Burtraw et al.* at Section II; *see also* State Respondents' brief at pages 49-53. The economists also conclude that this range of benefits would not have been achieved through

The aggregate effect of ARB's distribution strategy is to maximize total benefits to California, as required by the statute.[59] California cannot succeed in addressing climate change alone, and a fair, efficient, effective program that attracts partners is important if the state is to succeed in "encouraging other states, the federal government, and other countries to act," a core aim of the Legislature in enacting AB 32.[60] This approach appears to be bearing fruit: The province of Quebec, Canada, has enacted essentially the same cap-and-trade regulation as California's. The two jurisdictions have linked their programs and now coordinate to hold periodic joint auctions. Last month, the province of Ontario, Canada, announced its intention to create a coordinated cap-and-trade program that will similarly link with California's.

In sum, ARB adopted an auction in order to advance important AB 32 goals related to cost, equity, and environmental performance, not in order to raise revenue for the state.

V. Conclusion

Climate change poses significant threats to California's communities, natural resources, and economy. The Legislature recognized these threats in enacting AB 32 and gave ARB the task of limiting them through the design of an innovative set of climate policies that would demonstrate leadership. ARB's decision to distribute allowances through a mix of free allocations and auctions was driven by its pursuit of enumerated statutory goals, not revenue generation. Its use of auctions advances the

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other allowance distribution methods. *See Proposed Brief of Economists Burtraw et al.* at Section II.1 and II.3, including fn. 22 (concluding that neither free allocation of allowances nor an auction that returns all proceeds to auction participants would have achieved the full range of these benefits).

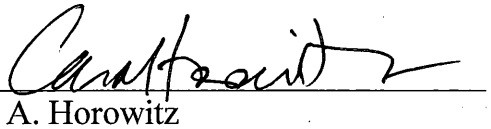
[59] Cal. Health & Safety Code at § 38562(b)(1).

[60] *Id.* at § 38501(c), (d).

equity, cost-effectiveness, and environmental performance of the regulatory program, while effectively pricing the use of a public resource. For these reasons, the auctions are not a "tax[] enacted for the purpose of increasing revenues."

Dated: May 15, 2015

Respectfully Submitted,
Frank G. Wells Environmental Law Clinic
UCLA School of Law

By: 

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CERTIFICATION OF WORD COUNT

I certify that the total word count of this brief, including footnotes, is 3,631 words, as determined by the word count of the Microsoft Word program on which this brief was prepared.

Dated: May 15, 2015

Respectfully Submitted,
Frank G. Wells Environmental Law Clinic
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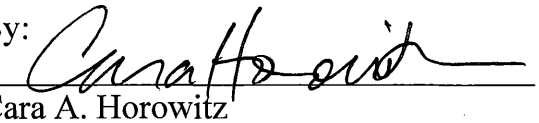
By: 

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PROOF OF SERVICE

California Chamber of Commerce, et al. v. California Air Resources Board et al.
Morning Star Packing Company et al. v. California Air Resources Board et al.
Case Nos. C075930 & C075954
Court of Appeal, Third Appellate District

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of Los Angeles, State of California. My business address is the UCLA School of Law, 385 Charles E. Young Drive, Los Angeles, CA 90095-1476.

On May 15, 2015, I served true copies of the following document(s) described as:

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS; PROPOSED BRIEF OF *AMICUS CURIAE* THE NATURE CONSERVANCY

on the parties in this action as follows:

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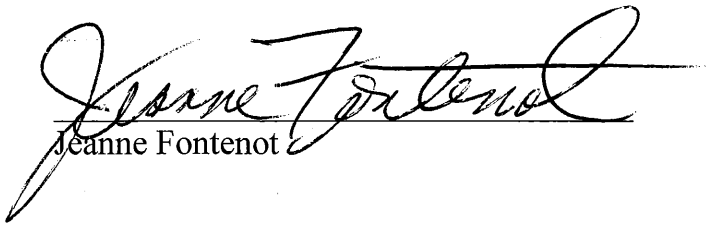
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 15, 2015, at Los Angeles, California.



Jeanne Fontenot

SERVICE LIST

California Chamber of Commerce, et al. v.
California Air Resources Board et al.
C075930 (Related Case C075954)
Court of Appeal, Third Appellate District

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