

1 DAVID PETTIT (SBN 67128)  
dpettit@nrdc.org  
2 MELISSA LIN PERRELLA (SBN 205019)  
mlinperrella@nrdc.org  
3 MORGAN WYENN (SBN 270593)  
mwyenn@nrdc.org  
4 NATURAL RESOURCES DEFENSE COUNCIL  
5 1314 Second Street  
Santa Monica, California 90401  
6 Telephone: (310) 434-2300  
7 Facsimile: (310) 434-2399

8 Attorneys for Defendant-Intervenor  
9 Natural Resources Defense Council, Inc.

10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA DUMP TRUCK OWNERS  
14 ASSOCIATION,

15 Plaintiff,

16 v.

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

20 Defendants,

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22 NATURAL RESOURCES DEFENSE  
23 COUNCIL, INC.,

24 Defendant-Intervenor.  
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Case No. 2:11-CV-00384-MCE-GGH

DEFENDANT-INTERVENOR NATURAL  
RESOURCES DEFENSE COUNCIL'S  
NOTICE OF CROSS-MOTION FOR  
SUMMARY JUDGMENT

Date: January 26, 2012  
Time: 2:00 p.m.  
Judge: Hon. Morrison C. England, Jr.  
Courtroom: 7

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on January 26, 2011, at 2:00 p.m. or as soon  
3 thereafter as the matter may be heard, before the Honorable Morrison C. England, Jr., United  
4 States District Judge, in Courtroom 7 of the United States District Court, Eastern District of  
5 California, located at 501 I Street, Suite 4-200, Sacramento, CA 95814, Defendant-Intervenor the  
6 Natural Resources Defense Council, Inc. (“NRDC”) will move this Court pursuant to Federal  
7 Rule of Civil Procedure 56(b) and Local Rule 260 for an order granting summary judgment on  
8 the sole count alleged by Plaintiff California Dump Truck Owners Association (“CDTOA”) in its  
9 First Amended Complaint. CDTOA’s sole count alleges that California’s Truck and Bus Rule<sup>1</sup>  
10 is preempted by the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c)(1)  
11 (“FAAA”).

12 NRDC moves for summary judgment on the grounds that California adopted the Truck  
13 and Bus Rule pursuant to authority expressly reserved to it under sections 7416 and 7543(d) of  
14 the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and there is no evidence that Congress intended to  
15 repeal that authority when it enacted the FAAA. On this basis, and because there are no genuine  
16 issues of material fact to be litigated, NRDC is entitled to judgment as a matter of law.

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26 <sup>1</sup> The “Truck and Bus Rule” refers to the rule challenged by CDTOA in this case, and is formally  
27 entitled “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and  
28 Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles,” 13 Cal. Code. Reg.  
§ 2025.

1 This cross-motion is based upon this Notice of Cross-Motion, the Memorandum of Points  
2 and Authorities in support thereof, the Statement of Undisputed Facts, the Declaration of Melissa  
3 Lin Perrella and exhibits attached thereto, and all pleadings, records and papers on file in this  
4 action, and such other further evidence and argument as may be presented at or before the time  
5 of the hearing.

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7 Dated: December 22, 2011

David Pettit  
Melissa Lin Perrella  
Morgan Wyenn  
Natural Resources Defense Council, Inc.

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10 By: /s/ Melissa Lin Perrella

11 Attorneys for Defendant-Intervenor  
12 Natural Resources Defense Council, Inc  
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