

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST NATURAL GAS COMPANY, AVISTA CORPORATION, and  
CASCADE NATURAL GAS CORPORATION,  
Petitioners,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178216 (Control)

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OREGON FARM BUREAU FEDERATION; OREGON BUSINESS &  
INDUSTRY ASSOCIATION; OREGON MANUFACTURERS AND  
COMMERCE; ALLIANCE OF WESTERN ENERGY CONSUMERS;  
ASSOCIATED OREGON LOGGERS, INC.; NORTHWEST PULP AND PAPER  
ASSOCIATION; OREGON ASSOCIATION OF NURSERIES; OREGON  
FOREST AND INDUSTRIES COUNCIL; OREGON TRUCKING  
ASSOCIATIONS, INC.; WESTERN WOOD PRESERVERS INSTITUTE;  
OTLEY LAND AND CATTLE, LLC; AND SPACE AGE FUEL, INC.,  
Petitioners,

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,  
Intervenor-Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178217

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WESTERNS STATES PETROLEUM ASSOCIATION,  
Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

**MOTION—INTERVENE**

Prospective Intervenor-Respondents Beyond Toxics, Climate Solutions, Environmental Defense Fund, Oregon Business Alliance for Climate—dba Oregon Business for Climate, and Oregon Environmental Council, (collectively, “Applicants”) move for permissive intervention to appear as respondents in the above-captioned consolidated cases under ORCP 33 C.

In support of this motion, Applicants respectfully refer the Court to the attached declarations of Lisa Arkin (Beyond Toxics), Gregg Small (Climate Solutions), Kjellen Belcher (Environmental Defense Fund), Tim Miller (Oregon Business for Climate), and Nora Apter (Oregon Environmental Council).

Counsel for Respondent Oregon Environmental Quality Commission and counsel for each set of Petitioners have stated that they do not oppose this motion.

**BACKGROUND**

In 2020, Governor Kate Brown ordered the Department of Environmental Quality (“DEQ”) to develop a set of administrative rules that would cap

greenhouse gas emissions from fossil fuel sources and reduce emissions over time, pursuant to the agency's existing statutory authority. DEQ responded by developing the Climate Protection Program ("CPP") to cap and reduce greenhouse gas emissions from large stationary sources and fossil fuels used in transportation, residential, commercial and industrial settings. The Oregon Environmental Quality Commission ("EQC"), the DEQ's policy and rulemaking board, adopted the rules on December 16, 2021. *See* OAR ch 340, div 271.

The CPP is designed to reduce the detrimental effects of greenhouse gas emissions on the overall public welfare through planned emissions reductions, while also providing a voluntary funding mechanism for the equitable distribution of the benefits of green development to environmental justice communities disproportionately impacted by climate change and air pollution. These communities are specifically prioritized in the CPP's voluntary funding mechanism because they otherwise may not experience the benefits of a clean fuel economy, further exacerbating the inequities environmental justice communities have faced in the climate crisis.

Petitioners—three separate groups aligned with fossil fuel industry interests—filed for judicial review of the CPP rules on March 18, 2022. This Court consolidated the cases on April 18, 2022. Petitioners challenge the EQC's statutory and constitutional authority to promulgate the CPP.

Applicants respectfully ask this Court for leave to intervene as respondents. Each Applicant has a direct interest in this litigation: each organization participated in the development of the CPP and has an organizational purpose and history of working to improve environmental and social health by reducing greenhouse gas emissions and advocating for a just transition to a clean energy future. Applicants' members stand to benefit directly from implementation of the CPP and would be harmed if Petitioners were to prevail.

Applicants' interests in the case are not adequately represented by any of the original parties. Applicants' intervention at this stage of the case will not delay or prejudice adjudication of the rights of the original parties and no party opposes Applicants' intervention. Applicants thus satisfy the standard for permissive intervention under ORCP 33 C.

## **APPLICANTS**

**Beyond Toxics** is an Oregon-based nonprofit organization dedicated to representing environmental justice communities that are disproportionately impacted by pollution and climate change. Declaration of Lisa Arkin ("Arkin Decl.") ¶ 4.

**Climate Solutions** is a Northwest-based nonprofit organization focused on developing a clean energy economy and accelerating practical and profitable solutions to the climate crisis. Declaration of Gregg Small ("Small Decl.") ¶ 2.

**Environmental Defense Fund** is a national nonprofit environmental organization working to stabilize the climate and strengthen people’s ability to thrive in a changing climate. Declaration of Kjellen Belcher (“Belcher Decl.”) ¶ 6.

**Oregon Business Alliance for Climate, dba Oregon Business for Climate**, is an Oregon-based nonprofit coalition of businesses focused on advancing climate policy and investing in Oregon’s clean energy economy. Declaration of Tim Miller (“Miller Decl.”) ¶ 6.

**Oregon Environmental Council** is an Oregon-based nonprofit whose mission is to advance innovative, collaborative, and equitable solutions to Oregon’s environmental challenges. Declaration of Nora Apter (“Apter Decl.”) ¶ 3.

## **ARGUMENT**

### **I. APPLICANTS SATISFY THE STANDARD FOR PERMISSIVE INTERVENTION.**

Under Oregon’s standards for permissive intervention, proposed intervenors must establish (1) their interest in the litigation, and (2) that their intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. ORCP 33 C; *see also Rendler v. Lincoln County*, 302 Or 177, 181-82, 728 P2d 21 (1986). In addition, a proposed intervenor must not seek to inject “entirely new and different” issues into the litigation. *Brune v. McDonald*, 158 Or 364, 370, 75 P2d 10 (1938). Oregon courts have held that public interest organizations may participate as intervenors where they or their members possess the requisite interest

in the litigation. *See Rendler*, 302 Or at 184 (organization may intervene if some of its members have particularized interest in matter).

Applicants satisfy the requirements for permissive intervention under ORCP 33 C. They seek to defend the validity of the CPP rules and EQC's authority to adopt them, but each has a distinct and particularized interest in the matter germane to its particular organizational focus. Additionally, Applicants' intervention will not cause undue delay or prejudice to the original parties.

**A. Applicants have an interest in the defending the CPP.**

Each Applicant has a distinct and concrete interest in the outcome of this litigation which cannot be adequately represented by the original parties. Petitioners seek to invalidate the EQC's adoption of the CPP; their position and interests are directly contrary to Applicants' interests in defending the CPP and ensuring its full implementation. As a government entity, EQC must balance a range of interest, including those potentially adverse to Applicants and their members, when making policy and litigation decisions. The EQC, and the agency it oversees—DEQ, cannot adequately represent Applicants' interests because its role is more intermediary than advocate. EQC must respond to many varied interests, including the regulated community and the public, and must answer to elected officials, including the governor and state legislators.

As set forth below, each Applicant has specific organizational interests in this matter. Additionally, each Applicants' members stand to benefit from the CPP's implementation and thus have interests which the Applicants seek to represent in the present litigation. Applicants also seek to defend the EQC's statutory authority to adopt the CPP, both as a foundation for potential future climate policy in Oregon and as a model for other states. As Oregon courts have recognized, public interest organizations with such interests satisfy the ORCP 33 C requirement for intervention. *Rendler*, 302 Or 177; *see also* Order on Motion, *Western States Petroleum Ass'n v. Environmental Quality Comm'n*, CA No. A158944 (cons) (April 4, 2016) (granting motion to intervene by Climate Solutions and Oregon Environmental Council in defense of EQC's clean fuels rule).

#### **i. Beyond Toxics**

Beyond Toxics, an Oregon-based nonprofit focused on representing environmental justice communities, has an interest in reducing greenhouse gas emissions for the health and well-being of environmental justice community members, who have borne a disproportionate share of the harms caused by climate change. Arkin Decl. ¶ 10. To fulfill this mission, Beyond Toxics has a long history of advocacy for climate change and climate justice policies and programs. Arkin

Decl. ¶¶ 8–9. Beyond Toxics frequently works with decision-makers on the state and local level to develop equitable climate policy. Arkin Decl. ¶¶ 8–9.

Beyond Toxics and the environmental justice communities it seeks to represent played a significant role in the development of the CPP. Arkin Decl.

¶ 12. Starting in 2020, Beyond Toxics sat on the Rulemaking Advisory Committee (“RAC”) for the CPP. Arkin Decl. ¶ 12. As a RAC member, Beyond Toxics reviewed program design elements, modeling designs, rule outlines, draft rules, final modeling results, fiscal impact analyses, and more. Arkin Decl. ¶ 12. Beyond Toxics publicly championed the CPP— submitting public comments in support of the program, preparing legislative briefings on the issue, and mounting a massive public relations campaign to generate thousands of supporting comments. Arkin Decl. ¶ 12.

The substantial time and effort that Beyond Toxics devoted to developing and supporting the CPP would be directly undermined by an adverse ruling in this litigation. Arkin Decl. ¶ 14. Beyond Toxics has concrete organizational interests which would be harmed if the CPP was set aside.

In addition, Petitioners’ challenge to the CPP directly threatens the interests Beyond Toxics’ members have in the program’s implementation. *See* Arkin Decl. ¶¶ 10–11, 13. As explained above, environmental justice communities have disproportionately borne the brunt of climate change impacts resulting from



greenhouse gas emissions. Arkin Decl. ¶ 10. A vital part of the CPP is the Community Climate Investments (“CCI”) Program. Arkin Decl. ¶ 11. The CCI Program prioritizes and aims to reduce burdens on environmental justice communities like those Beyond Toxics serves. Arkin Decl. ¶ 11. The voluntary CCI Program prioritizes investments in clean energy and greenhouse gas reduction projects benefiting communities on the frontlines of the climate crisis. Arkin Decl. ¶ 11. Beyond Toxics’ members stand to benefit directly from the CCI Program as well as from the CPP’s broader impact on greenhouse gas emissions and air quality. Arkin Decl. ¶ 11.

A decision in favor of Petitioners in this case would harm Beyond Toxics’ organizational interests and the interests of the community members it seeks to represent.

## **ii. Climate Solutions**

A Northwest-based clean energy nonprofit, Climate Solutions focuses on accelerating clean energy solutions to the climate crisis through market-based innovation and strong public policy on the state and local scale. Small Decl. ¶¶ 2–3. Climate Solutions cultivates diverse partnerships and collaborations with the environmental justice communities most impacted by climate change and most likely to benefit from the CPP’s implementation. Small Decl. ¶ 4. And Climate Solutions has been actively involved in the CPP’s development since its inception.

Small Decl. ¶¶ 5–7. Climate Solutions therefore has a direct interest in the outcome of this litigation.

Climate Solutions submitted scoping comments, attended and commented at the DEQ’s six technical program development workshops, submitted public comments, drafted strategic communications, met regularly with agency staff, and participated in the Rulemaking Advisory Committee. Small Decl. ¶¶ 5–7. Climate Solutions has invested considerable time and resources in the development of the CPP as part of its work to promote the transition to a clean-energy economy. *See* Small Decl. ¶¶ 5–7. It has a direct interest in the program’s successful defense and implementation.

In addition, Climate Solutions and its members have an interest in transitioning away from reliance on fossil fuels which produce greenhouse gasses harmful to the wellbeing of the group’s members and supporters. *See* Small Decl. ¶¶ 9–10. Some of Climate Solutions’ members also stand to directly benefit from the implementation of programs that may be funded through the CPP. Small Decl. ¶¶ 4, 9–10. Climate Solutions and its members would be harmed by a successful challenge to the CPP and therefore have an interest in the current litigation.

### **iii. Environmental Defense Fund**

Environmental Defense Fund (“EDF”) is a national environmental nonprofit organization which recognizes climate change as the greatest challenge of our

time. Belcher Decl. ¶¶ 3–6. Over 10,000 of its members reside in Oregon, where EDF actively advocates for strong environmental protections. Belcher Decl. ¶ 4. EDF works with state and local organizations to shape state-level climate policy, and participated extensively in the development of the CPP. Belcher Decl. ¶ 8.

EDF has a direct organizational interest in defending the CPP. During the program’s public scoping phase, from July 2020 to December 2020, EDF submitted comments and actively participated in a series of technical workshops to inform program design. Belcher Decl. ¶ 8. EDF attended the seven RAC meetings and submitted comments on specific program design elements. Belcher Decl. ¶ 8. Those comments were informed by an emissions analysis conducted by a modeling team which EDF funded. Belcher Decl. ¶ 8. The CPP’s successful adoption resulted in part from years of work by EDF staff and partners, giving EDF an important interest in defending the program it helped to design. Belcher Decl. ¶ 8.

EDF also has an interest in the CPP on behalf of its members, who stand to benefit from its implementation and would be harmed by Petitioners’ requested relief. *See* Belcher Decl. ¶¶ 7, 9–13. On behalf of its members in Oregon and around the world, EDF works for clean air and the reduction of greenhouse gas emissions. Belcher Decl. ¶¶ 4–6. Because climate change is a global, incremental problem, all emissions are important regardless of their geographic source. Belcher Decl. ¶ 12. Many of EDF’s members, in Oregon and around the world, are directly

affected by climate change. Belcher Decl. ¶ 11–13. EDF is interested in ensuring that Oregon meets its greenhouse-gas reductions target to ensure the health and safety of its members. Belcher Decl. ¶ 13.

Finally, EDF has an interest in the successful defense and implementation of the CPP as an important model of climate action for other states. Belcher Decl. ¶ 14. EDF frequently advocates for strong state-level climate programs. Belcher Decl. ¶ 6. The CPP creates a precedent that EDF seeks to build upon in other priority states. Belcher Decl. ¶ 14. An adverse decision in this litigation would harm EDF’s interests, and its members’ interests, in similar programs being adopted elsewhere that would lead to climate, health, and economic benefits. Belcher Decl. ¶ 14.

For these reasons, EDF and its members residing both within and outside of Oregon have strong interests in the outcome of the current litigation.

#### **iv. Oregon Business for Climate**

Oregon Business for Climate mobilizes industry support and business leadership across Oregon to advance strong, equitable, effective climate policies. Miller Decl. ¶¶ 6–9. Implementation of the CPP will advance Oregon Business for Climate’s interests, and those of its members, in a clean energy economy that will be of economic and environmental benefit to businesses across Oregon. *See* Miller Decl. ¶¶ 14–20.

In furtherance of its mission, Oregon Business for Climate has been involved with the CPP since its inception and has invested significant time and resources in its development. Miller Decl. ¶¶ 21–22. Oregon Business for Climate participated in the RAC, provided written feedback and public comments on the developing rules, and testified in EQC meetings. Miller Decl. ¶¶ 21–22. Oregon Business for Climate has defended and promoted the CPP in private communications and public blog posts and will continue to do so. Miller Decl. ¶¶ 21–22. Oregon Business for Climate has a strong organizational interest in the CPP and the current litigation challenging it.

Oregon Business for Climate also represents the interests of its member businesses in the CPP and this litigation. The CPP will provide numerous benefits to Oregon’s business community, particularly for organizations directly involved in developing a decarbonized economy. *See* Miller Decl. ¶¶ 14–20. Oregon Business for Climate’s members have an interest in the CPP which would be harmed by a decision in favor of Petitioners. Miller Decl. ¶ 22. Oregon Business for Climate and the member businesses it represents thus have an interest in the outcome of this litigation.

#### **v. Oregon Environmental Council**

Since 1968, Oregon Environmental Council (“OEC”) has worked to achieve a stable climate; clean and plentiful water that supports people, fish, and wildlife;

and healthy homes and neighborhoods free of air pollution and hazardous chemicals. Apter Decl. ¶ 3. OEC, in coalition with environmental justice and climate partners across the state, has for many years advocated for stronger climate policy on the state level, and it was heavily involved in the development and adoption of the CPP. Apter Decl. ¶¶ 8–13.

OEC participated in each stage of DEQ’s extensive CPP rulemaking process, including six technical workshops, three “Town Hall” meetings, and seven day-long RAC meetings. Apter Decl. ¶ 13. OEC provided extensive technical comments and feedback related to specific program design elements, options, and implications to inform the CPP rules, both in meetings and in written comments to the DEQ during the rulemaking process. Apter Decl. ¶ 13. OEC has invested considerable time and resources in the development of the CPP. Apter Decl. ¶ 14. OEC has a direct interest in the program’s successful implementation which would be harmed by an adverse outcome in this litigation.

In addition, OEC and its members have a concrete interest in transitioning away from reliance on fossil fuels, which produce greenhouse gas emissions harmful to the members’ and supporters’ health and wellbeing. Apter Decl. ¶¶ 16–17. OEC and its members would be harmed by a successful challenge to the CPP and therefore have an interest in the current litigation. *See* Apter Decl. ¶ 18.

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**B. Applicants' intervention will not cause undue delay or prejudice.**

Applicants' requested intervention would not unduly delay this litigation or prejudice the rights of any original party. While ORCP 33 C authorizes a motion to intervene "any time before trial," Oregon's appellate courts have established that a motion to intervene pursuant to ORCP 33 C is allowed on appeal. *Nakashima v. Board of Education*, 204 Or App 535, 543-45, 131 P3d 749 (2006) (citing *Barendrecht v. Clark*, 244 Or 524, 419 P2d 603 (1966)). The agency record was filed on July 5, 2022 and was deemed by the Court to be settled on July 20, 2022. *See* ORAP 4.22(5); Notice, Brief – Opening Due, CA No. A178216 (cons) (Aug. 3, 2022). Having obtained an extension of time, Petitioners' opening briefs are now due on September 21, 2022, and have not yet been filed. *See* Order, Time Extension Opening Brief – Grant, CA No. A178216 (cons) (Aug. 18, 2022).

Additionally, no Applicant will inject any "new and different" issues into the litigation. *See Brune*, 148 Or at 371. All Applicants seek to defend EQC's adoption of the rule Petitioners challenge. Accordingly, allowing Applicants to intervene would not unduly delay the litigation or prejudice the rights of any original party. Conversely, denial of Applicants' intervention would severely prejudice Applicants' interests—if Petitioners are successful in their attempt to overturn the CPP, Applicants will have no further legal recourse in the matter. This litigation is Applicants' only opportunity to defend their interests in the program's

implementation. *See Taylor v. Portland Adventist Med. Ctr.*, 242 Or App 92, 110, 255 P3d 526 (2011) (balancing prejudice to original parties against prejudice to would-be intervenors).

## CONCLUSION

As explained above, all Applicants have a concrete interest in the outcome of this litigation. Additionally, Applicants' intervention would not unduly delay this litigation or prejudice the rights of any original party and no party opposes Applicants' intervention. All Applicants thus satisfy the requirements for permissive intervention. For these reasons, Applicants respectfully request this Court grant their motion for permissive intervention as intervenor-respondents in these consolidated cases.

DATED: September 7, 2022.

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*s/ Maura C. Fahey*

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## **CERTIFICATE OF FILING AND SERVICE**

I certify that on September 7, 2022 I filed the original copy of this **MOTION—INTERVENE** with the Appellate Court Administrator, Appellate Court Records Section, using the Appellate Court Electronic Filing System.

I certify that on September 7, 2022, I served a true copy of this **MOTION—INTERVENE** using the Appellate Court Electronic Filing System on:

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I further certify that on September 7, 2022 service of a copy of this

**MOTION—INTERVENE** will be accomplished on the following participants in  
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CA No. A178218

**DECLARATION OF LISA ARKIN IN SUPPORT OF BEYOND TOXICS'  
MOTION TO INTERVENE**

I, LISA ARKIN, declare and state as follows:

1. I am the Executive Director of Beyond Toxics, a nonprofit based in Eugene, Oregon. I have worked at Beyond Toxics since 2001 and have been in my position as Executive Director since 2005. As an advocate, grassroots organizer, and community activist, I have dedicated my career to fighting for issues at the intersection of environmental justice, human rights, public health, environmental protection, and climate resilience.

2. I hold a Bachelor of Arts from the University of California at Los Angeles and a Master of Arts, in Education, from San Francisco State University. Before my employment at Beyond Toxics, I worked in academia. From 1982 to 1987, I was the Administrative Coordinator and Dance Instructor for Stanford University's Dance Program. From 1987 to 1996, I worked as an Associate Professor at the University of Oregon's School of Music.

3. After leaving academia, I was hired to write grants for a fledgling nonprofit organization, Oregon Toxics Alliance. I researched the topic of environmental pollution and worked alongside the founding members of Oregon Toxics Alliance to become more involved in the issues of toxic air and water emissions from large industrial facilities in my community. I attended local community meetings to learn more about the experiences of impacted neighbors. The more I learned, the more concerned I became for the health of Eugene's community members, nearby wildlife, and impacts on our air and water quality. As I continued to research and learn, I realized transitioning into environmental and community health was my life's passion. In 2010, I worked with members of the Board of Directors to rename the organization to its current name, Beyond Toxics, and retool our mission for environmental justice purposes. For over a decade, in my capacity as Executive Director, I have served on countless state advisory committees on the topics of toxic chemicals, pesticides, air and water quality, and environmental justice. I have given numerous lectures at institutes of higher education, conferences and symposia, hosted community workshops, spoken with journalists about these issues, and educated local and state-level decision-makers on environmental health, public health, and environmental justice.

4. Beyond Toxics is an Oregon-based environmental justice nonprofit. Its mission is to uplift voices from Oregon communities disproportionately

impacted by pollution and climate change. Beyond Toxics regularly collaborates with other nonprofits, educators, and tribal organizations to build a movement to demand that state and local policies require fair, inclusive, and equitable access to clean air, clean water, and safe spaces for all to live and work. For over 20 years, we have led successful policy, legislative, and legal initiatives centering around climate justice, pesticide reform, social and environmental justice, air toxics, and climate-smart resilient forestry.

5. Beyond Toxics has over 4,000 members throughout Oregon and reaches thousands more through our communications and social media platforms. These individuals take action to fight for climate and environmental justice in their own lives, contact decision-makers, attend rallies, submit testimony, and show up as advocates in their local communities. Beyond Toxics is guided by a Board of Directors & Advisors that gives input on our organization's policy and litigation decisions. Our staff members work on climate-centric policy and legal issues daily.

6. Beyond Toxics staff are regularly selected to serve on statewide advisory committees for state agencies, including the Oregon Department of Environmental Quality (DEQ), the Oregon Department of Agriculture, and the Department of Land Conservation and Development. Beyond Toxics staff are often asked to serve on steering committees for statewide coalitions working for environmental justice and environmental health.

7. Our staff members are liaisons between environmental justice communities and local decision-makers. They form partnerships with local decision-makers to expand the work of environmental justice. They are researchers, gathering data from published research, and they work closely with community scientists to gather environmental monitoring data for air and water quality. They advocate for state and local policies to protect the interests of environmental justice communities.

8. Beyond Toxics is deeply invested in climate justice and climate policies that promote decarbonization and prioritize environmental justice principles. Our Climate Justice programmatic work includes: (1) participation in the Oregon Climate Equity Network (formerly the Oregon Climate Action Plan Coalition) and co-leading forestry and agriculture sub-tables under the Natural and Working Lands group; (2) leading the Lane County Climate Equity and Resilience Task Force, an initiative helping the County best prepare for equitable climate change strategies; (3) participation as a steering committee member in Fossil Free Eugene and Fossil Free Lane County, a coalition of grassroots organizations and community members calling on the City of Eugene to lead a just transition away from fossil fuels and follow through with its climate change goals; (4) participation as a member of the Oregon Just Transition Alliance, a coalition organizing to move Oregon towards an economy that values workers and the environment on the

frontlines of climate change, economic exploitation, and environmental racism; and (5) leading efforts in Southern Oregon to help vulnerable BIPOC communities with wildfire preparedness in the face of climate change. Beyond Toxics has also participated in coalitions related to the Cleaner Air Oregon DEQ Rulemaking, the Oregon Air Quality Permitting DEQ Rulemaking, and the Oregon Clean Truck DEQ Rulemaking.

9. Beyond Toxics has also been very legislatively active for years, recommending and lobbying for environmental justice and climate-centric policies at the state level. For example, in 2021, Beyond Toxics introduced the legislative concept that resulted in HB 2488, prioritizing climate change and equity in Oregon's statewide land use system. While the bill was ultimately unsuccessful and did not pass, the proposal resulted in state agencies initiating a formal process to amend Oregon Statewide Land Use Goal 1 in light of the language raised in HB 2488. Additionally, Beyond Toxics lobbied for Senate Concurrent Resolution (SCR) 17 during the 2021 legislative session; this measure clarified that statewide natural resource agencies must consider environmental justice communities and issues in light of ORS 182.545. Beyond Toxics also actively lobbied for the passing of Cleaner Air Oregon during the 2017 legislative session.

10. Frontline communities, including those Beyond Toxics works with and represents, historically and presently bear the brunt of health, economic, and



ecological climate change impacts. Historical patterns of discriminatory exposure to toxic and environmental hazards put vulnerable communities at higher risk for serious health problems. Oregon must uphold statewide environmental policies that meaningfully prioritize frontline environmental justice communities and equitably address their disproportionate burdens. Further, Oregon must continue to better its climate policies and build on the foundations put in place. This will ensure Oregon develops meaningful and workable solutions for frontline communities.

11. The Climate Protection Program (CPP) plays a vital role in reducing Oregon's greenhouse gas (GHG) emissions and setting a hard, enforceable cap on fossil fuel use across sectors. A vital program under the CPP is the Community Climate Investments (CCI) Program. The CCI Program is a voluntary program that prioritizes and aims to reduce burdens on environmental justice communities—like those Beyond Toxics serves. It enables an alternative means of compliance with CPP emission reductions for regulated entities that could give frontline communities—including rural communities—access to emissions reduction technology, clean energy projects, and other climate-focused investments. Our members and the communities we work with stand to benefit directly from the CCI Program as well as from the CPP's broader impact on GHG emissions and air quality.

12. For these reasons, Beyond Toxics was actively involved in efforts to develop and implement the CPP since its inception. Starting in 2020, Beyond Toxics sat on the Rulemaking Advisory Committee (RAC) for the CPP. In our capacity as a RAC member, Beyond Toxics reviewed program design elements, modeling designs, rule outlines, draft rules, final modeling results, fiscal impact analyses, and more. Beyond Toxics also wrote and submitted public comments in support of the CPP and attended additional coalition meetings—apart from the RAC—regarding the CPP. In our official capacity, Beyond Toxics championed the CPP, prepared legislative briefings on the issue, and mounted a massive public relations campaign to generate several hundreds of comments in support of the Program leading up to the close of the Rulemaking comment period.

13. Going forward, Beyond Toxics has a substantial interest in the CPP and the CCI Program implementation and engagement. One key component of the CPP and the CCI Program implementation that Beyond Toxics is particularly interested in is the development of the DEQ's Equity Advisory Committee. The Equity Advisory Committee will be a key partner for the CCI Program. It will play an important role in determining the types of emission reduction projects supported with CCI funds and where those projects are located. It will also provide recommendations to the DEQ on the approval of applications from potential CCI Program entities and will review entities' work plans for fund distribution. The


DEQ has not yet selected the members for the Equity Advisory Committee; however, Beyond Toxics had one staff member apply to sit on the Committee as a representative of our organization. We are awaiting a final decision.

14. The substantial work Beyond Toxics devoted to developing the CPP would be directly undermined by the judgment petitioners seek in this litigation, namely, to have the rules set aside. However, a judgment upholding the CPP would advance Beyond Toxics' work to fight for climate justice, environmental justice, and decarbonization across Oregon. Further, a ruling supporting the Environmental Quality Commission's statutory authority to implement the CPP will ensure that there is a foundation to implement future, more comprehensive programs to reduce GHG emissions. It is vital that Oregon not only keep its current policy systems in place but also continue making positive strides to lessen the ever-growing threat of climate change.

15. The relief sought by the petitioners in this litigation threatens to injure the environmental, public health, and economic interests of Oregonians—particularly members of frontline and environmental justice communities. It threatens to injure Beyond Toxics' members and supporters who stand to benefit from CCI programs. Moreover, it threatens my personal health, well-being, and security and that of my children and grandchildren.

I hereby declare that the above statement is true to the best of my knowledge and belief. Further, I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed this 2nd day of September, 2022, at Eugene, Oregon.

  
\_\_\_\_\_  
LISA ARKIN

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST NATURAL GAS COMPANY, AVISTA CORPORATION, and  
CASCADE NATURAL GAS CORPORATION,  
Petitioners,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178216 (Control)

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OREGON FARM BUREAU FEDERATION; OREGON BUSINESS &  
INDUSTRY ASSOCIATION; OREGON MANUFACTURERS AND  
COMMERCE; ALLIANCE OF WESTERN ENERGY CONSUMERS;  
ASSOCIATED OREGON LOGGERS, INC.; NORTHWEST PULP AND PAPER  
ASSOCIATION; OREGON ASSOCIATION OF NURSERIES; OREGON  
FOREST AND INDUSTRIES COUNCIL; OREGON TRUCKING  
ASSOCIATIONS, INC.; WESTERN WOOD PRESERVERS INSTITUTE;  
OTLEY LAND AND CATTLE, LLC; AND SPACE AGE FUEL, INC.,  
Petitioners,

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,  
Intervenor-Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178217

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WESTERNS STATES PETROLEUM ASSOCIATION,  
Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

**DECLARATION OF GREGG SMALL IN SUPPORT OF CLIMATE  
SOLUTIONS' MOTION TO INTERVENE**

I, GREGG SMALL, declare and state as follows:

1. I am the Executive Director of Climate Solutions, a regional nonprofit based in Seattle, Washington and Portland, Oregon. I've worked for Climate Solutions since 2008. I have dedicated my career to addressing climate change, because there is no greater or more immediate threat to the wellbeing of my children and my community.

2. Climate Solutions' mission is to accelerate practical and profitable clean energy solutions to the climate crisis. Climate Solutions has pioneered the vision and cultivated the political leadership in the Northwest for the proposition that clean energy and broadly shared economic prosperity can go hand-in-hand. For nearly 25 years, we have led successful initiatives to deliver climate and clean energy policies, models, and partnerships that accelerate the transition from fossil fuels to a clean energy economy.

3. With over 30 staff in Oregon and Washington, Climate Solutions has built broad, winning coalitions for energy efficiency, renewable energy, and carbon reduction policies that are positioning this region as an incubator and proving ground for sustainable prosperity. The Northwest has emerged as a center of climate action, and Climate Solutions is an active catalyst, advocate, and campaign hub. In 2012, Climate Solutions was selected by Guidestar's Philanthropedia as one of the nation's 18 high-impact nonprofits working in the field of climate change—the only regional organization on the list.

4. Climate Solutions does our work in partnership with a diverse and broad group of allies including many communities of color and labor unions, businesses, environmental, and public health organizations. Many of our partners are from communities that have been, are, or will be most affected by climate change and the transition to clean energy.

5. Climate Solutions advocated for and supported Governor Kate Brown's Executive Order 20-04 in March 2020. Among other things, it expanded Oregon's greenhouse gas emission reduction goals and directed the Environmental Quality Commission (EQC) and Department of Environmental Quality (DEQ) to develop a program, under its existing authority, to cap and reduce emissions from large stationary sources, from transportation fuels, and from other liquid and gaseous fuels, including natural gas. Climate Solutions also supported the

rulemaking carried out by the DEQ to implement Governor Brown's directive and the final vote by the EQC to adopt the program.

6. Our organization has been involved with the development of the Climate Protection Program (CPP) since the DEQ began its preliminary public scoping work in May, 2020. Climate Solutions submitted scoping comments, attended and commented at the DEQ's six technical program development workshops, submitted public comments and encouraged our members and supporters to do so, drafted strategic communications, met regularly with agency staff, and participated in the Rulemaking Advisory Committee. This 18-month rulemaking process was a major step in our work towards a clean energy future with broadly-shared prosperity, free from the ravages of fossil fuel dependence.

7. Climate Solutions and our staff, members, and supporters have dedicated a significant amount of time and effort helping to design a CPP that maximizes benefits for climate, equity, and local economies. The substantial work that Climate Solutions has devoted to supporting development of the DEQ Climate Protection Program would be directly undermined by the judgment the petitioners seek in this litigation, namely, to have the rule set aside. In contrast, a judgment upholding the rule will help to advance Climate Solutions' work to establish a low-carbon economy in Oregon and across the west coast.



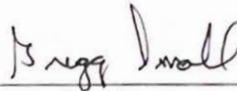
8. The CPP is critical to achieving Oregon's greenhouse gas emissions targets—as the Oregon Department of Energy recently determined, without the CPP Oregon will fail to achieve its climate targets. If the petitioners are successful in overturning the program, it will undermine Climate Solutions' years of work to secure mandatory, economy-wide emissions reductions. This would harm our interests and impede our mission of accelerating clean energy solutions to the climate crisis.

9. Many of our partners and members stand to directly benefit from the CPP's implementation through its funding of green energy projects. All of our members and partners will benefit from the reduction of greenhouse gas emissions and other harmful air pollutants. Their interests will be harmed if petitioners block the implementation of the CPP.

10. The relief sought by the petitioners in this litigation threatens to injure the environmental, public health, and economic interests of our members in Oregon and the Northwest. Moreover, it threatens the personal health, wellbeing, and security of both me and my staff and that of our families. We have concrete and significant interests in the outcome of this litigation, which threatens to undo some of our most influential work on climate policy.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed this 2nd day of September, 2022, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Gregg Small", written over a horizontal line.

Gregg Small, Executive Director  
Climate Solutions

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WESTERNS STATES PETROLEUM ASSOCIATION,  
Petitioner,

v.

ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

**DECLARATION OF KJELLEN BELCHER IN SUPPORT OF  
ENVIRONMENTAL DEFENSE FUND'S MOTION TO INTERVENE**

I, KJELLEN BELCHER, declare as follows:

1. I am a Manager on the U.S. Climate Team at Environmental Defense Fund (EDF), where I have worked for over six years. I work to advance ambitious climate policy solutions in key western states through policy analysis, policy development, management of communications campaigns, analytical projects, and engagement with key stakeholder groups. My work is focused on Oregon and Washington. I have been heavily involved in and helped to lead EDF's advocacy throughout the development of the Climate Protection Program.

2. I hold both Master of Science and Bachelor of Science degrees in Earth Systems from Stanford University. Earth Systems is an interdisciplinary environmental science degree program focused on approaching and solving the complex environmental problems caused by human activities and their interaction with the dynamic natural world.

3. EDF is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

4. Over 10,000 EDF members reside in Oregon.

5. EDF is one of the world's leading environmental organizations, with the mission to build a vital earth for everyone. EDF works to get the world on a rapid path to climate stability, with healthy, resilient communities. For more than 50 years we've been pioneers, using science and different perspectives to make the environment safer and healthier for us all. Guided by science and economics, EDF finds practical and lasting solutions to the most serious environmental problems. EDF employs hundreds of scientists, economists, engineers, business school graduates, lawyers, and other professionals to help solve environmental problems in a scientifically sound and cost-effective way.

6. EDF recognizes climate change as the greatest challenge of our time. Our work is guided by two primary goals: stabilize the climate and strengthen people's ability to thrive in a changing climate. EDF's work covers multiple areas, including climate, energy, oceans, ecosystems, and health. Since these topics are intertwined, we take a multidisciplinary, solutions-based approach, working in concert with other organizations—as well as with businesses, governments, and communities. We seek to protect and restore the quality of our air and climate,

transform energy systems, and ensure healthy and safe communities. We do this through cutting-edge research and advocacy, wide-ranging partnerships, and a focus on strengthening laws and policies that protect the climate, health, air, water, and make food and household products safer.

6. EDF has long been a leading voice on the design of U.S. federal and state climate policy and a champion of market-based solutions to environmental issues, including programs to reduce emissions of greenhouse gases and other air pollutants. We helped design the sulfur dioxide cap-and-trade program; were instrumental in passing and implementing California's emission trading system under its AB-32 law; and played a lead role in the effort to pass comprehensive climate legislation in the U.S. Congress in 2009-2010. EDF's U.S. Climate Team continues to be at the center of this policy analysis and development, incorporating economic, scientific, and legal expertise to secure effective and equitable policy change at the state, federal, and regional levels to curb climate pollution.

7. EDF has a strong organizational interest, and a strong interest based in our members' recreational, aesthetic, professional, educational, public health, environmental, consumer, and economic interests, in reducing climate and air pollution in Oregon. EDF's members in Oregon will benefit, both directly and indirectly, from the Climate Protection Program. The program's enforceable, declining limit on greenhouse gas emissions will help put Oregon on track to

achieve its statewide climate goals, while leading to important co-benefits.

Economic modeling found that the program will have a positive economic, fiscal, and health impact on the state, significantly reducing emissions while maintaining the overall health of the economy. Economic modeling also found that the program will result in cumulative monetized health benefits of approximately \$2 billion through 2050.<sup>1</sup> These benefits will be directly realized by EDF's members in Oregon.

8. EDF was deeply engaged in the development of the Climate Protection Program. During the Department of Environmental Quality's initial public engagement scoping phase for the program, from July 2020 to December 2020, EDF submitted comments and actively participated in a series of six technical workshops to inform program design. From January 2021 to July 2021, EDF attended the seven Rulemaking Advisory Committee meetings and submitted comments on specific program design elements. During the public comment period, EDF and its members submitted written and oral comments on the proposed rules. Those comments were informed by an emissions analysis conducted by a modeling team EDF hired as well as by our own expertise in

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<sup>1</sup> Oregon Department of Environmental Quality and ICF, *Oregon Climate Protection Program: Modeling Study on Program Options* (2021), <https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/ghgcr2021modStudyResults.pdf>.

climate policy, climate science, and economic analysis. EDF therefore has a direct and important interest in defending the Climate Protection Program, as its successful adoption resulted in part from years of work by EDF staff and collaboration with partner organizations.

9. Oregon is already experiencing the negative impacts of climate change through increased temperatures, changing precipitation patterns, reduced snowpack, drier summers, and more frequent and damaging fires. Costs of inaction for the state are significant and growing, and the effects of climate change are impacting human health and safety, infrastructure, economic growth, crop production, water supplies, and fish and wildlife populations. Wildfires in Oregon in 2020 burned nearly 1.1 million acres across the state, with an estimated \$354 million in fire-fighting costs. And, wildfire suppression costs may account for only 9% of the total direct and indirect costs of major wildfires.<sup>2</sup> EDF members in Oregon bear the costs of inaction from climate change.

10. These costs do not impact Oregonians equally; climate change multiplies a series of threats—from food and housing insecurity to health hazards—that are already facing disadvantaged and vulnerable communities, including low-income, Black, Indigenous, and rural households. The Climate

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<sup>2</sup> Oregon Global Warming Commission 2020 Biennial Report, <https://static1.squarespace.com/static/59c554e0f09ca40655ea6eb0/t/5fe137fac70e3835b6e8f58e/1608595458463/2020-OGWC-Biennial-Report-Legislature.pdf>



Protection Program is designed to target benefits to environmental justice communities from decarbonization efforts funded through the program.

11. As a national and international organization, EDF has over 2.5 million members and activists around the world, many of whom are directly and concretely affected by climate change. Climate change, which is made worse by carbon dioxide and other greenhouse gas emissions, is a serious and existential threat that affects both the environment and human health and wellbeing. The impacts of climate change are projected to become greater, more frequent, and more intense with every additional increment of global warming.

12. Because climate change is an incremental problem, every additional ton of greenhouse gases emitted into the atmosphere is important, regardless of where the emissions come from. Each additional ton contributes to greater warming, further exacerbating the impacts of climate change around the world. These impacts include longer and more intense hurricane seasons, prolonged drought, larger and more intense wildfires, rising sea-levels, increased flooding, and widespread extreme weather events.

13. Climate change is also a serious threat to human health. For example, climate change is projected to increase ozone pollution across broad swaths of the U.S., cause worsening and deadly heat waves, and drive increases in vector-borne diseases. For these reasons, EDF as a climate-focused membership organization,

and our members residing both within and outside of Oregon, have strong interests in reducing the greenhouse gas emissions that occur in Oregon and contribute to global climate change.

14. Additionally, the Climate Protection Program is an important model of climate action for other states. The program's enforceable, declining limit on greenhouse gas emissions from transportation fuels and natural gas fuel usage is an important precedent that EDF seeks to build upon and advocate for in other priority states. An adverse decision in this litigation would harm our organizational interest, and our members' interests, in similar programs being adopted in other states that lead to important climate, health, and economic benefits.

15. EDF and our members would likewise be harmed by an adverse decision undermining or preventing the Climate Protection Program from going into effect and achieving the climate, air quality, and economic benefits described above. In the absence of the Climate Protection Program, EDF members will experience greater effects of climate change than if it is in effect. The relief sought by the petitioners challenging the Climate Protection Program would undermine years of advocacy by EDF and harm our members' interests.

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I hereby declare that the foregoing is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed this 31 day of August, 2022, at 665 10th Ave, San Francisco, CA.

*Kjellen Belcher*

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Kjellen Belcher

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Petitioner,

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ENVIRONMENTAL QUALITY COMMISSION,  
Respondent.

CA No. A178218

**DECLARATION OF TIM MILLER IN SUPPORT OF OREGON BUSINESS  
FOR CLIMATE'S MOTION TO INTERVENE**

I, TIM MILLER, declare as follows:

1. I am the Director of Oregon Business Alliance for Climate, dba Oregon Business for Climate, a nonprofit based in Portland, Oregon. I have worked for the organization since 2020. As a business leader, nonprofit leader, and now advocate, I have dedicated the last 18 years, and plan to dedicate the remaining years, of my career to advancing sustainability, focusing on addressing climate change and environmental justice.

2. In addition to directing Oregon Business for Climate, I am affiliated with other organizations that are also addressing climate change and have an interest in the success of the Climate Protection Program (CPP). I am part-time Executive Director of Portland Energy Conservation, Inc. (PECI), a nonprofit involved in making grants to advance equitable climate policy. I serve on the Board (and am the previous Board President) of Climate Solutions, a leading

climate policy nonprofit working in Oregon and Washington. I also serve as Board President of Forth, a nonprofit based in Oregon which works regionally and nationally to accelerate clean, equitable transportation electrification.

3. Along with my clear interest in addressing climate change, and my resulting experience with policies and programs to that end, my interest in the CPP also stems from my business experience. As embodied in the mission of Oregon Business for Climate, it is my personal conviction that business can and must play a central and proactive role as we build a low-carbon economy. My business background includes a bachelor's degree in economics and an MBA, both from Stanford University, both with honors. Building on that framework and training, my experience includes 15 years in the for-profit sector, in management and senior leadership roles, across multiple functions (manufacturing and operations, marketing, sales, and general management), in sectors ranging from low-tech manufacturing, to high-tech, to internet businesses. With that diverse background, I went on to blend mission-aligned for-profit consulting along with nonprofit consulting, serving dozens of clients including public agencies and clean-tech start-ups, while also starting a clean-tech manufacturing business myself.

4. My business background has been essential for me in collaborating with leaders who bring a range of business perspectives, both to shape policies that

support business advancement, and to challenge the status quo thinking of some who may not see the opportunities of proactively addressing climate change.

5. My interest in addressing climate change, as evident in my various nonprofit leadership roles, has also led to deep experience in related policies and programs. As COO and CEO of an energy efficiency nonprofit for eight years, I had considerable engagement with state policy makers and agencies through testimony, direct discussions, and directly developing and pursuing policies—usually in close collaboration with other non-governmental organizations. At Climate Solutions and Forth, policy advancement is at the forefront of our work and thus an area for my active Board education and involvement. At PECI, the entire mission in recent years has been to fund climate policy advancement and environmental justice, giving me direct engagement in a broad range of policy and program alternatives, and visibility of the key actors and the hurdles along the way. And, of course, in leading Oregon Business for Climate, supporting and advancing effective policies and programs is central to my work.

6. Oregon Business for Climate is an Oregon-registered 501(c)(4) organization, a statewide group focused on mobilizing industry support and business leadership towards advancing climate policy and reducing emissions while investing in Oregon's clean economy. The organization's membership is comprised of nearly 100 medium-sized and larger businesses from across the state

that collectively employ almost 30,000 Oregonians in a wide range of industries, including the financial, energy, manufacturing, farming, transportation, sports, retail, services, and healthcare sectors.

7. We believe climate leadership is critical to the health of Oregon's industries and communities, and will help our state re-emerge as a leader thriving in the growing clean economy. To that end, our mission is to advance urgent, ambitious, equitable climate policies and programs designed to help spur innovation and economic opportunity while effectively and responsibly reducing emissions. Our work on and continuing support for the CPP is central to that mission.

8. Our work includes providing a forum for Oregon industry leaders to collaborate in policy and business engagements aimed at promoting investment, job creation, competitiveness, and economic growth as Oregon's low-carbon economy emerges. We understand the significant risk and negative impacts climate change is causing in Oregon's economy, as well as the economic advantage and leadership opportunities Oregon could gain by investing now in a sustainable, low-carbon future.

9. Oregon Business for Climate, along with our affiliate 501(c)(3) organization, Oregon for Climate Action, is the only business group working proactively at the state level focused on climate change. Our unique perspective is



especially critical right now. Other business groups have redoubled their efforts to resist climate action—attempting to block critical climate programs, clean fuels efforts, energy efficiency development, smart transportation, and other critical steps to address climate change. Oregon Business for Climate and our partners reject this approach and promote responsible climate action. We also pursue solutions that simultaneously address climate change and environmental justice—where a supportive business voice is unique and often critical to making progress.

10. Oregon is home to a wealth of climate and environmental justice organizations. Oregon Business for Climate works closely with these organizations, leveraging, aligning, and supporting their expertise and capacities. This expands our capacity to track, analyze and educate about critical policies, to organize events and communications, and to reach out to a broad audience of businesses. Recent projects include collaboration with the following organizations: B Local PDX (Oregon’s B Corp affiliate), Business for a Better Portland (BBPDX), Ceres, Climate Solutions, E2, Northwest Energy Coalition (NWECC), Oregon Environmental Council (OEC), Renewable Northwest, and Verde.

11. Our work pursues two main strategies, each implemented through a variety of programs and projects. The first overall strategy is policy education and advancement. This entails reaching Oregon business audiences and policy makers to inform and mobilize them on climate policy issues and opportunities. Our policy

education and advancement programs and projects include: 1) Events and virtual events—building support for necessary policy directions and understanding of climate impacts on Oregon businesses, sometimes paired with advocacy on specific legislation. Examples include candidate education meetings, events, and forums, such as the non-partisan business meetings we hosted with leading 2022 gubernatorial candidates in partnership with eight other nonprofit organizations. Our advocacy programs have included policy support sign-on campaigns (aligning businesses on letters of support for key policies such as Oregon’s 100% Clean Energy policy in 2021), testimony, and other strategies.

12. Our second overall strategy focuses directly on emissions reductions—inspiring and supporting Oregon businesses to voluntarily reduce their own emissions and to address the issue more broadly. From global corporations to smaller firms, businesses see the need to take action—whether it’s a matter of customer requirements, corporate responsibility, employee satisfaction, or stabilizing and reducing energy costs. In partnership with a group of other nonprofit organizations, and through our own initiatives, we have interviewed over 30 companies and associated groups, and from those findings are developing a range of decarbonization solutions.

13. In the context of our mission and these programs, the strength and continuing implementation of the CPP is of great importance to Oregon Business

for Climate and for our member businesses. As described above, our organization seeks to accelerate the decarbonization of Oregon’s economy by working through the business community, both to ensure Oregon does our share to address the global challenge (as all jurisdictions must do), and to generate jobs, business opportunities, and the long-term benefits of innovation and leadership. The CPP directly helps achieve these organizational goals by spurring natural gas providers, transportation fuels suppliers, and large industrial sites to reduce their emissions—a huge percentage of the overall emissions Oregon must address. And in the process, these emissions-reduction requirements will spur programs, business models, and other solutions that will advance opportunities and job creation in line with our mission. Oregon Business for Climate has a concrete interest in the implementation of the CPP to further our core mission.

14. A successful CPP is increasingly critical for the interests of our member businesses as well. First, savvy Oregon businesses need to be able to plan for their operating and regulatory environment, and want clarity wherever possible. They see that climate change is a huge piece of that context. Along with visible impacts here in Oregon, the global financial sector’s announcements make the business context clear—with \$130 trillion (40% of the world’s capital) aligned in addressing climate change. The recent COP26 global summit, referred to as “the business COP” by many, demonstrated the mounting urgency of the challenge to

businesses everywhere—and the inherent importance of planning accordingly. Many businesses face legitimate challenges as they plan, invest, and adapt for success in a clean energy economy—and the predictable planning context delivered by the CPP is essential to meeting these challenges.

15. Beyond this planning benefit, forward-looking businesses see both a responsibility and a business opportunity in addressing climate change. With strong climate action such as the CPP, Oregon has the chance to help lead the way to a clean economy, sparking innovations in products, services, and business practices in industries across the state (not just those directly regulated by the program, but all downstream energy users as well)—bringing leadership and competitive advantages as our businesses serve expanded markets here and outside the state.

16. Third, as mentioned above, Oregon businesses recognize that it's time to take action on their internal emissions—whether it's a matter of meeting customer requirements, advancing corporate responsibility, or boosting employee satisfaction. The CPP's purpose of driving down emissions from natural gas and transportation fuels, and the resulting programs and collaboration that will make this happen, will help companies address a large portion of their emissions.

17. Fourth, clean energy and energy efficiency reduce energy costs for families and businesses. Those dollars circulate right here in Oregon, a powerful

multiplier boosting our economy and opportunities for Oregon businesses of all sizes. At the same time, the costs of cleaner energy (and energy efficiency) aren't affected by market actors half a world away, as exemplified by the recent aggression and resulting war in Ukraine. Predictable energy costs, in turn, support the effective planning, resilience, and credit-worthiness of Oregon businesses.

18. Community Climate Investments, a central component of the CPP, represent a further opportunity for Oregon businesses. While these investments will flow through nonprofit organizations, many will be implemented in partnership with for-profit businesses (contractors/installers, solution providers, consultants, and others). These investments will fund projects, job creation, and business opportunities in communities across Oregon—from improving homes' energy efficiency, to accelerating access to efficient appliances and vehicles, to building up infrastructure and equipment related to these projects.

19. Finally, the co-benefits of the CPP for Oregon businesses are too numerous to fully capture. With reduced fossil fuel emissions, companies get a cleaner environment (especially air quality) to operate and serve in—with healthier and more productive employees, reduced health and environmental management costs, and a more attractive Oregon for tourists and all the businesses serving them. Beyond tourists, a cleaner environment, and Oregon's environmental leadership in

general, helps businesses recruit staff in an increasingly competitive market for talent.

20. To recap, for Oregon businesses that understand the need to address climate change, the CPP provides a clear planning context, business opportunities, support in reducing their emissions, reduced and more stable energy costs, a healthier Oregon economy, the opportunity to participate in the deployment of Community Climate Investments, and other business advantages stemming from various CPP co-benefits.

21. Anticipating the benefits of the CPP for our organization's mission, and for our member businesses, Oregon Business for Climate has been actively involved in the development of the CPP from the very beginning. Following initial internal and community conversations, our formal participation started with active engagement in the early workshops hosted by DEQ to begin scoping the potential program. As Director of Oregon Business for Climate, I then applied and was selected as a member of the Rulemaking Advisory Committee (RAC) for the program, and subsequently prepared for and participated in every RAC meeting. We also provided written feedback between meetings, had off-line advisory conversations with DEQ staff, testified in Environmental Quality Commission meetings, and shared our support for and encouragement toward a strong CPP in opinion pieces covered by the Business Journal and other outlets. In short, Oregon

Business for Climate has invested substantial time and resources in developing and supporting the CPP. In addition to representing our member businesses' interest in the program, we thus have a significant organizational interest in defending the CPP in the current litigation. Our members' interests and our own would be harmed by an adverse decision in this matter.

22. Recognizing the importance of a strong Climate Protection Program, for the advancement of our mission and for all the reasons cited above, Oregon Business for Climate saw it as our organizational duty to engage in the development, and now defense, of the program. The relief sought by the petitioners challenging the CPP would undermine years of advocacy and directly harm our members' concrete business interests.

23. Climate change means change is coming for Oregon businesses. There will be costs, benefits, and opportunities—and the CPP creates a predictable, clear, effective, and flexible system for reducing Oregon's emissions. Rather than letting change happen to us, the CPP enables Oregon businesses to face the challenge with a plan, and to play an active role in managing through it. It's imperative for our communities, and a once-in-a-generation opportunity for our economy.

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I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed this 30th day of August, 2022, at Portland, Oregon.

A handwritten signature in black ink, appearing to read "Tim Miller", written over a horizontal line.

Tim Miller



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CA No. A178218

**DECLARATION OF NORA APTER IN SUPPORT OF OREGON ENVIRONMENTAL  
COUNCIL'S MOTION TO INTERVENE**

I, NORA APTER, declare and state as follows:

1. I am the Program Director for Climate at the Oregon Environmental Council (OEC). I joined OEC in this role in March 2020. My responsibilities include directing OEC on policy analysis and development of legislative proposals and administrative rules to advance greenhouse gas emissions reductions and public health benefits for Oregon communities, and managing a broad coalition of labor, business, youth, climate, public health, and environmental justice partners with the mission of advancing climate, public health, and equity outcomes in Oregon. As part of my role, I maintain collaborative working relationships with Oregon state legislators, congressional representatives, and state agency officials, and serve as a formal member of various state agency Rulemaking Advisory Committees, including for the Climate Protection Program (CPP). I also serve as a Commissioner on the Oregon Global Warming Commission. In this role, I help develop recommendations for statutory and administrative changes to be carried out by state and local governments, businesses, and nonprofit organizations to achieve the State's emissions reduction goals.

2. I have a Bachelor of Arts from Lewis & Clark College. I have more than a decade of experience in public policy and environmental advocacy. Between 2012 and 2020 I served as

Deputy Director of Federal Affairs for the Natural Resources Defense Council (NRDC) and Legislative Aide to U.S. Senator Ron Wyden in Washington, D.C.. The urgency of the climate crisis and continued government inaction at the federal level compelled me to leave Washington, D.C. and apply my expertise toward advancing lasting climate policy solutions in my home state of Oregon.

3. Founded in 1968, the Oregon Environmental Council is a nonpartisan, 501(c)(3) nonprofit organization that works on behalf of its 2,135 members statewide to advance innovative, collaborative and equitable solutions to address Oregon's environmental challenges and benefit people's health and quality of life. Our goals are a stable climate that safeguards our communities and economy; clean and plentiful water that supports people, fish, and wildlife; and healthy homes and neighborhoods free of air pollution and hazardous chemicals.

4. For over 50 years, OEC has worked to advance effective, equitable public policies; promote viable environmental practices for businesses, communities and families; and build broad-based coalitions in support of lasting policy protections. OEC works directly with elected officials, community members, and grassroots activists across the state to advance policies to curb pollution from fossil fuels. By working today for lasting solutions, OEC helps protect the state against the costly and dangerous effects of extreme weather and air pollution while helping to build a more resilient, equitable clean energy economy for us all.

5. In recent years, Oregon has become the poster child for climate change, making international headlines for our deadly and devastating climate-fueled heat waves, wildfires, and drought. The past two summers alone, climate impacts have killed more than 100 Oregonians, including several frontline workers; destroyed more than 4,200 homes and buildings; threatened our state's economic recovery by shuttering small businesses, impacting local tourism, and

harming our natural resource economy; and compounded our ongoing public health crisis by worsening air quality and disproportionately affecting environmental justice communities.

6. Moreover, Oregon's climate tragedies are grim evidence of what scientific consensus has long concluded. The U.N. Intergovernmental Panel on Climate Change assessment released this summer only further underscores the need for urgent action by decision-makers in Oregon to significantly and immediately cut fossil fuel emissions and hasten the transition to a clean energy economy.

7. OEC and its members recognize that Oregon has a responsibility to address its share of this global challenge. It is unconscionable to continue putting the lives and livelihoods of our workers, frontline communities, children and grandchildren at risk; the State of Oregon must use every tool at its disposal to immediately cut the fossil fuel emissions digging us deeper into climate catastrophe.

8. OEC has been working on climate change solutions for nearly two decades. OEC's model of change is to not only inspire and harness individual actions, but especially in addressing the climate crisis, to also pursue systems change. OEC plays a leadership role in the climate movement in Oregon, managing a broad coalition of businesses, non-profits, community organizations, and individual Oregonians. OEC and our coalition partners formed the Renew Oregon coalition in 2015, and for five years advocated tirelessly for legislative action to limit climate emissions and invest in our most vulnerable communities across the state. We mobilized individuals from across the state to testify in committee hearings, meet with legislators and show their support for climate action. The program earned the support of over 15,000 Oregonians who signed a petition, more than 800 small and large business endorsements, and over 140 statewide faith leaders, in addition to workforce, public health, local government, rural, and other

community leaders. The policy proposal was vetted through numerous legislatively led work groups, including a special Carbon Reduction committee. The legislation included best practices for mandatory emissions reductions and provisions for energy-intensive, trade-exposed industries, and was intended to link Oregon to a broader multi-jurisdiction greenhouse gas reduction program. Despite broad public support for enacting a statewide cap on emissions, Senate and House Republicans—spurred on by many of the same companies serving as petitioners in this case—repeatedly denied the quorum needed to vote on the bill, upending the legislative process.

9. After years of collective advocacy from OEC and a broad coalition of businesses, non-profits, community organizations, and individual Oregonians, Governor Kate Brown made history in March 2020 by taking meaningful executive action (EO 20-04) to address the climate crisis. Citing the scientific, economic and moral imperative for reducing greenhouse gas emissions and adopting climate mitigation measures, EO 20-04 directs state agencies to use their existing statutory authority to help the state reduce greenhouse gas emissions by at least 45% below 1990 levels by 2035 and at least 80% by 2050—and in doing so, to prioritize and protect our most vulnerable and impacted communities. Thanks to robust advocacy engagement on behalf of an OEC-led coalition and environmental justice and climate partners across the state, the leadership of Governor Kate Brown, and extensive work on the part of our state agencies, Oregon has made significant progress over the past two-and-a-half years to reduce climate pollution, address historic environmental injustice, and promote resilient communities and economic vitality across Oregon.

10. OEC has long advocated for a statewide program to limit climate pollution from Oregon’s top emitting sectors, first through the multi-year-long effort in the Oregon legislature

described above and then through administrative action. The Department of Environmental Quality's CPP established mandatory requirements for Oregon's gas utilities and other fossil fuel suppliers to reduce regulated greenhouse gas emissions 50% below averaged 2017-2019 emissions by 2035, and 90% below averaged 2017-2019 emissions by 2050. Oregon is only the third state in the nation to adopt a declining cap on emissions from oil and gas companies. The CPP also establishes first-ever requirements for large stationary sources to reduce covered emissions 50% by 2035.

11. The CPP also includes an alternative compliance option for regulated fossil fuel suppliers that will generate investments to help reduce emissions from transportation and buildings, and support environmental justice and other communities statewide in the transition to a clean energy future. Through this Community Climate Investment (CCI) program, a fuel supplier may pay into a fund that invests in projects to reduce emissions in environmental justice communities—for example, replacing fossil gas appliances with electric heat pumps in an apartment complex—in lieu of directly reducing some of its own climate pollution. The CPP provides not only the opportunity to cut emissions from Oregon's top polluting sectors, but to create jobs, improve public health, and enhance the vibrancy and resiliency of Oregon communities.

12. OEC led an extensive year-and-a-half long advocacy effort to ensure that the CPP rules were based on the best available climate science; prioritized benefits for environmental justice communities and others on the frontlines of climate impacts; maximized positive job and health outcomes for local economies and communities; and relied on and incorporated public comments and input from impacted stakeholders. OEC submitted dozens of technical comment letters, drafted strategic communications, met regularly with agency staff and EQC

commissioners, and facilitated grassroots engagement to help generate more than 7,600 public comments during the rulemaking process.

13. I served as a formal member of DEQ's CPP Rulemaking Advisory Committee (RAC). I participated in each stage of DEQ's extensive CPP rulemaking process, including attending and providing comment at six technical workshops, three "Town Hall" meetings, and seven day-long RAC meetings. Throughout 80-plus hours of rulemaking-related meetings, I provided extensive technical comments and feedback related to specific program design elements, options, and implications to inform the CPP rules. In addition to weighing in orally at meetings, I led and/or contributed to drafting and submitting at least 18 written comments to DEQ during the rulemaking process.

14. Oregon Environmental Council has dedicated a significant amount of time and effort helping to design, and now implement, a CPP that maximizes benefits for climate, equity, and local economies. OEC's deputy director, legislative director, and communications director have all committed significant time and resources to furthering this multi-year campaign as well. The judgment sought by the petitioners in this litigation would directly undercut the substantial organizational time and resources OEC has devoted to advancing this program over the course of many years.

15. The Climate Protection Program is absolutely critical to achieving Oregon's greenhouse gas emissions reductions targets and driving investments to support an equitable transition to a clean energy economy. As determined through recent modeling led by the Oregon Department of Energy, without the CPP, Oregon will fail to achieve its climate targets. If the petitioners are successful in overturning this cornerstone climate protection, it will undermine OEC's years of work to secure mandatory, economy-wide emissions reductions. Given our

substantive engagement in the CPP's formation, OEC has unique insight and value-add into the process by which DEQ formulated the rules. Further, as a membership-based organization, formal member of the CPP Rulemaking Advisory Committee, and active participant in the 18-month-long rulemaking process and prior related legislative campaigns, OEC brings a perspective distinct from the State of Oregon.

16. OEC and its members will be directly harmed if the petitioners succeed in overturning the Climate Protection Program. The health and economic well-being of OEC's members will suffer if this critical program to reduce greenhouse gas emissions from major sources of climate pollution is not fully implemented. Additionally, OEC's members, including especially vulnerable members such as children, the elderly, and individuals with asthma, and communities on the frontlines of climate impacts, will suffer from the health effects of other co-pollutants associated with fossil fuel emissions if the petitioners prevail. Continued reliance on fossil fuels in our transportation, buildings, and industry would harm OEC's members, who will breathe dirtier air and suffer increased risk of serious health effects if the petitioners obtain the judgment they seek. Conversely, if the petitioners' challenges are rejected, OEC's members throughout Oregon will breathe cleaner air and enjoy reduced risks of the serious health effects associated with these pollutants.

17. While the economic impacts from CPP compliance will likely be negligible or even positive when aggregated across Oregon's economy as a whole, the costs of inaction—the failure to implement and achieve the CPP's science-based emissions targets—may be higher than the state's economy can bear. Climate change is already producing devastating impacts in Oregon, and the destruction caused by recent climate-influenced weather events and natural disasters, such as wildfires, droughts, and unprecedented heat waves, have price tags in the




billions of dollars. Further, emissions reductions under the Climate Protection Program will protect consumers from future price fluctuations. Renewable energy is not only cheaper; it does not suffer from wild price volatility like gas and oil. The more we can move toward electric vehicles and appliances, the less we have to worry about the price of oil and gas being determined half a world away. Electrification and cleaner ways of making those fuels exist right here in Oregon. This Climate Protection Program will help us deploy those technologies at scale, providing cost-savings, job creation, and healthier living environments for people and families across Oregon.

18. The petitioners seek to delay and derail a program that is already being implemented and which will set the path for our homes and buildings, transportation systems, and industries to begin operating in a cleaner, healthier way that protects Oregon now and for future generations. By cutting emissions and co-pollutants, the program will improve public health and resiliency for communities in Oregon most harmed by burning fossil fuels and climate change, saving billions of dollars annually in avoided health impacts. The Community Climate Investments will advance clean energy projects to support job creation, economic vitality, and cleaner, cheaper, healthier energy and transportation options in communities of color, tribal, low-income, rural, and coastal communities across the state. And the CPP's science-based emissions targets will provide opportunities for technological innovation and advancement that will benefit Oregon's workers and consumers by transitioning to a clean energy economy. Oregon's program is well designed and urgently needed. The petitioners' actions would harm the health and well-being of OEC's members, local economies, and current and future generations of Oregonians.

19. Given the essential role of the CPP in achieving our state's climate goals; the precedent that it sets for other states looking to adopt similar programs; and the potential for petitioners' challenge to hinder DEQ's authority to regulate climate pollution more broadly, OEC and its members have a critical stake in defending this program against rollbacks. OEC and key climate, business, and environmental justice partners, who were engaged in the rulemaking process and have a stake in ensuring that the CPP is implemented, are committed to protecting the CPP and DEQ's authority to regulate greenhouse gas emissions more broadly.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed this day of September 2, 2022 at Portland, Oregon.

A handwritten signature in black ink, appearing to read "Nora Apter", written over a horizontal line.

NORA APTER