Arguments Against Granti

EPA 4061

Entire Document Redacted INTERNAL DELIBERATIVE DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DISCLOSURE AUTHORIZED ONLY TO CONGRESS FOR OVERSIGHT PURPOSES IN RESPONSE TO SUBPOENA

# Partial Grant

INTERNAL DELIBERATIVE DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY DISCLOSURE AUTHORIZED ONLY TO CONGRESS FOR OVERSIGHT PURPOSES IN RESPONSE TO SUBPOENA Denial Finding: CA Doesn't Need GHG Standards to Meet
Compelling and Extraordinary Conditions (1)

 Argument: Climate change is worldwide condition caused by worldwide pollution. CA conditions (causes of air pollution such as emissions/geography; levels of air pollution; effects of air pollution) are generally not extraordinary with respect to climate. Even with regard to ozone, change in climate caused by standards is so miniscule as to not have any discernible effect on ozone – thus, CA does not need these standards to meet any compelling & extraordinary conditions

# CA Doesn't Need GHG Standards to Meet Compelling and Extraordinary Conditions (2)

- Plusses: 1) interpretation treating general climate issues different from other air pollution issues is plausible; 2) CA did not try to calculate specific reductions in temperature, which are very small
- Minuses: 1) Climate change directionally exacerbates CA ozone problems, which are the foundation of section 209(b); 2) data indicates standards will lead to reduction in temperatures (actually calculated by Alliance) and also reduction in ozone precursors; 3) EPA and courts have made clear that we are not to second-guess CA policy choices and that every little bit of reduction helps Supreme Court opinion echoes this; 4) EPA will likely make arguments similar to CA to justify our own GHG rule; 5) inconsistent with precedent saying we look at vehicle program as a whole, not individual standards

# Consistency With 202(a)

- Aside from arguments above, no defensible argument for denial.
- Auto manufacturers did not provide evidence that standards were infeasible.
- CA provided substantial evidence that standards could be met with technology already in field without reducing vehicle size.

# Protectiveness finding

- We can only deny waiver under section 209(b)(1)(A) if we find CA was arbitrary and capricious in making its "in the aggregate" protectiveness finding
- Manufacturers rely on Sierra Research study to show that CA standards will increase ozone precursors
  - EPA has found several significant problems with the assumptions in the Sierra Research study
  - CA has provided its own study that indicates that the standards will decrease ozone precursors
  - OAR believes CA's assumptions are reasonable in general, and not arbitrary or capricious
  - EPA will be relying on assumptions similar to CA's in its GHG rule
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# **EPCA Preemption**

- DOT has determined that state GHG/CO2 standards are preempted under EPCA
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- We could caveat our decision (if we grant in whole or in part) by stating that the decision to grant a waiver only addresses CAA preemption
  - This is consistent with Cal. Court case we defer to DOT's reasoned opinion that CO2 standards are preempted under EPCA
- Another approach is to defer deciding the waiver petition until the court's have decided the EPCA preemption issue.
  - This appears to conflict with Administrator's statements
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Minuses: 1) Evidence in docket indicates manufacturers can meet the standards for first 2-3 years; 2) EPA's long time view is that leadtime should run from date California enacts standards; 3) even given EPA's previous opinion regarding section 202, manufacturers were arguably not justified in thinking we would deny the waiver, given traditional analysis under section 209(b)(1)(C)

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### California GHG Waiver

**Arguments Against Granting** 

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- · After review of the docket and precedent, we don't believe there are any good arguments against granting the waiver
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