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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 STATE OF CALIFORNIA, et al.,
20
21 Plaintiffs,
22
23 v.
24 UNITED STATES POSTAL SERVICE, et al.,
25
26 Defendants.

Case Nos. 3:22-cv-02583-JD
3:22-cv-02576-JD

JOINT STATUS REPORT

Honorable James Donato
United States District Court Judge

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CLEANAIRNOW, et al.,
Plaintiffs,
v.
LOUIS DEJOY, et al.,
Defendants.

1 **JOINT STATUS REPORT**

2 Pursuant to the Court's orders extending the litigation stays in these cases (Case No. 3:22-
3 cv-02583-JD (*State*) Dkt. 121; Case No. 3:22-cv-02576-JD (*CleanAirNow*) Dkt. 63), the parties
4 submit the following status report.

5 **United States Postal Service's Status Update**

6 This portion of the report is provided by Defendants,¹ and Plaintiffs² do not join or endorse
7 it. The Postal Service is currently drafting the supplemental environmental impact statement (SEIS)
8 to modify its Next Generation Delivery Vehicle (NGDV) Acquisitions program. The Postal Service
9 expects to release a draft of the SEIS for public comment by June 30, 2023. The Postal Service
10 had initially anticipated releasing the draft SEIS in May 2023. *See State* Dkt. 106-2 ¶ 12;
11 *CleanAirNow* Dkt. 51-2 ¶ 12. Since then, the Postal Service has had to undertake revisions of
12 several aspects of its environmental analysis, in part based on topics that public commenters raised
13 regarding the scope of the supplemental review. *See* 87 Fed. Reg. 43,561, 43,562 (July 21, 2022)
14 (soliciting scoping comments). In addition, the Postal Service has required more time than initially
15 anticipated to refine its analysis to ensure use of appropriate modeling factors. Based on those
16 developments, the Postal Service now expects to finalize the revised record of decision for the
17 NGDV Acquisitions program in October 2023 (instead of August 2023, as previously projected,
18 *see State* Dkt. 106-2 ¶ 13; *CleanAirNow* Dkt. 51-2 ¶ 13). That is still well before the earliest date
19 when the Postal Service may begin to receive NGDVs. The Postal Service now expects to receive
20 the first such vehicles in June 2024 (instead of October 2023, as previously projected, *see State*
21 Dkt. 106-2 ¶ 5; *CleanAirNow* Dkt. 51-2 ¶ 5).

22 Plaintiffs' response below renews arguments from their stay briefing and advances new
23 arguments about a recent announcement that the Postal Service's delivery vehicle electrification
24 strategy includes contracts for 9,250 off-the-shelf electric vehicles, 9,250 off-the-shelf gas vehicles,

25 _____
26 ¹ United States Postal Service and United States Postmaster General Louis DeJoy.

27 ² In Case No. 3:22-cv-02583-JD: California, New York, Pennsylvania, Colorado, Connecticut,
28 Delaware, the District of Columbia, Illinois, Maine, Maryland, the People of the State of Michigan,
New Jersey, New Mexico, North Carolina, Rhode Island, Vermont, Washington, the City of New
York, and the Bay Area Air Quality Management District; and in Case No. 3:22-02576-JD:
CleanAirNow, Center for Biological Diversity, and the Sierra Club.

1 and more than 14,000 charging stations. U.S. Postal Serv., *USPS Moves Forward with Awards to*
2 *Modernize and Electrify the Nation's Largest Federal Fleet* (Feb. 28, 2023),
3 [https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm)
4 [to-modernize-and-electrify-nations-largest-federal-fleet.htm](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm). The announcement states that
5 “delivery of the vehicles is intended to commence in December of this year, assuming successful
6 completion of the [SEIS] . . . , and the related issuance of our Record of Decision pursuant to the
7 National Environmental Policy Act,” and that “[a]ll awards in today’s announcement are contingent
8 on the Postal Service’s satisfactory completion of National Environmental Policy Act
9 requirements.” *Id.* Plaintiffs thus are incorrect to suggest that the contract awards “rely[]” on the
10 existing environmental impact statement. If Plaintiffs move to lift the stay, the Postal Service will
11 respond in greater detail to Plaintiffs’ merits arguments.

12 **Plaintiffs’ Joint Response To The United States Postal Service’s Status Update**

13 This portion of the report is provided by Plaintiffs, and Defendants do not join or endorse
14 it. The Postal Service continues to change the description of its vehicle acquisition project and the
15 project alternatives under review while manufacture of Next Generation Delivery Vehicles and
16 additional vehicle orders are ongoing. *See State Dkt. 82-1, CleanAirNow Dkt. 35-1* (Quigley Decl.
17 at ¶¶ 13-14, 16, 18 [regarding development and manufacture of first 5,000 vehicles in the Next
18 Generation Vehicle Acquisitions order].) On February 28, 2023, the Postal Service announced an
19 additional order of 9,250 off-the-shelf gas-powered vehicles, along with 9,250 off-the-shelf electric
20 vehicles, totaling 18,500 additional vehicles that will start being delivered in December 2023. *See*
21 *Postal Service Announcement* at: [https://about.usps.com/newsroom/national-releases/2023/0228-](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm)
22 [usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm).

23 The Postal Service is taking these actions while relying on an inadequate and unlawful
24 Environmental Impact Statement (“EIS”) and Record of Decision (“ROD”), which do not evaluate
25 the acquisitions that USPS has announced it is pursuing. *See State Dkt. 116, 116-1; CleanAirNow*
26 *Dkt. 58, 58-1*. During an April 26, 2023 teleconference with lead counsel for the parties, the Postal
27 Service did not state which project alternatives—which NEPA requires the Postal Service to
28

1 analyze—are currently under review in the Draft Supplemental EIS. Additionally, Defendant
2 Oshkosh Defense, LLC provided no information on the current status of the manufacture of the
3 Next Generation Delivery Vehicles. Now, the Postal Service has stated that its revised ROD will
4 not be finalized until October 2023.

5 The Postal Service’s ongoing vehicle orders and contract for manufacturing activities, for a
6 project proceeding under a deficient EIS and ROD, based on new alternatives that have not been
7 fully studied or disclosed to the public, continue to violate the National Environmental Policy Act,
8 42 U.S.C. § 4321, *et seq.* If the Postal Service orders any more gas-powered vehicles without full
9 prior environmental review, while the Supplemental EIS and revised ROD are still pending, then
10 Plaintiffs may be compelled to move this Court to lift the stay.
11

12 Dated: May 1, 2023

Respectfully submitted,

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I hereby certify that the above counsel in Case Nos. 3:22-cv-02583-JD and 3:22-cv-02576-JD have concurred in the filing of this document.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 1, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification of such filing to all counsel of record by operation of the Court’s ECF System.

/s/ Timothy S. Bishop
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