

Environmental Justice Groups Intensify Judicial and Legislative Campaign Against California's Proposed Cap-and-Trade Program

08-01-2011 by *Olivier Theard*

Environmental Justice groups have redoubled their efforts to terminate the California Air Resources Board's (CARB) proposed cap-and-trade program to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020 under the Global Warming Solutions Act (AB 32). As opposed to a traditional regulatory approach whereby a GHG source would be forced to reduce its on-site emissions, cap-and-trade is a market based approach that allows a GHG source the option to either reduce on-site emissions, or to offset its emissions or pay another source to reduce GHG emissions. Environmental Justice groups have long argued that a market based cap-and-trade program would allow GHG sources to buy their way to compliance and result in disproportionately higher emissions in lower-income communities where large GHG sources reside. These groups have now increased their opposition to cap-and-trade on both the judicial and legislative fronts.

Litigation Update

As set forth in our prior blog articles (found [here](#), [here](#) and [here](#)), in *Ass'n of Irrigated Residents v. CARB* the Superior Court sided with the Environmental Justice groups suing CARB, ruling that in adopting cap-and-trade, CARB did not perform the rigorous analysis required by the California Environmental Quality

Act (CEQA). The Superior Court enjoined cap-and-trade implementation. After a series of legal maneuvers, the California Court of Appeal stayed the injunction, thereby allowing CARB to proceed with rulemaking even as the legal case against it continued.

Conceding nothing, on July 28, 2011 these Environmental Justice groups petitioned the California Supreme Court to overturn the stay and enforce the injunction against cap-and-trade implementation until the legal case is decided on the merits. The Petition for Review can be found [here](#). The groups argue that CARB, which has violated CEQA, should not be permitted to implement an unlawfully adopted cap-and-trade program. In part, the groups argue that CARB's decision to effectively delay cap-and-trade by one year (beginning implementation in 2013) means that CARB will not be irreparably harmed by continuing the stay on implementation. The Supreme Court has not yet decided whether to grant review.

Legislative Update

While the judicial battle continues, a coalition of over 40 environmental groups not involved in the lawsuit are stepping up efforts to convince lawmakers, including Governor Jerry Brown, that cap-and-trade is poor public policy and technically flawed. These groups [sent a letter](#) to the Governor requesting that he “rescue AB 32 from uncritical trust in the markets . . . that threatens to undermine an otherwise groundbreaking effort.” (the letter can be found [here](#)). In addition to making arguments about impacts on low-income populations, these groups argue that “different GHGs have vastly different profiles in terms of the length of time they remain in the atmosphere,” thereby rebutting the assumption behind cap-and-trade, which is that the nature and location of GHG emissions do not matter so long as emissions are reduced overall.

While cap-and-trade still appears to be the favored approach, the Governor has indicated that “these complex, expensive systems require continuous evaluation and modification.” Other lawmakers may be considering cap-and-trade

alternatives, as the [Legislative Analysts' Office \(LAO\)](#) has recently issued several letters expressing concern over “gaming” the market based system, and the LAO proposed several regulatory options that could achieve the same or more GHG reductions than cap-and-trade.

This blog will continue to update on any significant developments in the world of AB 32 and cap-and-trade.

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