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Court Ruling adds Hurdle to Implementation of California Greenhouse Gas Rules

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A California Superior Court issued a tentative ruling on January 24, 2011 against the California Air Resources Board (CARB or Board) putting in question the Board's ambitious schedule for reducing greenhouse gases (GHGs) in the state.

The tentative decision enjoins "any implementation of the [Scoping Plan](#) (Plan) until Respondent (CARB) has come to complete compliance with its obligations under its certified regulatory program and CEQA [the California Environmental Quality Act]." At issue is the Board's environmental analysis of potential alternatives to using a market-based emission reduction strategy, i.e. Cap and Trade. The lawsuit was filed by environmental justice (EJ) groups wanting greater direct regulation of industrial sources. There is a high probability that this decision will become final in its current form.

The case, *Association of Irrigated Residents, et al. v. California Air Resources Board*, was filed in San Francisco County Superior Court. The EJ groups accused the Board of illegally approving the Plan which outlines the policy choices of the state to achieve the goals of AB 32 - The Global Warming Solutions Act of 2006. The Plan was adopted in [December 2008](#), and the lawsuit was filed in 2009. The tentative ruling sides with the EJ groups and

finds the state acted illegally because it failed to conduct an adequate analysis of alternatives under CEQA.

So, what does this mean for [Cap and Trade](#), or for all the other measures listed in the Plan, including the other big reduction measures: [California's Clean Car Standard](#), the [Renewable Electricity Standard](#), and the [Low Carbon Fuel Standard](#)? It would seem the spirit of the court order would be to put on hold any of the regulations outlined in the Plan, thus giving the EJ groups a big victory against Cap and Trade. But, as things usually go, it is more complicated than that and is not yet known.

AB 32 both requires the Scoping Plan and authorizes the use of Cap and Trade, but the former is not required for the latter. Therefore, it could reasonably be argued that implementation of the reduction measures outlined in the Plan is independent of the implementation of the Plan itself. In fact, both the Clean Car Standards and the Land Use policy have independent authorizing statutes.

This ruling triggers a 15-day period in which both sides in the case can file objections, which would be considered before a final decision is issued by the court. Once the decision is made final, CARB could also appeal the decision, seek a stay of the ruling and send it to a higher court for hearing. In any event, this tentative decision is another step in a long multi-pronged legal battle involving California's efforts to reduce GHG emissions. It wasn't the first. The initial battle regarding GHGs concerned California's Clean Car Standard (the Pavley Regulations). That battle took over eight years and had quite a few twists before a new administration at the federal level struck a deal with the automotive industry to adopt California's standards.

The EJ groups also argued a few additional points in this suit, including that the cap-and-trade program will allow industrial facilities to avoid reducing emissions from some of their operations, thus exacerbating pollution in already heavily affected areas. This would be a violation of AB 32's provisions to protect such communities. The court ruled in CARB's favor on this and

several other issues, including that CARB acted within their discretion by including a Cap and Trade component.

CARB and the [California Attorney General's](#) office, which is defending the state in the case, say officials are "still evaluating the court's order and its implications for CARB." Until the ruling is finalized, with the details put in writing, and until California decides how it is going to respond to the court, the long-term effect of this tentative ruling is ultimately unclear. So, stay tuned.

The professionals at Manatt are fully engaged in this issue and those surrounding California's efforts to reduce greenhouse gases. For additional information on how this ruling or the pending Cap and Trade regulatory requirements will affect you, or for assistance participating in CARB's continued rulemaking process, contact [Jon Costantino](#) at 916-552-2365 in the Energy, Environment & Natural Resources practice group at [Manatt, Phelps & Phillips, LLP](#).