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California Court Rules Against CARB-Halts AB 32 Implementation

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On Friday March 18, 2011, California Superior Court Judge Ernest Goldsmith finalized his earlier [tentative ruling](#) on the validity of the California Air Resources Board (CARB) environmental analysis. Judge Goldsmith found that CARB *did not* comply with the California Environmental Quality Act (CEQA) when it finalized and approved the AB 32 Scoping Plan (Plan). Though the tentative decision left some uncertainty about the actual intent of the ruling, this time around the court was much clearer. This [decision](#) states that CARB is enjoined from "any further implementation of the measures contained in the Scoping Plan."

The implications of this decision are broad, and depending on how quickly CARB can remedy the situation, may have long-lasting effects. The Scoping Plan laid out California's blueprint or roadmap to meeting the goals of the California Global Warming Solutions Act of 2006, or [AB 32](#). The Plan contained 69 [distinct measures](#) for reducing greenhouse gas emissions (GHGs), including a Cap and Trade market, the Low Carbon Fuel Standard, a 33% Renewable Energy Standard, and others. Some of these measures are already adopted and implementation has begun, others are in the final stages of regulatory adoption. CARB has said they will appeal the decision and is currently seeking clarity on the breadth of the ruling. But, both the

Cap and Trade program and renewable electricity standard are in this last not-yet-finalized category, and if their respective rulemakings are not completed this year, CARB would have to readopt the regulations. Readoption would be a major setback for California's efforts.

One of the critical questions answered by this final decision was whether or not the subsequent rulemakings and their associated CEQA analysis were independent of the Scoping Plan and its broad programmatic CEQA review. CARB presented this argument in response to the tentative decision. But the judge took this issue on squarely and determined that in fact the regulations that stem from the Scoping Plan can not be viewed independently. Even if they have independent statutory authority and subsequent detailed CEQA analysis, the judge ruled the initial policy decision needs to be made in full light of the environmental consequences of each alternative.

The decision was not all bad for CARB and it holds in favor of California on all other substantive challenges to the state's compliance with the AB 32 mandates. CARB was given substantial deference concerning how best to reach the GHG reduction goals set by the legislature in AB 32. The court concluded that CARB's only failure was to an inadequate environmental review of the alternatives to its policy decisions, i.e., implementing a Carbon Tax instead of the Cap and Trade System. It is this review that must be revisited by CARB, and approved by the judge, before the AB 32 train can get moving again.

Therefore, the multimillion dollar questions are: "Will the California Cap and Trade System start on time in January 2012?" and "Does this ruling put a halt on all the other Scoping Plan measures?" At this point it is not clear what the answers will be. The only thing that is certain at this point is that California's climate program has been dealt a setback. How they respond to it will be a key test of resolve for CARB and the new Brown Administration.

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, contact [Jon Costantino](#) at 916-552-2365 in the [Energy, Environment & Natural Resources](#) practice group at [Manatt, Phelps & Phillips, LLP](#).