

One interesting feature of the [court decision](#) preventing the state from moving forward with AB 32 is that the court's decision seems to halt implementation of the entire [scoping plan](#).

As I'll explain, this is an odd result, and one that may be legally required but doesn't make practical sense.

The legal flaw the court found in the scoping plan – and the part of the plan that frustrates the environmental justice organizations that filed the lawsuit – is that the Air Resources Board didn't properly consider alternatives to the cap-and-trade component of the scoping plan. The court relied on this rationale in striking down the ARB's decision to adopt the plan.

But contrary to many people's understanding of AB 32, only a small portion, something like 20%, of the projected reductions from the scoping plan will come from the cap-and-trade program. The rest of the reductions are from measures that the plaintiffs in this case aren't likely to object to. The court, however, saw its role as either accepting or rejecting the agency's action, and not picking and choosing specific pieces of that action for rejection while leaving others intact.

What does this mean for AB 32's future?

I imagine that the plaintiffs in the lawsuit share the Air Resources Board's interest in continuing with the other AB 32 measures. They surely couldn't intend to shut down the entire program, many features of which reduce greenhouse gases and also offer co-benefits in the form of reduction of other sources of pollution. At the same time, the court's order invalidates the whole scoping plan, and with it, any regulations that depend on that plan.

Some of the measures in the scoping plan have already been implemented through other legal mandates (for example, the Pavley motor vehicle emission law), and this injunction shouldn't touch them. But the injunction could potentially cover many other non-cap-and-trade measures under the plan, such as limiting the GHG potential of refrigerants.

The court hasn't yet issued its Writ of Mandate (the actual document that will tell the Air Resources Board what it has to do to comply). Typically, the parties offer language to the court for the writ. Moreover, news reports have indicated that the Air Resources Board is acutely aware of this problem: The Los Angeles Times [reported](#) that "the board's attorneys will meet with plaintiffs about complying with the order without halting all aspects of its global warming plan." Perhaps they will work this out without halting the aspects of the plan that everyone (well, everyone who wants to reduce greenhouse gas emissions) can agree upon.

Can the Air Resources Board continue to implement measures to  
reduce greenhouse gases? | 2