

On Friday afternoon, Judge Goldsmith of the California Superior Court issued his final order in the case pitting environmental justice advocates against the State's Air Resources Board on the issue of cap and trade (order available [here](#)). We've written a lot about the case and about the values conflicts underlying it (see [here](#) for access to posts discussing the lawsuit, the court's decision, and views on the plaintiffs' aims). Of particular interest in the final order:

- The Court has set aside ARB's approval of the Scoping Plan, but only "as it relates to cap and trade."

- The Court has ordered ARB to "take no action" in reliance on the Scoping Plan or on the CEQA documentation it prepared, but again only "as it relates to cap and trade." Similarly, it specifically enjoins "any further rulemaking and implementation of cap and trade," but not other measures.

- Thus, ARB looks safe in moving forward with all other parts of the Scoping Plan. From the beginning, most of the greenhouse gas reductions achieved under the Scoping Plan were set to come from measures other than cap and trade, and those reductions and measures are still on track, I think. (I'm wavering only because the Order also sets aside the CEQA documentation for all of the Scoping Plan, seemingly without caveat — still pondering that wrinkle, thoughts welcome.)

- Judge Goldsmith keeps continuing jurisdiction over the case, meaning that if this judgment is upheld and ARB re-adopts a cap-and-trade program after new analysis, he'll be the one to decide whether ARB has ultimately done enough, in its new alternatives analysis, to satisfy CEQA (a decision which could then, like this one, be appealed).

ARB's director of communications, Stanley Young, says that ARB is filing an appeal of the ruling this morning. While the appeal is underway, the State will undoubtedly undertake its new analysis of the benefits and drawbacks of cap and trade compared with carbon taxes and perhaps other options. ARB has made clear that its new analysis of alternatives is already underway, and I expect it will be completed well before the end of the year.

So - what's the bottom line effect of this case on California's rollout of AB 32? I have a two-part answer. First, as I note above, AB 32 consists of much more than cap and trade, and the majority of its measures and resulting greenhouse gas reductions are alive and well going forward.

As for cap and trade, the effect of the case is still TBD-and not just because of the promised

appeal. California's election of a new governor opens the possibility (as Sean and I discuss [here](#) and [here](#)) that the reconsideration forced by the Court may result in a different decision on the merits of the cap and trade program. While it figures out its decision, the filing of an appeal will help the State keep its implementation schedule intact, since the lower court's judgment will likely be stayed (i.e., put on hold) during the appeal. Thus, if at the end of the day California chooses to go ahead with cap and trade as planned, its schedule for doing so has been rocked but not swamped.