Today, the California Court of Appeal rejected an appeal by environmental justice advocates seeking to scuttle the California Air Resources Board's AB 32 Scoping Plan. EJ advocates objected to the Scoping Plan's adoption of a cap-and-trade program to achieve some of the greenhouse gas reductions required under the landmark California law AB 32. Their primary concern is that the program will not adequately reduce the emissions of co-pollutants that harm public health, or possibly will even increase those emissions in vulnerable neighborhoods. (Legal Planet bloggers have discussed these arguments before at length; see this post for a collection of many of our thoughts about these issues, and the underlying lawsuit in this case.)

The procedural history of this case is rather complex. Here's a synopsis, omitting many details: The plaintiffs in this case originally challenged the Air Resources Board's Scoping Plan successfully in Superior Court, obtaining a decision that required the ARB to redo its environmental impact analysis of the plan. The ARB redid the analysis. And the court was satisfied that the new analysis complied with the law, ending that portion of the case. At the same time, the plaintiffs also had challenged the Scoping Plan on its merits, arguing that the the Scoping Plan violated AB 32's requirements. The Superior Court rejected that challenge, finding that the ARB's Scoping Plan complied with AB 32. The environmental justice advocates appealed. That challenge (to the merits of the Scoping Plan) is the subject of today's Court of Appeal opinion.

Basic administrative law primer: a regulatory action (such as ARB's adoption of the Scoping Plan) that implements a law passed by the legislature (such as AB 32) must be authorized by the law, and must not conflict with the law's requirements. And courts are responsible for determining whether regulatory actions are lawful. But the administrative agency has a lot of latitude; where there is a range of potential options for regulatory action, agency actions typically cannot be overturned unless they are "arbitrary or capricious" or (in California) not supported by "substantial evidence." Courts will typically avoid substituting their judgments for the agencies' judgments, if there is more than one reasonable interpretation of a statutory standard or of the available evidence. In practice, this means that if an agency makes a careful record showing how it took contrary opinions, uncertainties, or ambiguities into account, its decisions will generally be upheld unless the agency's rationale is completely implausible or based on a clearly incorrect interpretation of statutory language.

Here, a three-judge panel of the Court of Appeal (in a unanimous opinion authored by Justice Stuart Pollak) held that the ARB did not act arbitrarily or capriciously in approving its Scoping Plan. The Court highlighted in detail what it viewed as the careful and thorough analysis by ARB of the various components of the plan, and explained how the ARB's actions

complied with the statute. The Court concluded:

> The Governor and the Legislature have set ambitious goals for reducing the level of greenhouse gas emissions in California and to do so by means that are feasible and most cost-effective. The challenges inherent in meeting these goals can hardly be overstated. ARB has been assigned the responsibility of designing and overseeing the implementation of measures to achieve these challenging goals. The scoping plan is but an initial step in this effort, to be followed by the adoption of regulations, the first of which are already in effect, and plan updates no less than every five years. As the plan itself indicates, there is still much to be learned that is pertinent to minimizing greenhouse gas emissions. It is hardly surprising that the scoping plan leaves some questions unanswered and that opinions differ as to many complex issues inherent in the task. After reviewing the record before us, we are satisfied that the Board has approached its difficult task in conformity with the directive from the Legislature, and that the measures that it has recommended reflect the exercise of sound judgment based upon substantial evidence. Further research and experience likely will suggest modifications to the blueprint drawn in the scoping plan, but the plan's adoption in 2009 was in no respect arbitrary or capricious.

So the ARB's cap-and-trade program is safe for now from legal challenges in court (though there is a pending Title VI civil rights complaint in front of the U.S. EPA challenging other aspects of the program). Either one of my co-bloggers or I will likely follow up with more details on the opinion. (And as I complete this post, I note that Alan Ramo of Golden Gate University Law School has just posted about today's Court of Appeal Decision as well. I haven't gotten a chance to read his analysis yet, but he is always insightful, so I'm sure it's worth reading.)