

Breaking: California has successfully weathered (at least in the lower court) another challenge to its cap-and-trade program. A state court has affirmed ARB's significant discretion to design offsets protocols that rely on standardized additionality mechanisms, denying a petition that had sought to invalidate those protocols. Argus has [the first story](#) on this that I've seen. Court opinion [here](#).

At the heart of the case is the contention that ARB's offsets protocols violate the requirement in AB 32 that all offset reductions be, among other things, "additional" to reductions that would have been made anyway. Alan Ramo has a good analysis of the claims and underlying criticisms of ARB's offsets protocols [here](#). The court summarizes the dispute this way:

The standards-based approach [to determining additionality] creates additionality thresholds for particular categories of projects instead of determining additionality individually for each project. This Court must determine whether the Legislature forced Respondent's use of these mechanisms because they permit non-additional reductions to receive credit. Petitioners demand a perfect additionality determination that precisely delineates between additional and non-additional reductions. Respondent contends that additionality is inherently uncertain and it is impossible to design a perfect additionality mechanism.

When a court characterizes your argument as one demanding perfection, you tend to be in trouble. And sure enough, the court goes on to rely on the messiness of *all* additionality determination (see: CDM) to conclude that perfection could not have been the bar the Legislature intended to set here:

Determining additionality is difficult, and it is impossible to precisely delineate between additional and non-additional projects. All additionality determinations suffer from this limitation, not just standards-based approaches. Petitioners ignore this reality and insist Respondent must use a perfect additionality mechanism or none at all. This argument is inconsistent with the science behind additionality Petitioners request the Court to do something it does not have the power to do. Rewrite the statute to forbid the use of offsets.

In other words, offsets can't be known to be additional, ever, and therefore this regulatory approach is within ARB's discretion. Interesting outcome, and certainly one that will add to

ARB's momentum in getting cap-and-trade successfully off the ground. Not an outcome, however, likely to give comfort to those who fear that low-quality offsets may undermine the integrity of the cap.