

## Calif. cap-and-trade plan suffers legal setback

Bob Egelko, Chronicle Staff Writer  
03/22/11

California's attempt to implement its landmark global warming law with a market-oriented "cap-and-trade" system of pollution credits hit a snag Monday with a judge's ruling that the state had not looked hard enough at alternatives.

The ruling by Judge Ernest Goldsmith of San Francisco Superior Court does not prohibit the state Air Resources Board from adopting cap and trade or explicitly require that officials delay its scheduled implementation next year. But Goldsmith said the board must first analyze other options, such as a tax on carbon emissions, and explain why it did not choose them.

The state agency "seeks to create a fait accompli by premature establishment of a cap-and-trade program before alternatives can be exposed to public comment and properly evaluated," Goldsmith said in Friday's ruling, which the state and environmental group that sued over the plan received Monday.

The board will appeal, said spokesman Stanley Young. He expressed dismay at the scope of the ruling, which requires the board to conduct an environmental review and invite public comment before taking further steps to implement the law.

Measures that would be put on hold apparently include California's first-in-the-nation limits on greenhouse gas emissions from cars and trucks, Young said.

### Ruling's effects

A broadly worded ruling "puts at risk a range of efforts to move California to a clean-energy economy and improve the environment and public health," Young said.

But Alegría De La Cruz, legal director of the Center on Race, Poverty and the Environment, said the plaintiffs have no intention of sidetracking clean-car standards and other beneficial state actions.

The group will make that clear in the scope of the order that Goldsmith asked it to draft to carry out his ruling, De La Cruz said.

The goal of the lawsuit is to get the state to adopt an "environmentally superior alternative" to cap and trade, she said.

Young said the board has already conducted a "robust and comprehensive examination of the alternatives" and would submit its findings to the judge.



The air board's cap-and-trade rules, which it adopted in December, set industry-wide limits on emissions of carbon dioxide and other greenhouse gases and reduce those limits each year through 2020. Businesses that exceed their limits can buy allowances from other companies, and can also meet their goals through environmentally friendly actions like planting trees.

### **Implementing ab32**

The system is the centerpiece of the state's plan to implement AB32, the 2006 law requiring California to reduce greenhouse gas emissions to 1990 levels by 2020.

Conservatives have defeated national cap-and-trade proposals in Congress, but the California legal challenge comes from a different direction - grassroots "environmental justice" groups that consider the plan too weak.

They argue that companies that buy the right to exceed emission limits will also spew greater amounts of other pollutants on surrounding communities, mostly poor and nonwhite. The critics believe that businesses can also game the system by claiming environmental credits abroad, where enforcement is uncertain.

### **'Do it right'**

"Allowing the most entrenched polluters to increase pollution violates our environmental rights and is not the way to stop poisoning our air and slow catastrophic climate change," said Bill Gallegos, executive director of Communities for a Better Environment. He said the ruling gives the air board "a chance to do it right."

Most mainstream environmental groups, however, supported cap and trade and stayed out of the suit.

One group, the Environmental Defense Fund, issued a conciliatory statement Monday saying it was confident that the plaintiffs and the board "are committed to improving California's environment and fighting climate change and do not intend to bring AB32 work to a halt."

The one alternative that Judge Goldsmith cited to cap and trade was a carbon tax, a fee on the carbon content of fuels burned by motorists and industries.

Goldsmith said the only assessment the Air Resources Board has made public so far consists of two paragraphs declaring that a carbon tax and other options would have effects similar to the current plan, a conclusion that the judge said was supported by "little or no facts."

The judge also said, however, that the board has legislative authority to interpret the global warming law and acted "within its discretion, right or wrong ... to choose cap and trade as the primary methodology."

E-mail Bob Egelko at [begelko@sfchronicle.com](mailto:begelko@sfchronicle.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/03/22/MNUF11GAAT.DTL>

This article appeared on page **A - 1** of the San Francisco Chronicle