

MAY 20 2011

CLERK OF THE COURT

BY:  Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ASSOCIATION OF IRRITATED RESIDENTS, an  
unincorporated association, CALIFORNIA  
COMMUNITIES AGAINST TOXICS, an  
unincorporated association, COMMUNITIES FOR A  
BETTER ENVIRONMENT, a nonprofit corporation,  
COALITION FOR A SAFE ENVIRONMENT, a  
nonprofit corporation, SOCIETY FOR POSITIVE  
ACTION, a nonprofit corporation, WEST COUNTY  
TOXICS COALITION, a nonprofit corporation,  
ANGELA JOHNSON MESZAROS, CAROLINE  
FARRELL, DR. HENRY CLARK, JESSE N.  
MARQUEZ, MARTHA DINA ARGUELLO,  
SHABAKA HERU, TOM FRANTZ, in their  
individual capacities,

Petitioners,

v.

CALIFORNIA AIR RESOURCES BOARD, MARY  
D. NICHOLS, in her official capacity as Chairman of  
the Board, and DANIEL SPERLING, KEN  
YEAGER, DORENE D'ADAMO, BARBARA  
RIORDAN, JOHN R. BALMES, M.D., LYDIA H.  
KENNARD, SANDRA BERG, RON ROBERTS,  
JOHN G. TELLES, and RONALD O. LOVERIDGE,  
in their official capacities as members of the Board,

Respondents

Case No.: CPF-09-509562

**JUDGMENT**

Department 613  
Honorable Ernest H. Goldsmith

Action Filed: June 10, 2009

1           The Court having reviewed the pleadings, declarations, evidentiary exhibits,  
2 administrative record, and other papers submitted by counsel, heard the oral arguments of  
3 counsel, reviewed the record again in light of those arguments; the matter having been  
4 submitted for decision; and the Court having issued the Order Granting In Part Petition for Writ  
5 of Mandate (“Order”) that judgment and a peremptory writ of mandate issue in this proceeding,  
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

7           For the reasons stated in the Court’s Statement of Decision, the Verified First  
8 Amended Petition for Writ of Mandate is DENIED IN PART AND GRANTED IN PART.  
9 Specifically, the First Amended Petition for Writ of Mandate is DENIED as to the First,  
10 Second, Third, and Fourth causes of action regarding the Scoping Plan's compliance with AB  
11 32, and the Sixth and Seventh causes of action regarding the sufficiency of the FED's impacts  
12 analysis under CEQA. The First Amended Petition is GRANTED as to the Fifth and Eighth  
13 causes of action regarding the sufficiency of the FED's alternatives analysis and the timing of  
14 its approval under CEQA.  
15

16           1.       JUDGMENT IS ENTERED in favor of Respondents and Defendants  
17 California Air Resources Board, *et al.* (collectively “ARB” or “Respondents”) on Petitioners'  
18 First, Second, Third, and Fourth causes of action regarding the Scoping Plan's compliance  
19 with AB 32, and Petitioners' Sixth and Seventh causes of action regarding the sufficiency of  
20 the FED's impacts analysis under CEQA.

21           2.       JUDGMENT IS ENTERED in favor of Petitioners and Plaintiffs Association  
22 of Irritated Residents, Communities for a Better Environment, California Communities  
23 Against Toxics, Coalition for a Safe Environment, Society for Positive Action, West County  
24 Toxics Coalition, Angela Johnson Meszaros, Caroline Farrell, Dr. Henry Clark, Jesse  
25 Marquez, Martha Dina Arguello, Shabaka Heru, Tom Frantz (collectively “AIR” or  
26 “Petitioners”) on Petitioners' Fifth and Eighth causes of action regarding the sufficiency of  
27 the FED's alternatives analysis and the timing of its approval under CEQA.

28           a.       ARB committed a prejudicial abuse of discretion when it failed to

1 proceed in a manner require by law by inadequately describing and analyzing Project  
2 alternatives sufficient for informed decision making and public participation;

3           b.       ARB committed a prejudicial abuse of discretion when it failed to  
4 proceed in a manner require by law by violating the informational requirements of CEQA  
5 and its own certified regulatory program when it adopted Resolution 08-47 and began  
6 implementing the Scoping Plan without first responding to comments, completing the  
7 environmental review process, and approving the Project.

8           3.       A peremptory writ of mandate directed to Respondents issue under seal of this  
9 Court, ordering that:

10           a.       ARB shall **set aside** Board Resolution 08-47 and Executive Order G-  
11 09-001 adopting and approving the *Climate Change Scoping Plan* to Reduce Greenhouse Gases  
12 in California (“Project”) as it relates to cap and trade.

13           b.       ARB shall **set aside** Executive Order G-09-001 approving and  
14 certifying the Functional Equivalent Document (“FED”).

15           c.       ARB shall **take no action** in reliance on the FED and the Scoping  
16 Plan, as it relates to cap and trade, until ARB has come into complete compliance with its  
17 obligations under its certified regulatory program and CEQA, consistent with the Court’s  
18 Order.

19           d.       The Writ shall specifically **enjoin** ARB from engaging in any cap and  
20 trade-related Project activity that could result in an adverse change to the physical  
21 environment until ARB has comes into complete compliance with ARB’s obligations under its  
22 certified regulatory program and CEQA, consistent with the Court’s Order. This includes any  
23 further rulemaking and implementation of cap and trade, specifically but not limited to any action  
24 in furtherance of California Cap and Trade Program Resolution 10-42.

25           4.       This Court expressly **RETAINS JURISDICTION** over ARB’s proceedings by  
26 way of a return to peremptory writ of mandate and any subsequent return proceedings until  
27 the Court has determined that Respondents have complied with the California Environmental  
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Quality Act. The writ shall be returned by ARB within fifteen (15) months of its issuance.

5. The Court does not direct ARB to exercise its lawful discretion in any particular way with respect to the Project except as specifically set forth herein.

6. This Court expressly reserves jurisdiction to determine any award of attorneys' fees, costs, and litigation expenses pursuant to Code of Civil Procedure Section 1021.5.

DATED: *May 20, 2011*

*Ernest H. Goldsmith*  
HON. ERNEST H. GOLDSMITH  
JUDGE OF THE SUPERIOR COURT

**Superior Court of California  
County of San Francisco  
Department 613**

ASSOCIATION OF IRRITATED  
RESIDENTS, et al.,

Petitioners,

vs.

CALIFORNIA AIR RESOURCES  
BOARD, et al.,

Respondents.

Case Number: CPF-09-509562

**NOTICE OF ENTRY  
JUDGMENT  
(CCP §664.5), (CCP §668.5)**

TO: COUNSEL FOR PETITIONERS AND RESPONDENTS:

You and each of you will please take notice that **JUDGMENT** has been filed in the above entitled case pursuant to CCP §668.5.

DATED: May 20, 2011

T. MICHAEL YUEN, Clerk

By: \_\_\_\_\_

  
Linda Fong, Deputy Clerk

**DECLARATION OF SERVICE BY MAIL**

I, Linda Fong, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action. On May 20, 2011, I served the above notice and Judgment by placing a copy thereof in a sealed envelope, addressed as follows:

See Attached Service List

I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 20, 2011 at San Francisco, California.

T. MICHAEL YUEN, Clerk

By: \_\_\_\_\_

  
Linda Fong, Deputy Clerk

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