

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

**ORDER GRANTING IN PART AND
DENYING IN PART PETITION FOR
WRIT OF MANDATE**

Department 613
Honorable Ernest H. Goldsmith

Action Filed: June 10, 2009

1 This matter came on regularly for hearing on December 20, 2010 in Department 613
2 before the Honorable Ernest H. Goldsmith. Petitioners were represented by Alegría De La Cruz
3 and Brent Newell of the Center on Race, Poverty & the Environment, and by Adrienne Bloch of
4 Communities for a Better Environment. Respondents were represented by Mark Poole, Gavin
5 McCabe, and David Zanona of the Office of the Attorney General of California.

6 The Court having reviewed the pleadings, declarations, evidentiary exhibits,
7 administrative record, and other papers submitted by counsel, heard the oral arguments of
8 counsel, reviewed the record again in light of those arguments; the matter having been
9 submitted for decision; and as set forth fully in the Statement of Decision: Order Granting In
10 Part Petition for Writ of Mandate (“Order”), the Court finds that

11 a. ARB committed a prejudicial abuse of discretion when it failed to proceed
12 in a manner required by law by inadequately describing and analyzing Project alternatives
13 sufficient for informed decision making and public participation;

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

19
20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, for the reasons
21 stated in the Court’s Statement of Decision, the Verified First Amended Petition for Writ of
22 Mandate is DENIED IN PART AND GRANTED IN PART. Specifically, the First
23 Amended Petition for Writ of Mandate is DENIED as to the First, Second, Third, and Fourth
24 causes of action regarding the Scoping Plan's compliance with AB 32, and the Sixth and
25 Seventh causes of action regarding the sufficiency of the FED's impacts analysis under
26 CEQA. The First Amended Petition is GRANTED as to the Fifth and Eighth causes of
27 action regarding the sufficiency of the FED's alternatives analysis and the timing of its
28 approval under CEQA.

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

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

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

15 a. ARB shall **set aside** Board Resolution 08-47 and Executive Order G-
16 09-001 adopting and approving the *Climate Change Scoping Plan* to Reduce Greenhouse Gases
17 in California (“Project”) as it relates to cap and trade.

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

20 c. ARB shall **take no action** in reliance on the FED and the Scoping
21 Plan, as it relates to cap and trade, until ARB has come into complete compliance with its
22 obligations under its certified regulatory program and CEQA, consistent with the Court’s
23 Order.
24

25 d. The Writ shall specifically **enjoin** ARB from engaging in any cap and
26 trade-related Project activity that could result in an adverse change to the physical
27 environment until ARB has comes into complete compliance with ARB’s obligations under its
28 certified regulatory program and CEQA, consistent with the Court’s Order. This includes any

1 further rulemaking and implementation of cap and trade, specifically but not limited to any action
2 in furtherance of California Cap and Trade Program Resolution 10-42.

3 IT IS SO ORDERED.

4

5 DATED: *May 20, 2011*

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

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

ASSOCIATION OF IRRITATED RESIDENTS,
an unincorporated association, et al.,

Petitioners and Plaintiffs,

vs.

CALIFORNIA AIR RESOURCES BOARD, et al.,

Respondents and Defendants.

Case No.: CPF-09-509562

CERTIFICATE OF MAILING
(CCP 1013a (4))

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 attached **ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDATE** by placing a copy thereof in a sealed envelope, addressed as follows:

Alegria De La Cruz, Esq.
CENTER ON RACE, POVERTY & THE ENVIRONMENT
47 Kearny Street, Suite 804
San Francisco, CA 94108

Adrienne Bloch
Senior Staff Attorney
COMMUNITIES FOR A BETTER ENVIRONMENT
1904 Franklin Street, Suite 600
Oakland, CA 94612

Angela Johnson Meszaros, Esq.
LAW OFFICES OF ANGELA JOHNSON MESZAROS
1107 Fair Oaks Avenue, Suite 246
South Pasadena, CA 91030

Caroline Farrell, Esq.
CENTER ON RACE, POVERTY & THE ENVIRONMENT
1302 Jefferson Street, Suite 2
Delano, CA 93125

Mark W. Poole
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Timothy O'Connor, Esq.
ENVIRONMENTAL DEFENSE FUND
123 Mission Street, 28th Floor
San Francisco, CA 94105

and, 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.

Dated: May 20, 2011

T. MICHAEL YUEN, Clerk

By: _____

Linda Fong, Deputy Clerk