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## California's global warming law takes a hit

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In a setback that could stall the rollout of California's landmark climate change law, a court in San Francisco has ruled the state must spend more time studying alternatives to the measure's key feature -- a cap-and-trade program on greenhouse gas emissions -- before it goes into effect Jan. 1.

San Francisco County Superior Court Judge Ernest Goldsmith blocked the California Air Resources Board from moving forward with its rules under the law, known as AB 32, until it completes a more thorough environmental analysis. That could take months, putting into question whether the rules will take effect next year as planned.

Ironically, the law, signed by Gov. Arnold Schwarzenegger in 2006, survived industry challenges, and most recently an attempt by Texas oil companies to halt it when voters rejected Proposition 23 in November. But now, it has been tripped up by a challenge from a handful of small, non-profit environmental groups.

Those groups, led by Communities for a Better Environment, based in Oakland, sued the air resources board, which is commonly known as "ARB." They have argued since 2009 that as written, the rules could increase pollution in low-income, largely minority communities located around power plants and oil refineries if those facilities are

allowed to trade pollution credits under a "cap and trade" plan rather than simply facing either a tax on their emissions or some other limit.

"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. "Now the ARB has a chance to do it right and consider real alternatives to pollution trading."

### Appeal coming

Former Assembly Speaker Fabian Nuñez, who wrote AB32, called the court ruling "disappointing."

"It's another roadblock to California being able to achieve its predominance in the environmental world by being the first state in the country to implement CO2 reduction in a very serious way," he said.

Nunez said the air board should have taken the concerns of environmental justice groups more seriously. But to their central claim, he said: "It's a false assertion. There won't be more pollution."

The air board, whose members are appointed by Gov. Jerry Brown, announced it will appeal.

Stanley Young, a spokesman for the air board, said the agency will seek to clarify the ruling, which was filed Friday. If all actions under AB 32 are suspended, for example, that might mean that California's rules requiring utilities to provide 33 percent of their electricity from renewable sources are suspended. Or that the state's low-carbon fuel standard is in question.

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"We believe the plaintiffs did not intend to put on hold efforts to improve energy efficiency, establish clean car standards and develop low carbon fuel regulations," Young said. "A broadly worded writ puts at risk a range of efforts to move California to a clean energy economy and improve the environment and public health."

In December, the air board approved a "cap and trade" system to limit emissions of greenhouse gases that most climate scientists say are causing global warming.

Under the rules, roughly 600 of California's major polluters -- from oil refineries to power plants and factories -- will face mandatory limits starting in nine months on the amount of greenhouse gases they emit. The facilities will be able to trade pollution credits under a new "cap and trade" market, and will be allowed to use projects that offset global warming, such as tree planting, to cover up to 8 percent of their emissions limits.

## Not a death knell

The rules were drawn up under AB32, which requires that California's greenhouse gas emissions be cut to 1990 levels by 2020, a drop of about 15 percent from current levels.

In his 37-page ruling, Judge Goldsmith noted that the air board should have considered other ways to reach the target than "cap and trade," a market-based mechanism favored by industry. He noted the air board only devoted two paragraphs in its environmental study, for example, to a carbon tax.

The air board, Goldsmith wrote, "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."

Young, the air board spokesman, said his agency completed a 500-page environmental analysis in October, after the lawsuit was filed. He also disputed that cap and trade plans increase pollution in some communities, noting that AB32 required that other forms of air pollution cannot increase under the rules.

Several legal experts noted that an appeals court could stay the judge's ruling, allowing the rules to move forward while the case is argued in court through next year.

Stanford University law professor Buzz Thompson said the ruling is not a death knell for California's global warming law.

"My view is that it is clearly a setback," said Thompson, co-director for Stanford's Woods Institute for the Environment. "But it is not an immovable obstacle. It means that California has to look more carefully at the decision it made on cap and trade, and if it wants to make the same decision, justify it in more detail."

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