

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

CALIFORNIA CHAMBER OF COMMERCE et al.,
Plaintiffs and Appellants,

v.

CALIFORNIA AIR RESOURCES BOARD et al.,
Defendants and Respondents,
NATIONAL ASSOCIATION OF MANUFACTURERS,
Intervener and Appellant;
ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

C075930
Sacramento County
No. 34201280001313CUWMGDS

MORNING STAR PACKING COMPANY et al.,
Plaintiffs and Appellants,

v.

CALIFORNIA AIR RESOURCES BOARD et al.,
Defendants and Respondents;
ENVIRONMENTAL DEFENSE FUND et al.,
Interveners and Respondents.

C075954
Sacramento County
No. 34201380001464CUWMGDS

BY THE COURT:

The parties (including interveners) are directed to file simultaneous supplemental letter briefs addressing the following questions:

- 1) What is the rationale for and purpose of regulations stating the auction credits confer no property right? (See Cal. Code Regs., tit. 17, §§ 95802(a)(299); 95820(c).)
- 2) Describe the relationship, if any, between the probable environmental impacts caused by covered entities and the revenue generated from the auctions, and whether the record shows the Board established a *reasonable* relationship between the two.
- 3) Can the auction system be defended against the Proposition 13 challenge on the ground it is akin to a development fee? Address what standards apply when assessing the legality of such fees and how the auction system does or does not meet them.
- 4) Can the auction system be defended against the Proposition 13 challenge on the ground it essentially sells to covered entities the privilege to pollute?

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5) Although the current petitions do not seek to invalidate any particular expenditures of the auction revenue, the record shows the revenue is used for a wide variety of programs. The plaintiffs suggest that the auction proceeds--at least in part--are being used to replace what otherwise would be general fund expenditures.

(a) How directly must a particular expenditure of auction revenue be related to the goal of reducing greenhouse gases?

(b) What standards should the judiciary apply in reviewing expenditures that are alleged to be replacements for general revenue expenditures?

(c) What, as a practical matter, would be the remedy, if, under the applicable standards a court finds a particular program is not sufficiently tethered to the goals of Assembly Bill No. 32?

6) Address the proper test for voluntariness in the context of determining whether a payment is or is not voluntary for purposes of deciding whether it is a compulsory exaction or freely-entered transaction. Apply the test to explain whether or not the auction payments are voluntary. As part of the discussion, assume for purposes of argument only that the trial court credited the Rabo declaration, and that Morning Star (purely as a hypothetical case) will be forced out of business due to the lack of feasible, affordable, technology to reduce its greenhouse gas emissions, if it must continue to obtain emissions credits in order to operate its tomato processing facilities.

7) If this court finds the auction is deemed to be an invalid tax, what is the remedy regarding the regulations, *other than* a declaration invalidating the auction component?

Do not discuss whether an auction component of the cap-and-trade system was authorized by the Legislature.

Parties with like interests are encouraged to file joint supplemental briefs. All briefs, not to exceed 30 pages, shall be filed on or before May 23, 2016.

Dated: April 8, 2016


HULL, Acting P.J.

cc: See Mailing List

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MAILING LIST

Re: California Chamber of Commerce et al. v. California Air Resources Board etc., et al.
C075930 Sacramento County No. 34201280001313CUWMGDS

Re: Morning Star Packing Company et al. v. California Air Resources Board et al.
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