

California appeals judge's carbon market ruling

Published: 23 May 2011 21:55 CET Last updated: 23 May 2011 21:56 CET

California's top attorney on Monday took her first steps to challenge a ruling by a San Francisco judge last week that ordered the state to halt developing the rules for its planned carbon market.

Attorney General (AG) Kamala Harris filed an appeal to challenge Superior Judge Ernest Goldsmith's decision that said the California Air Resources Board (ARB) should “take no action” to implement cap-and-trade plans until it analyses other greenhouse gas reduction policy options.

It is unclear whether ARB will continue to move forward with its rulemaking process to implement the carbon market due to the judge's ruling. Under California law, the appeal automatically triggers a stay, or suspension, of the judge's ruling, which could allow ARB to continue work on the market's design, two California-based attorneys said Monday. But the case now moves to the state Court of Appeal, which will have the power to overturn the stay if the petitioners in the case can demonstrate that allowing ARB to continue developing the market rules would constitute “irreparable harm” to them.

“I expect petitioners will request the appellate court to overturn the automatic stay and that ARB and the AG will oppose that request,” said Malcolm Weiss, a partner with law firm Hunton & Williams LLP, told Point Carbon News via email on Monday. “Then it becomes a matter of how the appeals court rules on the issue. There are pretty good arguments on both sides, but I think ARB/AG has a pretty good shot of keeping the stay in place in part because the fix is not terribly difficult for ARB,” he said. Last week, ARB spokesman Stanley Young said the agency is working on its study of alternative policies to cap and trade like a carbon tax or direct regulations. He said the study will be complete by “early summer”.

Although Goldsmith's ruling brought a halt to the development of the cap-and-trade system, it did not cause delays to the implementation of other greenhouse gas reducing measures, such as applying a low-carbon fuel standard or energy efficiency measures, which are designed to help the state meet its goal of reducing its emissions to 1990 levels by 2020. The carbon market is expected to be responsible for meeting 20 per cent of the goal. Weiss said it is still unclear whether California's carbon market will start in January 2012 as planned or be delayed. “Frankly, it is still not clear to me that whether the cap-and-trade programme will start on time because there are so many moving parts and no one entity has full control over the process,” he said. “I continue to think there could be a delay of a couple months to many months,” he said.

On Friday, state senator Fran Pavley, the author of AB 32, the law mandating the state reduce its emissions, said she will hold a hearing in Sacramento on 15 June to examine the implications of the San Francisco Superior Court ruling.

By Rory Carroll

San Francisco