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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA., S.J.

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United States District Court

for the

ADR Northern District of California

8 Richard M. Peekema

Plaintiff,

vs.

10 Bay Area Air Quality Management District

12 Defendant.

Civil Action no. 009 03283

RS

Complaint
for
Declaratory Judgment

CRS

16 I. Jurisdiction

17 This action arises under a federal statute, 28 U.S.C. § 2201.

19 II. Parties

- 20 1. Plaintiff Richard M. Peekema is a California resident residing at 4817 Wellington Park
- 21 Dr., San Jose, CA in the County of Santa Clara. The costs of services which plaintiff
- 22 purchases from entities in Santa Clara County are directly affected by the fees extracted
- 23 from those entities by regulatory agencies.
- 24 2. Defendant Bay Area Air Quality Management District (BAAQMD) is a governmental
- 25 agency created by the State of California to regulate air quality in a district of some seven
- 26 counties, including Santa Clara County.

1 III. Controversy

2 **Question: Does the Defendant BAAQMD have the requisite legal authority to regulate and**
 3 **tax the production of Greenhouse Gases (GHGs) in its district?**

4 Defendant BAAQMD has issued a proposed new fee schedule which will tax permitted
 5 entities under its authority for the amount of GHGs they emit. The BAAQMD staff report on this
 6 subject details the fee schedule, cites their statutory authorization for this new regulation, and
 7 summarily dismisses a number of public comments which challenge this authority.¹

8 Plaintiff contends that Defendant BAAQMD has exceeded its authority to control the
 9 emissions of toxic pollutants which degrade the quality of the air in its district. With the
 10 proposed new fee schedule, Defendant would now control non-toxic pollutants which do not
 11 directly affect the residents therein.

12 Defendant's present authority to regulate toxic air pollutants is based on the Federal
 13 Clean Air Act², which is cited in the creation of California's Environmental Quality Act
 14 (CEQA)³. California's legislature then created the Air Resources Board (CARB)⁴ and the
 15 BAAQMD⁵ under CARB, to implement appropriate pollution regulations⁶ and rules.

16 The 2006 legislative enactment⁷ of AB 32 authorizing CARB to regulate future
 17 Greenhouse Gas emissions does not automatically confer on the Defendant the authority to tax
 18 present local emissions. The 2007 U.S. Supreme Court opinion⁸ of limited scope which held that
 19 carbon dioxide is a pollutant, similarly does not confer such authority to BAAQMD.

20
 21 ¹ Bay Area Air Quality Management District Staff Report "Proposed Amendments to BAAQMD Regulation 3: Fees";
 May 12, 2008 (Available at <http://www.baaqmd.gov/>)

22 ² [Federal Clean Air Act] 42 U.S.C. §§ 7401 et seq.

23 ³ [(CEQA) California Public Resources Code §§ 21000 et seq.

24 ⁴ [CARB] California Health and Safety Code §§ 39000 et seq.

25 ⁵ [BAAQMD] California Health and Safety Code §§ 40200 et seq.

26 ⁶ [Regulations] [Federal] 40 CFR 63
 [State] 14 CCR §§15000 et seq.
 [Agency] BAAQMD Regulation 3

27 ⁷ [AB 32 (2006)] California Health and Safety Code §§ 38500 et seq.


28 ⁸ Massachusetts v. EPA; 549 U.S. 497 (2007)

1 Attempts to regulate GHGs at the federal level are currently being debated in the U.S.
2 House and Senate,⁹ and may or may not eventually affect the authority now asserted by
3 Defendant. The economic impact of the proposed federal regulations is a significant part of that
4 debate. It is the local economic impact of Defendant's proposed fees which give rise to this
5 controversy. An urgent desire to address global warming concerns cannot substitute for the
6 requisite legal authority. What is necessary and is being sought through this complaint is an
7 objective assessment of the authority to impose GHG regulations and taxes by a local entity.
8

9 IV. Remedy

10 The controversy in question is properly before this Court, and a ruling on this matter is
11 relevant, timely, and needed. Therefore, Plaintiff demands that:

- 12 a. a judgment be entered that Defendant BAAQMD lacks the authority to assess fees
13 from any local entities related to the amount of carbon dioxide or other
14 Greenhouse Gases produced by that entity, and
15 b. Plaintiff recover his costs.
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⁹ Waxman-Markey; "American Clean Energy and Security Act of 2009" H.R.2454
Lieberman, et al.; "America's Climate Security Act of 2007" S. 2191
Sanders [for Boxer, et al.]; "Global Warming Pollution Reduction Act" (2007) S. 309