

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO  
Civil Department, Central Division  
1130 "O" Street  
Fresno, California 93724-0002  
(559) 457-2000

FOR COURT USE ONLY

FILED

MAY 15 2019

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

TITLE OF CASE:

John R. Lawson Rock & Oil, Inc. vs California Air Resources Board/CEQA

CASE NUMBER:  
19CECG00331

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**ORDER OVERRULING IN PART, SUSTAINING IN PART, RESPONDENTS' DEMURRER**  
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FRESNO COUNTY SUPERIOR COURT  
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

<p>John R. Lawson Rock &amp; Oil, Inc.,  Petitioner,  vs.  California Air Resources Board,  et al.,  Respondents.</p>	<p>Case No. 19CECG00331  ORDER OVERRULING IN PART, SUSTAINING IN PART, RESPONDENTS' DEMURRER</p>
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**I. INTRODUCTION**

Respondents California Air Resources Board ("CARB") and Core  
demur to Petitioner's first, second, fourth, fifth and sixth cause  
of action, on the grounds that Petitioner failed to exhaust its  
administrative remedies, failed to state sufficient facts to state  
a cause of action and failed to wait until claims are ripe.

1 Petitioner opposes the motion.  
2

3 **II. DISCUSSION**  
4

5 *Jurisdiction - exhaustion of administrative remedies*

6 Respondents argue that this Court lacks jurisdiction over  
7 Petitioner's first cause of action, for failure to perform an  
8 environmental review, because Petitioner failed to exhaust its  
9 administrative remedies. Respondents also dispute, on the merits,  
10 whether CEQA provisions apply here, given that CARB determined that  
11 this rulemaking was categorically exempt from CEQA pursuant to Code  
12 of Regulations, title 14, section 15061, subdivision (b)(3), but  
13 assume *arguendo* that the CEQA exhaustion requirement is applicable  
14 and argue that Petitioner failed to satisfy it.

15 "A person shall not maintain an action or proceeding unless  
16 that person objected to the approval of the project orally or in  
17 writing during the public comment period provided by this division  
18 or *prior to the close of the public hearing on the project* before  
19 the filing of notice of determination[.]" (Pub. Res. Code §21177(b),  
20 emphasis added; see *Galante Vineyards v. Monterey Peninsula Water*  
21 *Management Dist.* (1997) 60 Cal.App.4th 1109, 1121.) "The essence of  
22 the exhaustion doctrine is the public agency's opportunity to  
23 receive and respond to articulated factual issues and legal theories  
24 before its actions are subjected to judicial review." (*North Coast*  
25 *Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors*  
26 (2013) 216 Cal.App.4th 614, 623, internal citations and quotation  
27 marks omitted; emphasis in original; see *California Clean Energy*  
28

1 Committee v. City of San Jose (2013) 220 Cal.App.4th 1325, 1343,  
2 fn. 7 [plaintiff must allege noncompliance with CEQA "at some point  
3 in the administrative review process before acquiring standing to  
4 litigate the case in the trial court."].) This is to afford the  
5 lead agency a chance to act and render litigation unnecessary.  
6 (North Coast Rivers Alliance, supra, 216 Cal.App.4th at p. 623.)

7  
8 "Exhaustion of administrative remedies is a jurisdictional  
9 prerequisite to maintenance of a CEQA action." (Bakersfield Citizens  
10 for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th  
11 1184, 1199.) Speaking in opposition to a project at a public hearing  
12 prior to approval, "satisfy[ies] CEQA's liberal standing  
13 requirement." (Id. at p. 1198; see State Water Resources Control  
14 Bd. Cases (2006) 136 Cal.App.4th 674, 792 ["As long as the alleged  
15 grounds for noncompliance were presented by someone at sometime  
16 prior to the close of the public hearing, then the exhaustion  
17 requirement is satisfied."].)

18 In the case at bench, Respondents circulated for public review  
19 an Initial Statement of Reasons ("ISOR") on December 19, 2017,  
20 regarding the California Phase 2 GHG rulemaking action. Thereafter,  
21 Respondents opened the 45-day comment period for the ISOR. The  
22 comment period closed on February 5, 2018, and a public hearing was  
23 held on February 8, 2018. Petitioner did not submit comments during  
24 this comment period, or at the hearing. Respondents approved the  
25 proposed regulations for adoption at the public hearing, in  
26 Resolution 18-2.

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On July 3, 2018, Respondents published modified regulatory language and re-opened the public comment period for 15 days, pursuant to Government Code section 11346.8. Petitioner submitted a comment letter on July 18, 2018. A public hearing was held on September 27, 2018, at which time Respondents repealed Resolution 18-2 in its entirety, and approved the proposed regulations, as modified, in Resolution 18-32. It appears, therefore, that the proposed regulations were not finally approved for adoption, and the public hearing on the project had not closed, until September 27, 2018. Accordingly, Petitioner's comments were timely, such that Petitioner has standing to bring the instant action. Respondents' demurrer on this ground is therefore overruled.

*Inverse condemnation - ripeness*

"The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [...] [T]he ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) "Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies,

1 and also to protect the agencies from judicial interference until  
2 an administrative decision has been formalized and its effects felt  
3 in a concrete way by the challenging parties." (*Id.* at p. 171.)  
4

5 Here, Petitioner concedes that it "cannot allege exactly what  
6 the cost to its business will be" (*opp.*, 6:16, emphasis in  
7 original), however argues nonetheless that the "effects of the  
8 regulations are sufficiently knowable for the court to determine  
9 whether these two regulations constitute a taking[]" (*id.* at lines  
10 17-18).

11 The petition alleges that "[t]hese regulations include both  
12 the Proposed Amendments, individually, and cumulatively, along with  
13 other related regulations affecting the trucking industry,  
14 including CARB's Tractor-Trailer Regulation; recent and ongoing  
15 amendments to CARB's Truck and Bus Regulation; proposed amendments  
16 to CARB's HDVIP and PSIP regulations, which are presently in the  
17 rulemaking process; proposed amendments to CARB's HD Warranty  
18 regulations, which are presently in the rulemaking process; proposed  
19 amendments to CARB's HD OBD regulations, which are presently in the  
20 rulemaking process; and anticipated 2019 rulemakings affecting the  
21 trucking industry[.]" (*Pet.*, ¶72.)  
22

23 The taking alleged by Petitioner is at this time so speculative  
24 that it appears to the Court that addressing the claim on its merits  
25 would constitute an advisory opinion. The claim appears unripe for  
26 adjudication. The demurrer based on this ground is sustained, with  
27 leave to amend.

28 //

1 *Declaratory, injunctive relief*

2 "It is settled that an action for declaratory relief is not  
3 appropriate to review an administrative decision." (*State of*  
4 *California v. Superior Court* (1974) 12 Cal.3d 237, 249.)

5  
6 Petitioner has styled its petition as a verified petition for  
7 writ of mandate and complaint for inverse condemnation, declaratory  
8 relief and injunctive relief, and has re-alleged and incorporated  
9 all preceding paragraphs into each claim. In its opposition,  
10 Petitioner does not address the demurrer to its declaratory relief  
11 claim.

12 The controversy alleged in the claim is regarding Respondents'  
13 failure to comply with CEQA, the CEQA guidelines, and CARB's  
14 implementation of regulations without completing an environmental  
15 review and in a piecemeal fashion. Petitioner seeks a declaration  
16 of Respondents' duties under CEQA and that Respondents have failed  
17 to comply with CEQA. As this claim seeks to compel compliance with  
18 CEQA, it appears that declaratory relief is inappropriate.  
19 Accordingly, the demurrer to Petitioner's declaratory relief claim  
20 is sustained, with leave to amend.

21  
22 Petitioner's opposition also does not address Respondents'  
23 demurrer to Petitioner's injunctive relief cause of action.  
24 Petitioner seeks "a permanent injunction commanding Defendants to  
25 cease violating CEQA, the CEQA Guidelines and the Board's  
26 implementing regulations ... and to follow the required legal process  
27 for evaluating the environmental impacts of the Regulation." (Pet.,  
28 ¶83.) As with the fifth cause of action, Petitioner's sixth cause

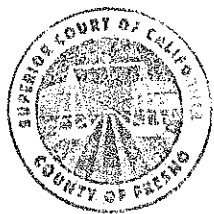
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of action seeks to ensure Respondents comply with CEQA, such that writ relief appears to be the sole relief to which Petitioner is entitled. The demurrer to the sixth claim is sustained, with leave to amend.

**III. DISPOSITION**

Respondents' demurrer to Petitioner's first cause of action is overruled. Respondents' demurrer to the remaining causes of action is sustained, with leave to amend.

Dated this 16<sup>th</sup> day of May, 2019.



*Kristi Culver Kapetan*  
\_\_\_\_\_  
Hon. Kristi Culver Kapetan  
Judge of the Superior Court