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Air District wins landmark development lawsuit

(Fresno) – In a sweeping landmark decision, the San Joaquin Valley Air Pollution Control District’s regulation of development for air-quality impacts throughout the Valley is legal and valid, Fresno County Superior Court ruled Thursday.

The contentious lawsuit challenging the District’s pioneering Rule 9510, which establishes development fees for air-pollution mitigation, was filed by the California Building Industry Association and several co-plaintiffs: the Valley Taxpayers Coalition, the Coalition of Urban Renewal Excellence and the Modesto Chamber of Commerce.

“We now hope the state Building Industry Association joins our many local developers, who have embraced this rule and are working with us to improve the Valley’s air quality,” said Seyed Sadredin, the District’s Executive Director and Air Pollution Control Officer. “We sincerely hope that we can move past adversary and work collaboratively for the Valley’s benefit.”

The Valley Air District was the first in the state to put such a rule into place, and other areas are looking to it as a model for their own potential regulation.

Rule 9510, also called Indirect Source Review, was adopted in December 2005. The lawsuit, filed in June 2006, claimed that the District had no authority to regulate development and impose fees, and amounted to a tax under Proposition 13.

The court disagreed.

“The court finds in favor of the defendants in all [11] causes of action,” said Judge Donald Black in his ruling.

Rule 9510 holds developers accountable for air-quality impacts that result from building activity and also for air-quality impacts that result from the development’s use. Developers have options for offsetting pollution through a variety of mitigation measures – for example, including sidewalks and green spaces in new housing developments -- and are assessed fees for any pollution that exceeds thresholds established by the Air District.

“The case was hard fought by all parties. We are pleased with the Judge’s decision,” said Philip Jay, the District’s legal counsel.

The Valley Air District covers eight counties including San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and the valley portion of Kern.

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