

CALIFORNIA CLIMATE CHANGE CASE AGAINST OIL PRODUCERS REMAINS IN FEDERAL COURT

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Many cities across California are turning to the judiciary to address the effects of climate change. In the past year, eight California cities and municipalities have filed lawsuits against major oil producers seeking damages for the companies' contribution to climate change via their production of fossil fuels. In September of 2017, the cities of San Francisco and Oakland filed suit against BP, Chevron, ConocoPhillips, and Exxon Mobil, claiming damages and seeking an order of abatement under California's Public Nuisance Law. Specifically, the cities assert that the production and consumption of fossil fuels is the primary cause of global warming, that the defendants were aware their fossil fuel product could have severe and catastrophic impacts on the global climate, and that the effects of the plaintiff' actions will soon manifest themselves as a public nuisance in San Francisco and Oakland. Following these complaints, the cities are seeking an order of abatement that requires the oil companies to fund a climate change adaptation program that addresses the infrastructural needs of the cities to protect against the effects of climate change such as sea level rise.

Recently, however, the case has taken an interesting turn. In October of 2017, defendants removed the case to federal court and a recent order by California federal Judge William Alsup has confirmed that it will stay there. In his February order denying the plaintiffs' move to remand, Judge Alsup asserted that climate change is a global issue and therefore should be governed by federal law. Judge Alsup goes on to provide his reasoning, concluding that "plaintiffs' claims for public nuisance, though pled as state-law claims, depend on a global complex of geophysical cause and effect involving all nations of the planet. [¶] It demands to be governed by as universal a rule of apportioning responsibility as is available."

Judge Alsup's order went further, denying the plaintiffs' claims that the case should remain in state court due to precedents set by the 2011 Supreme Court decision in *American Electric Power Co. Inc. v. Connecticut* (564 U.S. 410 2011) and the Ninth Circuit's 2012 ruling in *Native Village of Kivalina et. al. v. ExxonMobil Corp. et. al.* (4:08-cv-01138). While the plaintiffs allege these rulings affirm that the federal Clean Air Act displaces federal common law claims, Judge Alsup asserts that these ruling were concerned with greenhouse gas emitters rather than greenhouse gas producers, who are named in this case. This decision seems to signal a shift in the realm of tort litigation away from the state courts, as seen in *American Electric Power* and *Native Village of Kivalina*, and towards federal courts. The potential implications of this decision have many experts interested to see if it will be picked up by the Ninth Circuit or by the Supreme Court.

Furthermore, Judge Alsup went on to issue a separate notice inviting the parties to a two-part tutorial on the subject of climate change. The first part calls on the parties to trace the historical study of climate change covering topics such as smog, ozone, and global warming. The second part will "set forth the best science now available on global warming, glacier melt, sea rise, and coastal flooding."

The California Environmental Attorneys at Bick Law LLP will continue to monitor the following cases as litigation continues: The People of the State of California, acting by and through Oakland City Attorney Barbara J. Parker v. BP PLC et al., case number 3:17-cv-06011, and The People of the State of California, acting by and through San Francisco City Attorney Dennis J. Herrera, v. BP PLC et al., case number 3:17-cv-06012.