

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Ex  
Rel. EDMUND G. BROWN, JR., ATTORNEY  
GENERAL,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY;  
EDWARD DeMARCO, in his capacity as  
Acting Director of FEDERAL HOUSING  
FINANCE AGENCY; FEDERAL HOME LOAN  
MORTGAGE CORPORATION; CHARLES E.  
HALDEMAN, Jr., in his capacity as  
Chief Executive Officer of FEDERAL  
HOME LOAN MORTGAGE CORPORATION;  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION; MICHAEL J. WILLIAMS, in  
his capacity as Chief Executive  
Officer of FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Defendants.

\_\_\_\_\_ /

No. 10-cv-03084 CW

ORDER REGARDING  
SONOMA COUNTY'S  
MOTION FOR A  
PRELIMINARY  
INJUNCTION IN THE  
SONOMA COUNTY  
ACTION, 10-cv-  
03270  
(Docket No. 33)

SONOMA COUNTY and PLACER COUNTY,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE AGENCY;  
EDWARD DeMARCO, in his capacity as  
Acting Director of FEDERAL HOUSING  
FINANCE AGENCY; FEDERAL HOME LOAN  
MORTGAGE CORPORATION; CHARLES E.  
HALDEMAN, Jr., in his capacity as  
Chief Executive Officer of FEDERAL

No. 10-cv-03270 CW

1 HOME LOAN MORTGAGE CORPORATION;  
2 FEDERAL NATIONAL MORTGAGE  
3 ASSOCIATION; MICHAEL J. WILLIAMS, in  
4 his capacity as Chief Executive  
5 Officer of FEDERAL NATIONAL MORTGAGE  
6 ASSOCIATION,

7 Defendants.  
8 \_\_\_\_\_/

9 SIERRA CLUB,

10 Plaintiff,

11 v.

12 FEDERAL HOUSING FINANCE AGENCY;  
13 EDWARD DeMARCO, in his capacity as  
14 Acting Director of FEDERAL HOUSING  
15 FINANCE AGENCY,

16 Defendants.  
17 \_\_\_\_\_/

18 CITY OF PALM DESERT,

19 Plaintiff,

20 v.

21 FEDERAL HOUSING FINANCE AGENCY;  
22 FEDERAL NATIONAL MORTGAGE  
23 ASSOCIATION; FEDERAL HOME LOAN  
24 MORTGAGE CORPORATION,

25 Defendants.  
26 \_\_\_\_\_/

No. 10-cv-03317 CW

No. 10-cv-04482 CW

1 California, various local governments and the Sierra Club have  
2 filed the above-captioned lawsuits against the Federal Housing  
3 Finance Agency (FHFA) and related entities, after the FHFA issued a  
4 statement, and the Federal National Mortgage Association (Fannie  
5 Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)  
6 published announcements, which allegedly thwarted Property Assessed  
7 Clean Energy (PACE) programs.<sup>1</sup> Through these programs, state and  
8 local governments sought to finance energy conservation projects  
9 using city and county tax assessments against the retrofitted  
10 properties. The American Recovery and Reinvestment Act of 2009  
11 provided funding to support these programs, and the Department of  
12 Energy has assumed responsibility for allocating such funding  
13 through grants. Plaintiffs seek declaratory and injunctive relief,  
14 pressing claims for violations of the Administrative Procedures  
15 Act, the National Environmental Policy Act, various state laws and  
16 the United States Constitution.

17 In the Sonoma County action, 10-cv-03270, Sonoma County has  
18 moved for a preliminary injunction. Docket No. 33. The motion  
19 seeks a court order enjoining Defendants from:

20 1. Giving any force or effect in Sonoma County to the FHFA's  
21 July 6, 2010 "Statement on Certain Energy Retrofit Loan Programs"  
22 and any actions taken by Freddie Mac or Fannie Mae in response to  
23

---

24 <sup>1</sup> Three similar cases are pending in federal district courts in  
25 Florida and New York. The FHFA has moved the Judicial Panel on  
26 Multidistrict Litigation to centralize all seven actions. The three  
27 additional actions are The Town of Babylon v. FHFA et. al., 2:10-cv-  
04916 (E.D.N.Y); Natural Resource Defense Council, Inc. v. Federal  
Housing Finance Authority et al., 1:10-cv-07647-SAS (S.D.N.Y.); and  
Leon County v. FHFA et al., 4:10-cv-00436-RH (N.D.Fla.).

1 the FHFA's July 6, 2010 Statement, including but not limited to,  
2 the actions taken by Freddie Mac and Fannie Mae on August 31, 2010.

3 2. Interpreting the Uniform Security Instrument as prohibiting  
4 Sonoma County Energy Independence Program (SCEIP) assessments,  
5 whether obtained before or after July 6, 2010;

6 3. Issuing any further directives, statements, or guidance  
7 that characterize SCEIP assessments as loans or threats to the  
8 safety and soundness of Freddie Mac, Fannie Mae and the Home Loan  
9 Banks; and

10 4. Treating SCEIP assessments differently than any other  
11 assessments or property taxes imposed pursuant to state law.  
12 California filed an amicus brief in support of Sonoma County's  
13 motion. Docket No. 65. The motion was argued on December 2, 2010.

14 The Court is inclined to deny Sonoma County's motion. Sonoma  
15 is not likely to succeed on the merits to obtain the broad relief  
16 it requests. Nor does the balance of hardships tip sharply in its  
17 favor, given that continued uncertainty, even if preliminary relief  
18 were granted, is unlikely to be reassuring to Sonoma County  
19 residents who have applied for the program, energy-retrofitting  
20 businesses, and financial institutions.

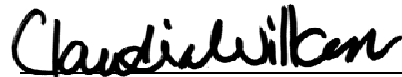
21 However, the Court would entertain a narrower request for  
22 relief, such as an order that, although not being required in the  
23 interim to withdraw their challenged announcements, Defendants  
24 proceed to initiate the notice and comment process while this  
25 lawsuit is pending. Plaintiffs' likelihood of success on their  
26 Administrative Procedure Act claims for notice and comment is  
27 greater than on their other claims. Complying with a preliminary  
28

1 order such as this may not cause great hardship to Defendants, and  
2 might even serve a beneficial purpose. On the other hand, delay in  
3 beginning the notice and comment process, if such is eventually  
4 required, could cause a hardship to Sonoma County.

5 Because this form of preliminary relief was not requested in  
6 Sonoma County's motion, the Court allows Defendants to address it.  
7 Defendants may not reiterate their arguments about the merits of  
8 Plaintiffs' case, but may address the balance of hardships that  
9 would be incurred by a preliminary injunction requiring them to  
10 begin the notice and comment process, without being required to  
11 withdraw their announcements. Defendants may file a brief of not  
12 more than ten pages on January 6, 2011. Sonoma may respond with a  
13 brief of the same length, addressing the same issue, on January 13,  
14 2010. The matter will be decided on the papers.

15  
16 IT IS SO ORDERED.

17  
18 Dated: December 20, 2010



19 CLAUDIA WILKEN  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28