

Bush administration joins battle over Calif. vehicle pollution

By ANDREW BRIDGES, AP Science Writer,

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LOS ANGELES(AP) - The Bush administration weighed in Wednesday on the contentious battle over California's efforts to clean its air, joining automakers in arguing a state mandate that seeks to curb tailpipe emissions is pre-empted by federal law.

In a friend of the courts brief, the Justice Department maintained that federal law overrides any state effort to regulate fuel economy for cars and trucks.

In its 37-page filing with a federal appeals court in San Francisco, the department lawyers argued that California's zero emission mandate impinges on what is solely a federal responsibility.

"The Energy Policy and Conservation Act provides that when a federal fuel economy standard is in effect, a state or a political subdivision of a state may not adopt or enforce a law or regulation related to fuel economy standards," the department argued.

A spokeswoman for California state Attorney General Bill Lockyer said the move dashed hopes the administration would cooperate with the state in its efforts to meet federal clean air standards.

"It's disappointing we have the Bush administration choosing to attack California instead of working with California to clean up our air," said Lockyer spokeswoman Sandra Michioku.

The 12-year-old zero-emissions mandate requires an increasing percentage of new cars and trucks sold in California emit no or extremely low levels of pollution. Under its provisions, automakers can partially meet the requirement by selling hybrids - fuel-efficient vehicles that pair a gasoline engine with an electric motor.

General Motors Corp., DaimlerChrysler and several auto dealers sued the state in February over the mandate. They won a preliminary injunction in June delaying enforcement of the law, which was to have entered effect Jan. 1. They argued the mandate related to the setting of fuel economy standards, which only Congress can do.

The state appealed the case, with environmental groups and others joining its cause.

On Wednesday, U.S. Assistant Attorney General Robert D. McCallum Jr. and U.S. Attorney John K. Vincent took the side of the plaintiffs in arguing the state was attempting to regulate fuel economy standards.

The zero-emissions rule allows automakers to earn credits by selling more hybrids. The number of credits granted for each vehicle sold is decided by its fuel efficiency, according to the zero-emissions mandate.

There "can be no question that the California regulations at issue here are subject to pre-emption," the two federal lawyers wrote in the brief.

Environmentalists blasted the action.

"Given a choice between California and clean air and car makers, they chose, the Bush administration chose, the car makers," said David Doniger, an attorney with the Natural Resources Defense Council.

Messages left with General Motors and DaimlerChrysler seeking comment were not immediately returned Wednesday.

While drafting national energy legislation, both the House and Senate have rejected attempts to require automakers to dramatically improve fuel economy.

Bakersfield Californian, Local Digest October 10:

Rosedale refinery cited for Tuesday gas flaring incident

The San Joaquin Valley Air District issued a citation Wednesday morning to the Shell Bakersfield Refinery for Tuesday's flaring incident at the Rosedale Highway facility.

The notice of violation cites a violation of visible emissions limits.

Shell can contest the citation, in which case the matter would go to the courts. Otherwise, settlements can range from hundreds of dollars to tens of thousands of dollars.

The visible emissions limit is set at 20 percent opacity for three minutes.

The notice of violation does not preclude future citations being issued, according to an air district official. It depends on the outcome of further investigation.

Refinery officials said Wednesday that a power outage forced operators to vent excess gases to the flare, where they are ignited.

Massive dairies win long battle

By DAVIN McHENRY, Bakersfield Californian, October 10, 2002

After four years, the controversial Borba dairies have been approved.

Judge Roger Randall signed off on the project's latest environmental review earlier this week, setting the stage for the two 14,000-cow dairies to move forward. The project had been embroiled in court since August 2000, when environmental groups sued, saying the dairies were too large and would cause too much pollution.

Over the past two years, Randall has twice ordered additional environmental review on the project, but agreed Tuesday that the latest round was sufficient.

His decision could be appealed by the Center on Race, Poverty and the Environment or the Sierra Club, who sued over the dairies. Brent Newell, an attorney with the center, declined to say whether an appeal is planned.

"We have 30 days to decide," he said.

George Borba, who proposed the dairies with his cousin James Borba, said he is gearing up to resume work on his site -- provided there is no appeal. George Borba said the only hurdles left are acquiring some construction permits, as well as approval from dairy regulatory agencies.

Once built, the Borbas would each own a separate dairy, located within several hundred feet of each other. Construction of the two dairies will be independent affairs.

"A lot of people don't realize that they are not one big dairy," George Borba said. "(James) has his own builder and I have my builder. They are two separate dairies."

The Borba cousins created a major stir when they first proposed their twin dairies in 1998. Critics argued they would become a detriment to the area.

The dairies drew scorn not only from statewide environmental groups, but from southwest Bakersfield residents, who worried that flies, odors and dust would drift into their neighborhoods.

Southwest resident Frank Prieto said Thursday he had signed a petition opposing the dairies years ago, when he feared his apartment patio would be overrun by flies. But the retiree had long since forgotten about the project.

"I thought that whole mess was over a long time ago," he said. "I figured they built it and it didn't turn out as bad as they thought."

In reality, the project was on hold thanks to a pair of lawsuits.

The center sued in 1998 when it appeared the Borba project would be approved without any environmental review. The case was eventually settled and the Borbas agreed to conduct an environmental impact report.

But the center and Sierra Club sued again in 2000, saying they were not satisfied with the level of environmental review. Twice, Randall ordered the Borbas to study some portions of the project in more detail.

The latest round of review focused on whether the dairies would be financially viable if their herd sizes were reduced. The Borba's environmental consultants argued that any reduction in herd size would make the project impossible to finance or borderline unprofitable.

Newell and the center argued that the Borba's consultants ignored some factors that would make the dairies profitable, such as economies of scale. The center stood fast on that point Thursday.

"We are disappointed and disagree with the ruling," Newell said.

Even if the case is not appealed, Newell said the fight has been worth it.

The same day Randall issued his decision, county supervisors voted unanimously to require all new dairies to go through public hearings and environmental scrutiny, like the Borbas. Previously the county had allowed dairies to be built without those requirements as long as they were far enough from urban areas.

"If it hadn't been for these lawsuits I don't think the public would have had a chance to become informed about these issues and these dairies," Newell said. "These dairies would have been built and no one would have known about them."

While critical of the center's suits in the past, county supervisor Pete Parra agreed that the increase in scrutiny of dairies has been beneficial.

"I think the bar has been raised in terms of environmental issues," he said. "I think the public has won."

Parra also praised the Borba cousins for sticking with their Kern County location, despite their extensive legal battles.

"That demonstrates their commitment to invest in Kern County," Parra said. "They have chartered new territory. I hope they get their construction permits tomorrow and start construction."

George Borba did not give an estimate of when construction might start, but said his family is more than ready to head to Kern County.

"We've been on hold for some time now," he said. "My kids have been enrolled at St. Francis (School) for two years. We've just been waiting to move."

Forest Service: More Sierra logging may be needed to help pay for fuels reduction By SCOTT SONNER Associated Press Writer

Published in Bakersfield Californian, October 10, 2002

KINGS BEACH, Calif. (AP) - Removing fuels from forests to ease wildfire threats in the Sierra is proving more costly than expected and may require logging some trees currently protected to help pay for it, the Forest Service's regional boss said Thursday.

Jack Blackwell, regional forester for national forests in California and the Sierra, also said the agency may not be able to do as much prescribed burning as it had hoped and may have to rely more on mechanical thinning of forests because of growing concerns about air pollution.

"Fuels treatments are more expensive than we thought," Blackwell said in a speech to 300 scientists, land managers and others during the Sierra Nevada Scientific Symposium at Lake Tahoe.

"We simply haven't got the money to do everything we planned to do," he said. "What I think we're going to have to do is try to leverage these fuel dollars so they go farther."

Because Southern California is entirely dependent on fuel reduction money made available by Congress through the National Fire Plan, Blackwell said it may fall to parts of the Sierra and Northern California to find alternative financing for such projects, such as offering up additional commercial timber for sale.

"Up here in the Sierra, where we have forested areas, where we've got to do this very necessary fuels work, I think we are going to have to pay for that work by selling some of the trees that need to be cut," Blackwell said.

"No one is talking about cutting the big trees. But I think that some of the medium trees, along with the small ones that are necessary for these fire suppression projects - some of the medium trees that are not needed for wildlife - we are going to have to cut to help pay for some of these treatments.

"We shouldn't expect it is going to pay for all the treatments. We'll still have some subsidizing. But I see no other way out of this," he said.

Blackwell said in an interview after his speech that there is no specific definition of medium-sized trees, but it likely would include trees larger than 2-feet thick, perhaps up to 30 inches in diameter.

More than 10 million acres spread across 10 national forests along the California-Nevada border from south of Yosemite National Park to north of Lake Tahoe currently enjoy varying levels of protection under a 10-month old policy known as the Sierra Nevada framework.

Across about half the area, that policy prohibits logging of trees larger than 20 inches in diameter.

But the policy is currently under review and Blackwell said he expects to receive recommendations from the review team by January regarding changes that may be necessary on a number of fronts, including reducing wildfire threats.

He said he is concerned that without some changes, the agency will be unable to carry out those goals.

"There are some serious barriers right now," Blackwell said.

"One of those barriers is smoke management. We've got concerns from local (air quality) boards about burning," he said.

Timber industry leaders and some Western members of Congress have been pressing the agency for more flexibility to log larger trees and step up thinning projects to reduce fire risks. They maintain the current Sierra framework is overly restrictive.

Jay Watson, the California-Nevada coordinator for The Wilderness Society who attended the symposium, said any significant changes in the size of trees to be cut would require a whole new environmental impact statement in the Sierra.

Under the framework, the Forest Service already has authority to cut trees up to 30 inches thick in the one-fourth mile closest to communities, areas known as defense zones, a relatively small amount of acres Sierra wide, he said.

The 20-inch limit applies to the next one and one-quarter mile from communities, areas known as threat zones which cover about 2 million acres, as well as "general forest" areas that cover about 5 million acres, he said.

No trees larger than 12 inches in diameter currently can be cut in the 4 million acres designated as "old-growth emphasis," where the largest trees are found, he said.

Watson said the plan was devised to reduce fire risks while protecting old-growth forests and their resident wildlife, including the California spotted owl.

"We're certainly willing to consider what they propose," he said. "But the plan that was put together was a very balanced plan. If the agency tries to turn it more into a timber-oriented plan to pay for it completely on the backs of bigger trees, it would lose all its balance and could very well lead to the listing of the California spotted owl."

Lodi asks judge for another injunction against cleaners

By Jeff Hood, Lodi Bureau Chief, The Record

SACRAMENTO -- Attorneys for Lodi requested a second injunction Thursday against a downtown dry cleaner, saying experts are convinced that Guild Cleaners is a major source of pollution found in the soil and groundwater in the city.

Lodi went back to U.S. District Judge Frank C. Damrell Jr., asking the judge to force Guild to investigate the scale of perchloroethylene contamination in downtown Lodi. The chemical is a common dry-cleaning solvent considered hazardous to human health.

Damrell did not rule on the request Thursday.

The city's attorneys, who said they were acting on behalf of the people of the state of California, obtained an oral injunction in December against Guild from Damrell. The judge, however, rescinded his order this past summer after deciding Lodi's attorneys actually represent the city in the lawsuit, filed in November 2000.

Lodi attorney Cecelia Fusich told Damrell and the court's independent expert, Michael Kavanaugh, that PCE found in indoor air poses a health risk to the public and that in the soil it threatens the city's water supplies.

But attorneys for Guild Cleaners said their field tests and analyses of previous studies show the Lodi News-Sentinel newspaper is the source of PCE contamination, not Guild.

Guild attorney Lori Gualco said a host of chemical compounds found underground near the newspaper's former site -- just north of Guild and now leased by the city's Finance Department -- are consistent with printing operations, not dry cleaning.

She also said the city shares responsibility for the spread of PCE through its leaky sewer system and that Lodi's 1997 agreement with the state Department of Toxic Substances Control, in which the city paid more than \$1 million to the agency, amounts to an admission of responsibility.

Fusich disagreed, however, saying many court cases are settled without an admission of guilt, and public agencies in similar cases have not been held responsible for hazardous material placed in their sewer systems.

Even if the city is considered a responsible party, Damrell should order the injunction, she said.

"The city isn't acting as the owner of a sewer system, the city is acting in the public benefit, attempting to get something for the public good," Fusich said. "The city's sewers leak. They inherently leak. All cities' sewer systems leak."

But Damrell pointed to a recent 9th U.S. Circuit Court of Appeals decision ruling that a responsible party may not seek an injunction against other polluters. He asked attorneys for both sides to submit written arguments on the city's injunction request in light of that case. Damrell also asked the attorneys to state how the city's 1997 deal with the Department of Toxic Substances Control affects the city's liability.

Damrell won't decide until after Kavanaugh submits his expert opinion of the technical issues by Nov. 15.

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[Bakersfield Californian Editorial, October 10, 2002 :](#)

Dairies need watchful eye

Pulling the plug on "by-right" dairies was a responsible move for the Kern County Board of Supervisors to make this week.

Dairy permitting in Kern County now will require a review of the environmental consequences of each new dairy and will include opportunities for the public to voice concerns.

Dairies will operate under conditional-use permits designed to address the specific impacts of individual dairies.

Struggling to balance their support of the dairy industry with growing community concerns over the stench and potential pollution of an increasing number of large dairies, supervisors had embraced the idea of allowing "by-right" dairies.

These are dairies that can be built "by right" because they are located far away from neighbors and sensitive land-uses, such as schools. By-right dairies do not have to obtain restrictive conditional-use permits and are not subjected to public hearings.

To accommodate a by-right system, supervisors proposed to develop a countywide dairy plan and study the areawide environmental consequences, rather than the dairy-by-dairy consequences of building dairies.

The sticking point became the cost and scope of the plan and environmental study, and who would pay. Supervisors were unable to entice the "dairy industry" to ante up sufficient money.

Supervisors also were unable to convince dairy operators to agree to pay the county's legal costs when *not, if* a lawsuit was filed by environmental and neighborhood groups over the plan. Indemnifying the county from this legal minefield wasn't in the dairy industry's plan.

So it's now each dairy for itself. Each new guy on the block will get scrutinized and required to obtain a conditional-use permit.

As dairy industry representatives left the board's chambers Tuesday, they grumbled that the supervisors' decision will discourage future dairy operators from relocating to "unfriendly" Kern. They suggested these dairy operators may just skip over to Kings and Tulare counties, where permitting is easier and cheaper.

Who are they kidding?

If they don't want Kern's scrutiny and operating limits, then they should just skip over this county and locate in some other "friendly" place.

But the two counties to Kern's north have been contending with the environmental consequences and legal challenges resulting from the dairy industry for more years than Kern.

As a result, Kings and Tulare counties impose similar controls. It is utterly ridiculous to contend somehow new dairies will get a free environmental ride in those two counties.

Kern County supervisors are commended for eliminating by-right dairies.

The dairy industry brings the promise of great economic opportunities to Kern County. But those opportunities must not also bring the degradation of Kern County's environment and quality of life.

[Letters to the Editor, Fresno Bee, October 11, 2002](#)

'Poor network'

By Lee Brand
Fresno

I would like to respond to Betty Lake's [Oct. 6] letter regarding bicycles on Valley roads. I have logged many miles on Valley roads on my bicycle. Yes, some bicyclists do ride side-by-side and do not ride safely on Valley roads. The vast majority of bicyclists, however, wear helmets, ride single file and are very safety conscious.

Ms. Lake recommends that bicyclists stay inside the white line of the bicycle lane. This cannot always be done. There are many stretches of road where there is no bike lane, including Friant Road near Table Mountain Casino. In areas where there is a bike lane, it is often difficult to ride inside the white line because the lane is littered with broken glass and debris. Bicyclists are always alert to aggressive drivers who throw objects at them or see how close they can come.

Compared with other communities, Fresno County and the city of Fresno have a poor network of bike paths. Many lanes are not maintained and are too narrow. Next time you visit the central coast or other communities, notice the width and condition of the bike lanes.

The San Joaquin Valley has one of the worst air quality ratings in the United States. Shouldn't we build safer bike and pedestrian trails to encourage people to use their cars less and avoid confrontations between bicyclists and automobiles?

'Enough time'

By Rose Rowe
Fresno

In Lou Steck's Oct. 2 letter was a good point: Working people are just too busy to add one or two hours using our present public transportation.

What is needed is efficient, frequent, modern transit for Fresno, where people really want to use it. That will certainly clear up some traffic congestion and **dirty air**.

Vote "no" on the Measure C extension. It's the wrong measure, as it gives too much of our tax dollars to roads and freeways and too little for public transit, bicycle lanes, road repair, trails and access for the disabled.

Thirty years is too long. Taxpayers are shown only 10 years of projects and will have no say about the last 20 years of spending. The present Measure C runs until 2007, enough time to work on a better, balanced transportation plan.

With a better plan working people can look forward to someday using excellent public transit in our city.