

West freeway proposal gaining

Environmental impact of roadway that would cut gridlock to be discussed tonight

By David Burger

Bakersfield Californian, Thursday, Nov. 2, 2006

Sick of getting stuck in east-west Bakersfield traffic? Relief is in sight.

The Bakersfield Planning Commission tonight will take a last look at the eight-mile, \$170 million Westside Parkway project, which is meant to ease traffic tie-ups in west Bakersfield.

On the agenda tonight is the final environmental impact report on the proposed roadway, and commissioners will consider sending it on to the city council for its approval.

Tonight is the last public hearing on concerns about potential environmental damage.

Environmental concerns

The report lists potential negative consequences to the environment if the project goes forward. But the report also lists ways the city can lessen those effects.

Among those possible negative effects are:

- Possibility of soil contamination, especially near the Bakersfield Flying J Refinery.
- Possibility of habitat loss for the San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, burrowing owl and Swainson's hawk. Specifically, planners must do a field survey for kit fox dens.
- Removal of 1.3 acres of Great Valley cottonwood riparian forest where the project crosses the Kern River in two locations.

Other concerns

Arthur Unger, representing the Kern-Kaweah chapter of the Sierra Club, was the lone voice speaking in opposition to the project at April's hearing.

The city should focus on funding public transportation, not building what might become an eight-lane thoroughfare, Unger said.

The freeway should also prohibit trucks, provide bus stops, be surrounded with valley oaks and [have warnings to people that the air next to the roadway was not fit to bike or exercise in](#), he added.

The latter suggestion was made because the freeway is planned to run near the Kern River bike path, Unger said.

"This freeway is the wrong way," Unger said. "I'm sad. We are choosing private vehicles over mass transit."

Jennie Eng, city principal planner, said no other opposition to the final environmental impact report has been registered.

Planning Commission Chairwoman Barbara Lomas said the parkway will improve west-side traffic congestion, which had grown because of poor road planning decades ago.

"Past mistakes are being corrected," Lomas said.

Timeline

The best-case scenario of when the road could be finished is six years from now, Ted Wright, city public works civil engineer, has told the commission.

But the 2012 timeline holds only if the state provides promised funds, he said. The parkway is not part of the Thomas Roads Improvement Program -- its funding comes from a separate source.

If the money gets somehow tied up, some of the TRIP money secured by Rep. Bill Thomas, R-Bakersfield, might be used, Wright said.

The Westside Parkway would only go as far west as Heath Road. But it's not the only road scheduled to relieve traffic jams in the city's western areas.

The West Beltway, part of TRIP, is scheduled to be finished in 2015, according to a February city-published report.

It would connect to the parkway and run north and south, and would connect travelers from the parkway to 7th Standard Road to the north and Taft Highway to the south.

Drivers can test car pollution

Stockton Record, Thursday, November 2, 2006

STOCKTON - Drivers can find out how much pollution is emitted by their cars during a free smog test event from 9 a.m. to 3 p.m. Saturday at San Joaquin Delta College.

Delta's auto shop students will use remote sensors to calculate each car's emissions in a matter of seconds. Those whose cars fail the test will receive coupons for up to \$500 of smog repair work at a designated auto shop, said organizers with the nonprofit Valley Clean Air Now.

No official smog test certificates will be issued. For that, drivers will need to have their vehicles tested at a certified smog-test business.

This will be the second time Valley Clean Air Now has hosted such a program in Stockton. The event has been held 10 times throughout the region.

For more information, visit www.valley-can.org and click on Tune In & Tune Up.

Clean-air activists file to join legal defense of developers' fee

Bakersfield Californian, Thursday, November 2, S.F. Chronicle, Wednesday, November 1, 2006

Fresno, Calif. (AP) -- Three environmental groups filed a motion Tuesday to join the legal defense of an air quality rule that would charge developers fees to help cut air pollution in one of the worst air basins in the country.

The Fresno-based Medical Advocates for Healthy Air, Environmental Defense and the Sierra Club want to help defend the San Joaquin Valley Air Pollution Control District, which last year approved rules allowing local air authorities to assess fees on new construction.

Builder and local commerce associations sued the district in June over the rule, claiming it is an illegal tax because it does not relate directly to pollution emissions.

The fees are about \$780 per house this year but will increase annually. Builders can cut their fees by adding pollution-reducing features like bike lanes and energy-efficient cooling systems.

Air officials estimate they would raise \$103 million from construction over the next three years to be used on new technology such as clean-running buses and street sweepers.

The clean-air activists will go before the Fresno County Superior Court on Dec. 6 to present arguments to join the defense. If the motion is granted, they would become parties to the case.

Environmentalists want to join air quality lawsuit

By MARK GROSSI - THE FRESNO BEE

in the Modesto Bee, Thursday, November 2, 2006

FRESNO — Three clean-air activist groups announced Tuesday that they will try to join the legal defense of an air-quality rule that will bring in millions of dollars from builders to reduce pollution from city sprawl.

The groups — Sierra Club, Environmental Defense and Fresno-based Medical Advocates for Healthy Air — support the local air district's fight against builders and other groups that sued the district in June over the rule.

In the lawsuit, builders contend that the rule contains fees that amount to an illegal tax. Clean-air activists, who call the measure "indispensable," are scheduled to make a motion to intervene on Dec. 6 in Fresno County Superior Court.

"I see children and adults every day who are suffering from lung disease aggravated by the region's air pollution," said Kevin Hamilton, a respiratory therapist and co-founder of the medical advocates group. "We can't continue to stand by and do nothing."

But the rule is unfair because it does not relate directly to pollution emissions, according to the four groups suing the San Joaquin Valley Air Pollution Control District.

The groups are the California Building Industry Association, the Coalition for Urban Renewal Excellence, the Fresno-based Valley Taxpayers Coalition and the Modesto Chamber of Commerce.

The goal of the rule is to reduce bad air caused by traffic from new homes, businesses, commercial buildings and schools built on the edge of cities.

Local air authorities estimate that the fees from the rule would raise \$103 million from construction over the next three years.

But builders can reduce the fees by installing features such as outdoor outlets for electric lawn mowers, bike lanes and energy-efficient water heaters.

Money raised from the rule would buy new technology such as clean-running buses and street sweepers. The investments are intended to reduce the smog, dust and soot that make the valley one of the worst air basins in the country.

The fees are about \$780 per house this year, but they will escalate to almost \$1,800 over the next few years. The building industry estimates that the fees will raise \$225 million over the next five years.

Justices question clean-air plan

By PETE YOST, Associated Press Writer

in the Sacramento Bee, New York Times and San Francisco Chronicle

Thursday, November 2, 2006

WASHINGTON (AP) - Several Supreme Court justices reacted skeptically Wednesday to a Clinton-era clean-air plan that is costing the electric power industry billions of dollars for installation of pollution control equipment at aging coal-fired plants.

The government reluctantly joined environmental groups in the fight against Duke Energy Corp. over the interpretation of 26-year-old federal rules that the Bush administration has proposed relaxing.

The outcome of the Duke case could affect power plants in 10 states where utility companies are being sued under the New Source Review program. The plants are the remaining targets of what had been more than a dozen lawsuits brought by the government.

Federal regulators suddenly switched their interpretation of the 1980 rules and sued Duke in 2000, Carter Phillips, a lawyer for Duke, told justices.

Lawyers for the environmental groups and the government said Duke and other utilities always have understood federal requirements and chose not to comply with them, an assertion that prompted extended scrutiny from the justices.

Justice Antonin Scalia said it is "a little bit of an exaggeration" to argue that the regulations always had been interpreted the same way by the government. He pointed to a federal regulator who long ago gave a different interpretation that favors Duke.

"Companies can get whipsawed," Scalia said in suggesting the Environmental Protection Agency might have changed the way it applies the rules.

Lawyer Sean Donahue, representing Environmental Defense and two other groups opposing Duke, said a court challenge to the rule in the early 1980s went against industry, with the decision spelling out what the regulation requires.

"If they are so clear," why did an EPA official in the 1980s interpret the rule in favor of the position Duke is taking? asked Justice Samuel Alito.

Donahue said the official "misapplied" the rule in what Donahue called "an anomalous circumstance."

"I know you say he's wrong," Alito replied. "But if somebody in his position with his expertise can interpret the regulations in that way, doesn't that show that they're not clear on their face?"

At the start of his argument, Donahue got exactly three sentences out before Chief Justice John Roberts interrupted. He noted that Donahue's statement, which the lawyer was presenting as fact, was disputed by Duke.

Justice Ruth Bader Ginsburg focused on a recent EPA rule-making that would adopt Duke's position on how to measure pollution emissions.

That is "only a proposal," replied Deputy Solicitor General Thomas Hungar, struggling to address a point that has put the Bush administration in a difficult position in the case.

A few months after Duke won in the 4th U.S. Circuit Court of Appeals in Richmond, Va., the Bush administration proposed an industry-friendly rule that is along the lines of what Duke and other utilities always have wanted.

If not for the environmental groups, there would have been no case Wednesday in the Supreme Court. The government asked the high court not to take the case, a move that would have left Duke victorious if the justices had gone along.

At issue is whether the appeals court had the authority to handle the case when it ruled in favor of Duke last year. Also in dispute is whether pollution emissions should be calculated hourly, as Duke wants, or annually, as the environmental groups say.

The enforcement program is aimed at reducing power plant emissions of nitrogen oxide and sulfur dioxide that contribute to smog and acid rain.

States where utility companies are challenging federal requirements are Alabama, Indiana, Kentucky, Ohio, Pennsylvania, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.

The case is Environmental Defense v. Duke Energy Corp., 05-848.

Justices Challenge EPA's Arguments in Clean Air Act Case

By Charles Lane, Staff Writer

Washington Post, Thursday, November 2, 2006

Supreme Court justices took a skeptical view of an Environmental Protection Agency crackdown on air pollution from electric power plants yesterday as the court heard oral arguments in a major case on the authority of the federal government to punish violations of the Clean Air Act.

At issue is a wave of lawsuits begun by the EPA during the last two years of the Clinton administration in which the agency sought to force utilities to equip their refurbished older plants with state-of-the-art pollution control equipment. The EPA said it was enforcing its long-established view of the Clean Air Act's requirements. But companies objected, saying the EPA was unfairly imposing a new and stricter interpretation of ambiguous federal regulations.

At yesterday's argument, most of the justices who spoke up seemed to agree with industry's view.

"What I'm concerned about is that companies can get whipsawed," said Justice Antonin Scalia.

When Sean H. Donahue, a lawyer for Environmental Defense, a private organization defending the EPA enforcement actions, told the court that the agency's regulations were "clear on their face," Chief Justice John G. Roberts Jr. interjected, "That's an audacious statement."

At issue in the case, *Environmental Defense v. Duke Energy*, No. 05-848, is how to measure utilities' compliance with the Clean Air Act's "new source review" program, which governs emissions from plants that have been modernized or expanded.

Environmental Defense says that about 17,000 facilities are covered by the rules, and it cites studies that show 20,000 premature deaths per year traceable to pollution from coal-fired plants.

It says the EPA properly insisted that Duke Energy get a special permit and install new pollution-control equipment before reopening several coal-fired plants it had started renovating in 1988, because the plants' total emissions dramatically increased when they were brought back online.

But Duke, a North Carolina-based utility, countered that the proper standard was not the total amount of pollution its plants emitted, but the rate at which they emitted it. By that measure, the company said, its renovations had not changed the plants' capacity for pollution.

In June 2005, the U.S. Court of Appeals for the 4th Circuit, based in Richmond, ruled in Duke Energy's favor.

By that time, the Bush administration had promised to change EPA enforcement policy, announcing in 2002 that it would bring no new cases against utilities.

But the EPA continued cases that were pending when the administration took office in 2001, so the Bush EPA and Environmental Defense were on the same side in the 4th Circuit.

After that, the administration proposed new clean air regulations that echo the 4th Circuit's decision and would apply it nationwide. It then asked the Supreme Court not to accept Environmental Defense's request to intervene in the case.

The court's decision to take the case over the administration's objection was a surprise. Since the adoption of modern environmental legislation in 1970, the court had agreed to hear just two previous cases in which an environmental group was the petitioner.

Yesterday, the Bush administration was back on Environmental Defense's side of the case, defending the EPA's authority to press the last few cases against Duke and others.

Justice Ruth Bader Ginsburg asked Thomas G. Hungar, a deputy solicitor general, about the impact of the administration's shifting positions. "Since the government is now taking the position that another Duke could do just what was done here and there's an enforcement action pending, would you, if you prevailed in that enforcement action, nonetheless enforce, though it goes against the current government policy?"

"Your Honor, the 2005 proposal that you're referring to is only a proposal. . . . It has not been adopted," Hungar replied. "So the rules as they exist today are the same as the ones we're talking about, although there was a modification in 2002."

A decision in the case is expected by July.

Clean Air Act Cited In Expected Lawsuit

Groups Plan Move to Stop Highway

By Eric M. Weiss, Staff Writer

Washington Post, Thursday, November 2, 2006

Two environmental groups say they will sue to stop construction of the intercounty connector, arguing that building the highway would violate sections of the federal Clean Air Act.

Environmental Defense and the Maryland chapter of the Sierra Club said the Washington region already fails to meet certain clean-air standards and that building the six-lane, 18-mile highway would increase pollution. The \$2.4 billion intercounty connector would link Interstate 270 in Montgomery County with Interstate 95 in Prince George's County.

"There are elementary schools and nursing centers close to the ICC, and people who live and work within several hundred yards of this new highway will suffer health problems as a result of breathing fine particles from the trucks and buses and cars," said Michael Replogle, transportation director for Environmental Defense, which has filed an "intent to sue" notice with the federal government, Maryland and the regional Transportation Planning Board.

Because the Washington region does not comply with federal limits on fine particles, the groups say, federal officials cannot legally approve or fund any project that would increase the amount of particulates. The highway was given final approval by federal officials in June and some minor construction projects have begun.

"It's up to the federal agencies to meet their responsibilities under the Clean Air Act and take a good hard look at this and whether the approval of this road was a legal action," Replogle said.

A 60-day notice of intent to sue is required when taking legal action against federal agencies for violating the Clean Air Act, said Hope Babcock, director of the Institute for Public Representation at Georgetown University Law Center, which is representing the environmental groups.

"We want them to go back and do an analysis that is not defective," she said.

Maryland Transportation Secretary Robert L. Flanagan said yesterday that the suit neither surprised nor worried him.

"Every highway project has to withstand the test of a lawsuit," Flanagan said. "In this particular case, the enemies of the ICC have not given up."

Flanagan said all the proper studies have been done and all applicable regulations have been complied with. He added that Maryland's study on the small particulate impact of the highway has been held up by federal officials as an example of how to conduct an environmental review.

"They have been planning a lawsuit since day one," Flanagan said of the environmental groups. "And by the same token, we have had legal advisers carefully screen every step we made so we can defend the lawsuit."

Last April, highway opponents filed 129 pages of objections to the highway's environmental impact report, saying planners failed to investigate cheaper, cleaner alternatives to the region's traffic woes.

Supporters say the highway is necessary to link the thriving business community that runs along I-270 to Baltimore-Washington International Thurgood Marshall Airport and the Port of Baltimore, both accessible by I-95. They also say it will take drivers off local roads and give them a more direct route across Maryland's crowded northern suburbs.

[Visalia Times-Delta, Letter to the Editor, Thursday, Nov. 2, 2006:](#)
Miller was proud to attend candidates forum

Steve Haze was not the only candidate present at last week's forum hosted by the Visalia Times-Delta and the League of Women's Voters on Oct. 16. Two candidates for the 34th Assembly seat were there, Democrat Desmond Farrelly and Green Party David Silva. Green Party Candidate for the 21st Congressional District John Miller, and the candidates for the COS Board of Trustees were also present.

Republicans Devin Nunes and Bill Maze were noticeably absent, which speaks volumes about their leadership. They either show considerable disdain for the voting public, are overconfident, or they are afraid to defend their policies. Rep. Nunes also has refused to attend forums in Fresno, in which both Mr. Miller and Mr. Haze have appeared.

In the case of Rep. Nunes, this is especially telling, because he continues to represent the interests of big oil and large corporations; he continues to fund the Iraq war and drive our government into deeper debt; he has links to disgraced lobbyist Jack Abramoff and to Tom Delay; he has failed to address global warming, climate change and [air pollution](#), which harms the health and economy of our Valley and is one of the major concerns of all Valley residents. He will not regulate the dairy industry, which is a major source of this pollution, nor will he take steps to control urban sprawl.

It must be noted, although last Monday's forum was sparsely attended, it was sponsored by not only the League of Women Voters, but also by the Visalia Times-Delta, the Visalia Chamber of Commerce, the Building Industry Council, and the Tulare County Farm Bureau. Rep. Nunes was disrespectful to all of these groups and the voters by refusing to attend.

I was honored to be there, because I believe it is our civic duty to participate in democracy and to try and hold our elected officials accountable for their actions.

JOHN ROGER MILLER, Ducor

[Note: The following clip in Spanish discusses the motion being filed by three San Joaquin Valley organizations to support the air district's authority to implement ISR. For more information, contact Maricela \(559\) 230-5849.](#)

Litigan tres organizaciones ambientalistas en favor de restricción a contaminación

Defensa Ambiental, Sierra Club y Promotores de Aire Saludable entablaron la demanda en una corte superior de California en la ciudad de Fresno

Noticiero Latino, Aire Libre, Fresno, CA
Radio Bilingüe, Wednesday, November 1, 2006

Por lo menos tres organizaciones ambientalistas del Valle de San Joaquín en California presentan hoy una contra demanda a la Asociación de la Construcción estatal para garantizar que un reglamento que impone límites a la contaminación continúe en vigor.

Defensa Ambiental, Sierra Club y Promotores de Aire Saludable entablan la demanda en una corte superior de California en la ciudad de Fresno.

Los grupos exigen que la asociación de constructores detenga una demanda contra la Oficina Regional de Administración de Calidad del Aire del Valle de San Joaquín. Los empresarios suponen que el reglamento afecta sus negocios, pero la oficina regional demuestra que esos negocios crean fuerte contaminación.