

## **In need of overhaul?**

### **Objection over planned truck stop west of Lodi adds new fire to debate over California Environmental Quality Act**

By Alex Breitler

Stockton Record, Tuesday, February 19, 2013

Virtually no one objected to developer Kevin Huber's plans for a new truck stop.

Not the environmental groups. Not the air quality cops. Not the county bureaucrats.

Indeed, since the project was formally pitched nearly three years ago at Flag City west of Lodi, there has been only one objection on record: that of the rival truck stop across the street.

Pilot Flying J fought the plan and delayed it - also delaying the 40 jobs the new Love's truck stop is supposed to provide, the \$400,000-plus per year in tax revenue and the extra space for big rigs that clog the streets around the existing facility.

Perhaps most telling, however, is that Pilot based its challenge upon the state's foremost environmental law, less than five years after Pilot CEO Jimmy Haslam complained publicly of California's "extreme" regulations to protect the environment.

"It's unbelievable," Huber said last week.

Overhauling the California Environmental Quality Act is a hot topic in Sacramento this year, and the Flying J case might be one example why.

"Unfortunately, CEQA has been abused by people who really don't care about the environment," Huber said. "I think when a competitor uses the CEQA sword as a means to delay competition, that is an abuse of the legislation."

Gov. Jerry Brown has indicated his desire for change, last year referring to CEQA reform as "the Lord's work." Legislation is expected this year.

Coalitions have mobilized on both sides of the debate. The developers argue the law is misused and manipulated by sometimes shadowy interest groups and unions, bogging down projects in costly litigation; environmentalists say these fears are overstated, that the law is the only way for citizens to challenge potentially damaging projects and preserve their quality of life.

All this discussion comes at a time when the state is considering a massive infrastructure project in the Delta - twin tunnels to send water to southland farms and cities. Some Delta advocates fear weakening CEQA will pave the way for that plan.

"I'll be honest: CEQA will be one of the tools to prevent the utter destruction of this estuary," said Stockton environmentalist Bill Jennings.

This city is no stranger to CEQA battles.

A fight over its growth-inducing general plan resulted in a 2008 settlement agreement among the city, the Sierra Club and then-Attorney General Jerry Brown. New policies attempt to reduce the city's climate footprint and curb urban sprawl.

It wouldn't have happened without CEQA, said Rachel Hooper, a San Francisco-based land use attorney who represented the Sierra Club in its challenge.

"There is no other law that could have made this difference," Hooper said. "CEQA absolutely saved the day for this monumental project for the city of Stockton. And that's why those of us who work with CEQA are so intent upon preserving it. We see the difference it can make."

It took a CEQA challenge to upend the privatization of the city waterworks. Hooper was involved in that case too.

And a challenge under the same law led to the creation of a farmland preservation program that requires developers, before they pave over the fields, to pay a fee toward saving open land elsewhere.

"That's been a huge success that never would have occurred without CEQA lawsuits," said Eric Parfrey, a Sierra Club activist from Stockton, and a planner himself.

"There are always these individual horror stories people can dredge up" about the law being abused, Parfrey said. "But considering how many CEQA documents are written - thousands each year - out of all those thousands less than 1 percent are challenged in court."

But attorneys remember well that 1 percent.

Four years ago Stockton attorney Howard Seligman defended a group that wanted to build a mosque in Morada. Residents sued to block it under CEQA, citing concerns about fire safety, traffic, groundwater and soil, though documents at the time also suggested cultural concerns.

The case ended with a settlement. Much like Huber's truck stop, the end result was that the project was allowed to move forward with essentially the same conditions that had originally been imposed.

"You spend all that money, and the bottom line is, in that particular case, the ultimate disposition was a reaffirmation of what the board had already approved," Seligman said last week.

Some have suggested courts be authorized to require plaintiffs to post bond at the beginning of the proceedings to cover the defendants' attorney fees, if the case turns out to be frivolous. Another solution, they say, would restrict whether CEQA lawsuits can be filed if they satisfy the law in the eyes of approving agencies.

In the truck stop case, Pilot denies that its interest in blocking the project is purely to avoid competition.

"We want to make sure that the cities, counties and state government of California are not setting aside health and safety issues because they are in a fiscal crunch and are trying to create tax revenue as quickly as possible," Bill Mulligan, Pilot's vice president, said in a prepared statement.

Pilot has said it's concerned about air quality and traffic.

But supervisors denied Pilot's latest appeal last Tuesday. And ultimately, despite the extra time and money spent on additional environmental review, the project is essentially the same today as when it was proposed in 2010, Huber said.

And the struggle may continue.

Huber said Pilot could still sue to challenge last week's decision.

## **Stanislaus County transit plan to be aired**

By Kevin Valine

Modesto Bee, Sunday, February 17, 2013

MODESTO -- Residents can weigh in regarding a long-term countywide transportation and land-use plan at a Tuesday meeting of the Modesto City Council and Planning Commission.

Representatives of the Stanislaus Council of Governments will be on hand to explain Valley Vision Stanislaus, as well as solicit input on topics such as public transportation, roads, pedestrian and bicycle paths, and housing.

Valley Vision Stanislaus will look at ways to reduce greenhouse gas emissions through coordinating transportation and land-use planning as required under a new state law. Examples include locating housing near employment centers or making it easier for workers to take buses or ride bicycles to work.

The meeting in Modesto is one of many StanCOG — the county's transportation planning agency — will hold throughout the county. Residents will get a chance to provide comments once a draft plan has been created. A final plan should go before StanCOG, the county and its nine cities for adoption in October.

Valley Vision Stanislaus will not take the place of county or city land-use plans, said Kendall Flint, part of the consulting team hired by StanCOG to help develop the countywide planning document.

But Flint said local jurisdictions that follow Valley Vision will find it easier to get federal funding and save money by using Valley Vision's environmental reports as the foundation for the environmental review of their projects.

Flint said Valley Vision will be a 25- to 30-year plan and will cost \$500,000 to create, with funding provided by the federal government.

Tuesday's study session will start at 5:30 p.m. in the basement chamber of Tenth Street Place, 1010 10th St. For more on this transportation and land-use initiative, including dates of other meetings, go to [www.valleyvisionstanislaus.com](http://www.valleyvisionstanislaus.com).

## **Distribution centers quietly add to Valley pollution**

By Mark Grossi

The Fresno Bee, Saturday, February 16, 2013

Hazardous waste, treated human sewage and farm chemicals are part of a dumping ground culture surrounding the San Joaquin Valley, but other deadly health risks slip under the radar.

Through a legal loophole, a company with global sales of \$4 billion opened its West Coast distribution center in Visalia last year without having to follow a rule that curbs air pollution, much of it generated by traffic.

Critics, who sued over it, argue traffic and diesel truck exhaust from the 500,000-square-foot distribution center will create tons of air pollution. Air pollution kills several hundred people prematurely each year in the Valley.

They say VWR International, a laboratory supply and distribution company, needs to use the cleanest trucks available or buy cleaner equipment for businesses in the area.

It's a classic case of big-city pollution being dumped into the Valley, say air-quality activists. The distribution center moved from the Bay Area to the Valley, where the air is more tainted than anywhere in the country except the South Coast Air Basin.

VWR shouldn't be allowed to leverage profits on the lungs of the people living here, says Fresno activist Kevin Hall, executive director of the Central Valley Air Quality Coalition.

"It's shocking," Hall said. "This is exploitation of the Valley's economic crisis."

Health researchers say diesel exhaust is carcinogenic. Diesel is now considered the biggest single contributor to air pollution in the Valley.

To help combat pollution from urban sprawl and traffic, the San Joaquin Valley Air Pollution Control District has a rule requiring new businesses to clean up or pay for cleanups in the area, as well as make a full accounting of the dirty air that will be created.

The 2005 rule forces new projects at the edges of town to pay fees for traffic and other types of pollution. The fees are used to help buy cleaner diesel engines for buses, tractors and trucks in the area.

But the air district says the rule doesn't apply in VWR's case. The company is exempt because there is no "discretionary decision" involved from the city -- such as a City Council vote on a conditional-use permit.

The VWR distribution center didn't need such a permit, Visalia officials say. The center is appropriately located in the city's industrial park that was zoned 20 years ago for this kind of use.

City attorney Alex Peltzer said the City Council voted on the zoning for that land in the 1990s. At that time, the environmental issues were debated and considered, he said. It is a common, legal practice throughout California, say many experts.

Peltzer added that objections to the VWR project are really about union issues. The Teamsters Joint Council 7 alleged union-busting activities when VWR moved to Visalia from Brisbane in the Bay Area.

"The Teamsters are trying to say that this is an environmental issue," Peltzer said. "It's really a union issue."

On Thursday, 61 employees of VWR in Visalia voted to join Teamsters Local 948. But a lawyer representing the Teamsters said there has been no change in the lawsuit the union filed against the VWR project. The lawsuit says the company should address air-quality issues.

Three public-interest groups -- the Coalition for Clean Air, Center for Environmental Health and the Association of Irrigated Residents -- also are part of the suit.

A Tulare County judge dismissed it in 2011. But in September last year, the 5th District Court of Appeal in Fresno reinstated the case, saying the plaintiffs have the right to make sure the city follows environmental law. It is supposed to come back before the court in Tulare County.

The plaintiffs also filed a federal lawsuit in Fresno, citing the U.S. Clean Air Act. A federal judge this month denied VWR's motion to dismiss the case. It is on hold until the Tulare County court rules.

There is good reason not to dismiss the case, according to the ruling.

"Being compelled to breathe air less pure than that which otherwise would be mandated by the (Clean Air Act) is a valid injury," Judge Lawrence J. O'Neill wrote.

Oakland attorney Richard Drury, representing the plaintiffs, said the public has a right to know how much pollution this new distribution center will create. That information is not available now, he said.

"We tried to stop the center from opening this year, but we were unsuccessful," Drury said. "But it's not too late to do the right thing, follow the air district's rule and account for all the pollution."

### **Traffic, dirty air**

Diesel trucks are the biggest dirty-air villain in the Valley and California. For a key ozone chemical called oxides of nitrogen, the trucks dwarf cars, trains, power plants, oilfield production and any other single source in the Valley.

Diesel trucks also are the biggest player in the business of moving goods here. Recent studies show they move more than 90% of the half billion tons of goods transported each year in the Valley, including hauling products to and from large distribution centers.

In the last five years, distribution centers have blossomed in Stockton, Turlock, Fresno, Porterville, Shafter and other Valley cities.

In the northwest Valley, Amazon is preparing to build distribution centers at Patterson and Tracy. The Seattle company decided to build centers here after agreeing in 2011 to start collecting state and local sales taxes on goods purchased by California shoppers.

To the south, IKEA, the home furnishings giant, set up shop many years ago next to Interstate 5 at the Grapevine. Wal-Mart plans a distribution center in Merced. The new VWR center in Visalia opened last year.

"Land is still cheap here," said Seyed Sadredin, executive director of the Valley air district. "Distribution centers can locate close to transportation corridors."

The air district's innovative rule for urban sprawl was pointed at all kinds of businesses, shopping centers and residential developments. Distribution centers are clearly among them. Since 2007, the rule has been triggered for 20 distribution center projects.

Here's how it works:

District analysts figure how much pollution each new housing development or business would normally create, based on construction and traffic. According to the rule, the new project must reduce 50% of the estimated pollution.

To help meet the threshold, several new distribution centers used the most air-friendly construction practices possible. That included hiring building contractors whose vehicles and equipment run 20% cleaner than the state average.

But if the air district's threshold can't be met, the owner must pay a fee -- about \$9,000 per ton of pollution above the threshold.

The fee has raised \$6 million from the distribution centers. The money is used in many kinds of pollution reduction, such as helping farmers buy better diesel engines for water pumps or tractors.

The expected pollution reduction over the next several years is nearly 2,000 tons, prompting Sadredin to call it a success.

He added that the VWR distribution center in Visalia had been the only large center to use the loophole in the rule.

But this year, Fry's Electronics will open a 175,000-square-foot warehouse in Hanford where it will send returned merchandise from its 16 retail locations in California. The district said it appears the rule would not apply to Fry's, either.

### **Expensive air**

The VWR Visalia distribution center is the largest in the company's worldwide network -- which spans more than 30 countries in Europe, Asia, North and South America.

The company estimates the cost of the Visalia project at nearly \$40 million. It's an investment creating positive economic ripples, especially in Visalia.

The center started taking in shipments last June, and its staff is more than 90, VWR reported.

From the Visalia site, the company can reach more customers with next-day delivery than it did before.

In Visalia's industrial park, distribution centers can quickly send shipments to the city airport, use rail or state highways -- 99 or 198.

Thousands of people work at the industrial park, which includes other distribution centers such as JoAnn Fabric and VF Industries, distributing sports wear.

In a county with an unemployment rate bouncing between 14% and 15% -- the state and national rates are below 10% -- the industrial park is an important part of the region's growth.

"Even in the good times, Tulare County has struggled with unemployment," said Visalia assistant city manager Mike Olmos. "There are jobs here at the industrial park for people throughout this area."

But any large project with the potential to add a lot of air pollution should undergo the air district's rule, activists say. It means more than extra money from pollution fees.

The environmental analysis tells the air district how much pollution is being added to the air as cities expand. It is information the district needs to devise new ways to reduce pollution and achieve stringent air quality standards.

But that advantage was lost in the case of the VWR distribution center, activists say.

In the absence of a pollution analysis, experts hired by the plaintiffs in the lawsuit estimate the pollution, saying there would be at least 1,780 vehicle trips per day and enough ozone-making gases to qualify as a major pollution source.

That's wildly out of kilter compared to VWR's numbers. The company says there will be 32 to 42 truck trips per day, adding that carriers like United Parcel Service are hired to do the hauling.

"Sustainability is important to VWR -- it is good for our company and good for the community," said spokeswoman Valerie Collado in an email.

But the company should not have been allowed into Visalia based on a general environmental review that was done in the 1990s, activists say. No matter what VWR says, there is no official environmental statement of how much pollution is expected from this center.

Says activist Hall: "Doing environmental review this way is like running your business on fax machines and land lines."

[Fresno Bee Op-Ed, Friday, Feb. 15, 2013:](#)

## **Casey Diaz: Cleaning the Valley air requires teamwork**

*Casey Diaz is an owner of Charles Diaz Trucking Inc., a family company based in Fresno, and vice president of the California Trucking Association.*

In the trucking industry, you understand very quickly that you're not really in business alone. Your success depends on that of your neighbors and fellow businesses. Their success depends on your ability to get their products from the fields or the plant to customers. You learn from day one that we need each other to succeed.

That's been the reality of my family's business since the day my father loaded his first truckload of plants at a Madera nursery, and it's how things work today, 30 years later. We've grown to operate 26 trucks, and every day, we move tons of produce, frozen food and juice from our partners' businesses to their customers. We understand that we're part of something bigger, that we're all in this together.

This understanding also is reflected in our approach to a key issue in our industry. We believe that as a trucking firm, and as a Central Valley family, we have an important role to fill in helping make our air cleaner. This is why we've been active in helping find new ways to do business and in embracing new technology. We are working every year to put cleaner trucks on the road and to test new engines and fuels, like natural gas, for our fleet.

In California, trucking firms have been given a much bigger role in cleaning the air than in the rest of the United States. Whereas federal regulations focus on the manufacturers of trucks and heavy equipment, California puts the primary burden of clean-air regulations on those who operate the equipment. Trucking firms are required to replace expensive equipment much sooner than was previously necessary, and to replace it with costlier versions. This isn't easy, but it's a role we've accepted and to which we are committed.

Fortunately, we haven't been left entirely without help. California has recognized that no company and no industry could bear this regulatory burden without assistance. After all, complying with California's clean-air mandates costs the state's truckers more than \$1 billion per year. What's more, many of these costly mandates hit our industry at the same time as the recession. A sagging economy meant less freight to haul, and increased competition meant lower rates for that freight.

Without some way to share these costs, trucking firms like the one my father built would never make it to the next generation. And, because trucks are involved in virtually every product you use or buy, increasing the cost of trucking increases the cost of everything consumers purchase.

These realities led our state to implement several vital programs to build cleaner fleets and comply with strict clean-air regulations. One of these, created in 2007 by Assembly Bill 118, has been instrumental in our move toward more modern, cleaner trucks and alternative fuels.

But the work of cleaning the Central Valley's air is closer to the beginning than the end. We all have a long way to go -- many more trucks to update, equipment to replace and checks to write.

Two bills in the California Legislature recognize this long-term task and the need for all of us to help each other succeed. These bills, Assembly Bill 8 by Assembly Members Henry Perea, D-Fresno, and a companion measure, Senate Bill 11, would extend incentive and funding programs that help companies like ours help clean the skies above our valley and our state.

These bills reflect the reality that cleaner air won't come overnight. They extend the funding programs through 2023, giving all of us a chance to make meaningful progress. And, they reflect the understanding that regulations by themselves won't clean the skies. If we are to achieve our goals, we have to have businesses that can succeed and shoulder the burden.

By advancing these bills, our lawmakers can demonstrate they understand what many Valley businesses have known all along: We're all in this together and helping each other is the path to success

Letters to the Bakersfield Californian, Sunday, Feb. 17, 2013:

### **Coal plant a bad idea in a region with dirty air**

I am bothered to learn that the San Joaquin Valley Air Pollution Control District has issued a preliminary air permit to SCS Energy for a coal power plant in Kern County near Buttonwillow called Hydrogen Energy California, or HECA.

Having the dirtiest air quality in the nation, it should be unthinkable to permit a plant that will be using 300 trucks a day of coal to fuel it. The emissions, including mercury, will only make our air quality worse. The immediate effects might not be noticeable, but what will the effects be over the next 10 years?

If more people knew of this, more people would be against it.

*James Hernandez, Bakersfield*

### **Kern needs HECA project**

During the recent TV news coverage of permitting for the proposed HECA plant, a protester said that the plant is infringing on farmers, so they should build the plant somewhere else. I disagree.

Firstly, they are building it there because the oil is there. Secondly, the gasified coal that's burned to generate power is considered a clean source.

Kern County needs this huge project. It will pump millions into the local economy, create a lot of much-needed jobs and provide another electrical generating source that this state desperately needs.

*Fred Evenson, Bakersfield*