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ENVIRONMENTAL PROTECTION LAWS UNDER SIEGE: THE ADVANCE OF EFFORTS TO CREATE EXEMPTIONS TO CEQA AND SUSPEND AB 32

By

*Douglas P. Carstens**

I. Introduction

This year, attacks against the Global Warming Solutions Act (AB 32) and the California Environmental Quality Act (CEQA) are intense. CEQA for the past several decades has protected California's natural environment and the quality of Californians' lives in numerous ways. It has enabled ordinary people, environmental and community groups, and public agencies to participate in public decision-making about a wide variety of projects affecting their communities. AB 32 has been touted as an example of Governor Schwarzenegger's commitment to a greener California, and is credited with setting an example nationwide of how to control the emissions of greenhouse gasses.

However, some manufacturers, builders, engineers, developers, business interests, and others have blamed CEQA and AB 32 for many of the economic ills that beset the state. They have called for the suspension of AB 32 until the economy improves, and for significant limitations on CEQA. Although many recent proposals and two enacted bills last year dealt with exempting certain projects, most proposals to amend CEQA focus on creating limitations on judicial review of decisions under the Act to curb alleged abuse of CEQA and shorten delays associated with litigation. As a result, the ability of concerned individuals, groups, and public agencies to effectively challenge that review in court to ensure its legal sufficiency would be eliminated. This article explores the background of this current wave of proposals, identifies and explains some of the exemptions, and identifies the various arguments that have been espoused for and against the proposals.

* Douglas Carstens is a partner in Chatten-Brown & Carstens in Santa Monica, a firm that represents plaintiffs in environmental and land use actions. The firm was special counsel to the City of Walnut in challenging the approval of the NFL football stadium by the City of Industry that preceded enactment of AB3x 81 to exempt the stadium from CEQA.

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II. Background to Current Environmental Exemption and Suspension Proposals

A. The Global Warming Solutions Act (AB 32) Was Passed in 2006

In 2006, the Legislature passed AB 32, the Global Warming Solutions Act, to set greenhouse gas emissions reduction goals into law. It directed the California Air Resources Board to develop early actions to reduce greenhouse gases (GHGs) and prepare a longer range plan to identify how to limit GHG emissions.

B. Historical Development of CEQA and Reform Efforts

CEQA was passed by the California Legislature in 1970. Soon after CEQA's passage, the California Supreme Court interpreted its protections to apply to private as well as public projects [*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 104 Cal. Rptr. 761, 502 P.2d 1049]. In response to this decision, business interests sought and obtained revisions to CEQA to set short statute of limitations and ensure it allowed for project approval despite their impacts [Barbour and Teitz, "CEQA Reform: Issues and Options," Public Policy Institute of California (PPIC), April 6, 2005, p. 7, *available at* www.ppic.org/content/pubs/op/OP_405EBOP.pdf].

In the 1980s, there was relatively little effort to reform CEQA, though some reforms occurred after a recession of the state economy in 1983 led Governor Deukmejian to appoint a task force to recommend ways to ease CEQA's regulatory burden [Barbour and Teitz, "CEQA Reform: Issues and Options," p. 7]. Then, in the severe recession of the early 1990s, there were concerted efforts directed at changing the standard for when projects would require extensive environmental review. More than 60 bills to revise CEQA were introduced in the Legislature in 1993 [Barbour and Teitz, "CEQA Reform: Issues and Options," p. 7]. Some amendments to CEQA passed, but they did not fundamentally weaken the statute. They included codification of mitigated negative declarations, revised time limits, and limits on judicial remedies [Barbour and Teitz, "CEQA Reform: Issues and Options," p. 9].

The next major effort to limit CEQA occurred in the summer of 2007 when some legislators attempted to remove GHGs from the purview of CEQA. The crisis was resolved with passage of Pub. Res. Code § 21097, which actually recognized that CEQA applies to global warming impacts, but exempted transportation and flooding projects from certain challenges [Pub. Res. Code § 21097, now superseded by Pub. Res. Code § 21083.05 (requiring Resources Agency promulgation of guidelines for analysis of GHG impacts)].

Then, on the heels of the severe recession of 2008, in 2009 the Legislature exempted an NFL Stadium in the City of Industry from CEQA. CEQA has generally applicable categorical exemptions established by the Resources Agency and various statutory exemptions. Categorical exemptions exempt a class of projects such as environmental restoration

or minor land use alterations from CEQA, subject to various exceptions [CEQA Guidelines § 15354; *see, e.g.*, CEQA Guidelines §§ 15300–15333]. Statutory exemptions have been passed for specific, usually publicly necessary projects such as prisons or railroad lines [Pub. Res. Code §§ 21080.01 (prison in San Luis Obispo County), 21080.02 (prison in Kings County), 21080.13 (railroad grade separations); 21080.05 (railroad right of way) and 21080.04 (Napa Valley Wine Train)]. However, until 2009, there had never been a specific CEQA exemption passed for a privately owned and used project.

C. A Proposed Football Stadium Was Given a Pass

In the closing days of the 2009 legislative session, Majestic Realty and the City of Industry proposed that a 75,000 seat National Football League (NFL) stadium and an associated three million-square-foot entertainment and retail complex be exempted from CEQA through Assembly Bill 81 x3. It exempted the proposed stadium from further environmental review and from pending and future CEQA lawsuits. After the City of Industry approved the stadium administratively, the nearby City of Walnut filed one lawsuit and a local group filed another one, noting that the original environmental impact report (EIR) was for a business park and did not adequately analyze a stadium. Although proponents claimed, without citing any evidence, that the project would provide 18,000 jobs, an economic analysis by the City of Walnut found that this stadium would produce only part-time and low-wage positions, and not even 18,000 of those. Opponents of the exemption in the Legislature argued that a healthy environment and laws to protect it create the foundation for a strong economy and job creation. The exemption legislation passed the Assembly within a day of its introduction in the last two days of the Legislative session. It was not referred to any legislative committee with experience with CEQA, but rather to the Arts, Entertainment and Sports Committee. Without time for verification of facts, some legislators were convinced by misinformation supplied by stadium proponents that an EIR had already been done for the stadium, that the stadium would be the first LEEDs certified stadium in the country, and that it would create 18,000 jobs. A few weeks later, again without referral to any environmental committees, the Senate passed the legislation without amendment. Governor Schwarzenegger supported the project as a boost to California's economy. At the time of this writing nine months after the passage of the exemption, no construction has been commenced on the stadium, and no NFL team has yet committed to move there.

D. An Exemption for an Air Pollution Rule Was Passed

At the end of the same 2009 legislative session, a bill was passed for the Priority Reserve credit program [AB 1318 and SB 827]. The program allowed the Southern

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California Air Quality Management District to reserve some emission credits for permitting of priority facilities such as power plants, but it had been successfully challenged in two court cases. The air district complained to the Legislature that the court decision created a de facto air quality permit moratorium in the South Coast Air Basin. The two bills effectively abrogated the court decision, contrary to the Legislature's usual reluctance to interfere in pending litigation.

III. Proposals to Reduce Environmental Protections Are Pending in the Legislature and in the Initiative Process

The success in exempting projects in 2009 apparently emboldened longstanding opponents to CEQA and AB 32 who claim rollbacks are needed because of the economy.

A. Legislative Proposals Would Limit CEQA's Enforcement

In what is called the "CEQA Litigation Protection Pilot Program of 2010," the Governor proposed that the Secretary of Business, Transportation, and Housing Administration select 125 projects over each of the next five years and grant them judicial immunity from the California Environmental Quality Act. For those 125 projects, local communities, cities, and counties would not be able to test in court the adequacy of the environmental review prepared for a project to ensure it met minimal legal requirements.

The four identical bills introduced to promote this program in February 2010 [ABX8 37 (Calderon & Nestande), AB 1805 (Calderon & Nestande), SBX8 42 (Correa & Cogdill), and SB 1010 (Correa & Cogdill)] would prohibit "court review of a lead agency's certification of an EIR or adoption of a mitigated negative declaration, as well as a lead or responsible agency's project approval, for 125 projects that are selected by the Business, Transportation and Housing Agency (BT&H) over a five-year period" [Senate Com. on Env. Quality, Bill Analysis for SB 1010]. Although most bills have been held in committee, observers anticipate that the concepts they propose will be taken up during budget negotiations in the summer [Los Angeles Times editorial, "Jobs at any price?" Feb. 28, 2010].

Some business interests view these exemptions as a way to expedite construction of numerous, unspecified projects, and boost the economy. Proponents of proposed projects say the bills would create jobs and promote economic progress because they would realize cost savings by cutting the review time necessary to identify impacts and develop mitigation measures for those impacts. Bill opponents include environmental groups, planners, public health advocates, and consumer groups, who argue these bills would strip communities of the ability to hold developers and project proponents accountable for developing and implementing mitigation measures that reduce or avoid a development project's significant adverse effects in such areas as air and water quality, traffic congestion, noise, and open space. People in California's communities, cities, and counties would not be able to enforce the environmental review process of CEQA for any of the 125 projects.

B. Proposed Initiatives Would Undermine Environmental Protections

In addition to the proposals in the Legislature, various measures have been submitted to the Attorney General as initiatives that would undermine environmental protections. The common thread in these measures is to rollback, restrict, or eliminate protections provided by environmental laws in the name of promoting economic activity. The California Jobs and Housing Act would restrict the right to challenge a proposed project's environmental impact report to the California Attorney General [Initiative 10-0009 and Initiative 10-0008; www.sos.ca.gov/elections/ballot-measures/cleared-for-circulation.htm]. It would "preclude any person, city, county, or other entity, other than the state Attorney General, from bringing a lawsuit that alleges that an environmental impact report does not comply with the California Environmental Quality Act because it fails to identify ways to minimize significant environmental effects, fails to offer alternatives to the proposed project, or fails to satisfy other legal requirements" [www.sos.ca.gov/elections/ballot-measures/cleared-for-circulation.htm. Initiative 10-0016, which also qualified for circulation, "Repeals the California Environmental Quality Act, the California Coastal Act, the California Endangered Species Act, and the California Global Warming Solutions Act"]. Initiative 09-0104 "suspends State laws requiring reduced greenhouse gas emissions that cause global warming, until California's unemployment rate drops to 5.5 percent or less for four consecutive quarters" [www.sos.ca.gov/elections/ballot-measures/pending-signature-verification.htm]. "California's unemployment rate is currently hovering around 13%, and economists do not expect that level to fall below 5.5% in the foreseeable future. So, for all intents and purposes, the initiative if successful would effectively sound the death knell for AB 32" [Richard Frank, "The Looming Political Battle Over AB 32 & California's Environmental & Economic Future" (May 3, 2010), http://legalplanet.wordpress.com/2010/05/03/the-looming-political-battle-over-ab-32-californias-environmental-economic-future/].

Presently, there is no single public agency or individual charged with enforcement of CEQA. Sean Hecht, Executive Director of UCLA's Environmental Law Center, said, "Judicial review is the only way of ensuring environmental review under CEQA actually complies with the law, because there is no state oversight agency to ensure compliance" ["Schwarzenegger, Calderon propose relaxing environmental laws for development," Rebecca Kimitch, San Gabriel Valley Tribune, 2/20/2010]. Despite this lack of a designated enforcement mechanism, CEQA has achieved its vitality by allowing a broad range of potentially interested parties to go to court to enforce its requirements. Theoretically, the state's attorney general as the chief law enforcement officer of the state has the responsibility for enforcement of CEQA and all other state laws. However, the California Supreme Court has observed there is no practical way that the Attorney General can monitor the thousands of proposed projects that are subject to CEQA and ensure that its mandates are met in every instance: "Although there are within the executive branch of the government offices and institutions (exemplified by the Attorney General) whose function it is to represent the general public in such matters and to ensure proper enforcement, for various reasons the burden of enforcement is not always adequately carried by those offices and institutions, rendering some sort of private action imperative" [*Serrano v. Priest* (1977) 20 Cal. 3d 25, 44, 141 Cal. Rptr. 315, 569 P.2d 1303].

IV. Arguments in Favor of Legislative CEQA Exemptions

A. CEQA and AB 32 Allegedly Slow Down Projects and Kill Jobs

Proponents of CEQA exemption legislation and AB 32 suspension rely on similar arguments to advance their positions. One common argument has been that environmental review under CEQA and restrictions imposed by AB 32 interfere with economic activity in the state and prevent job creation. This argument was used to support the NFL Stadium exemption. Assemblyman Anthony Adams, a proponent of the CEQA exemption legislation, stated, "We have to get this economy moving, and we can't do that if we allow our own rules to prohibit people from getting back to work" ["Schwarzenegger, Calderon propose relaxing environmental laws for development," Rebecca Kimitch, San Gabriel Valley Tribune, 02/20/2010].

The initiative to suspend AB 32 requirements is named the California Jobs Initiative, thus implying it will positively affect the jobs situation in the state. Proponents of suspending AB 32 say it will cost California up to 1.1 million jobs and devastate budgets of California social services agencies through massive losses in tax revenue [www.suspendab32.org/ab_32.htm]. The initiative to suspend private CEQA enforcement is entitled the Jobs and Housing Initiative, thus implying it might positively benefit jobs and housing growth.

Regarding claims that CEQA interferes with economic activity, a 1997 report by the Legislative Analyst's Office stated: "It is difficult to assess fully whether concerns about CEQA litigation act as a major impediment to business development because there has not been any study of CEQA's economic impact on business statewide" ["CEQA: Making it Work Better," California Legislative Analyst's Office, March 20, 1997, *available at* www.lao.ca.gov/1997/032097_ceqa/ceqa_397.html]. This report found that the evidence of problems CEQA opponents rely on "is often anecdotal ... there is no quantitative data available to enable an assessment of the magnitude of these problems or measure their overall impact."

People opposing relaxation of environmental restrictions point out that the lack of job creation is a function of the poor economy, not regulatory restrictions imposed by CEQA or AB 32. They view the attacks on the decades old CEQA statute in rough economic times as opportunistic, with those in the position to gain the most economically from relaxed regulations arguing that the regulations interfere with the economy as a whole. A Los Angeles Times editorial stated "many of the stimulus bills are simply retreads that have been reintroduced almost annually on behalf of business interests that opposed California's standards even when the economy was booming and unemployment was low" [Los Angeles Times, "Jobs at Any Price?" Feb. 28, 2010]. For opponents of exemptions and AB 32 rollbacks, the undercutting of environmental protections are not so much about creating jobs as they are about protecting the profit margins of the proponents of the roll-backs. According to Cal-Access, the top donations to the effort to suspend AB 32 were all from businesses involved in fossil fuels: Valero Energy Corp., Occidental Petroleum, Tesoro Companies, World Oil Corporation, and Tower Energy Group [http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1323890&view=received].

Other observers opine that AB 32 actually creates jobs and is good for the economy. The Governor stated, "AB 32 will add jobs, create savings in energy costs and increase personal incomes. In fact, the highest job creation California is seeing right now is in our green economy" [http://gov.ca.gov/press-release/15063].

Professor Richard Frank of the UC Berkeley School of Law said [Richard Frank, "The Looming Political Battle Over AB 32 & California's Environmental & Economic

Future," (May 3, 2010), http://legalplanet.wordpress.com/2010/05/03/the-looming-political-battle-over-ab-32-californias-environmental-economic-future/]:

> As a result of the Golden State's past, demonstrated commitment to effective greenhouse gas reduction efforts and expansion of its renewable energy portfolio, California has become a magnet for green tech venture capital: the Sacramento Bee reports that in 2009, California attracted 60% of all the venture investment in North America for companies involved in renewable fuels and alternative vehicles.
>
> Now, as a result of the pending initiative [to suspend AB 32], many of those same companies are beginning to consider whether they should pursue their business efforts elsewhere. And other states-including Ohio and Nevada-are aggressively recruiting these firms away from California, to their own jurisdictions.

Senator Alan Lowenthal called the proposal for creation of multiple CEQA exemptions a "non-starter," noting, "It is true California is in an economic crisis and it needs to set priorities, but that doesn't have to be done at the expense of who we are as a state . . . don't do it by attacking the very reason people would ever want to come to California and that is because we have taken care of the environment" [www.sgvtribune.com/news/ci_14439856, "Schwarzenegger, Calderon propose relaxing environmental laws for development," by Rebecca Kimitch, San Gabriel Valley Tribune, 02/20/2010]. Proponents of environmental protections have noted "Some studies show environmental protection normally has no negative impact on the economy overall, and sometimes it has a positive effect" [Martha Marks, President of Republicans for Environmental Protection, "Debunking the False Dichotomy," October 8, 2003, available at www.repamerica.org/opinions/speeches/29.html].

Opponents of exemptions argue that while exempting projects from CEQA may seem on the surface to be an economic plus, the likely environmental problems that will result would in turn cost money, making the appearance of cost savings an illusion that does not account for resultant costs to address unanticipated environmental problems that these projects will or could create. Recently, proponents of strong environmental protections have pointed out that the loss of life and coastal and water dependent jobs in the Gulf of Mexico due to the oil spill from the BP Deepwater Horizon terminal could be a consequence of the lack of regulatory oversight and failures in safety and spill contingency planning that began with a categorical exclusion from the National Environmental Policy Act review, the federal corollary of CEQA [www.businessinsider.com/bp-mistakes-2010-5#bp-downplayed-operational-risks-in-applications-for-exemption-from-federal-inspection-1; "U.S. exempted BP's Gulf of Mexico drilling from environmental impact study," Juliet Eilperin, Washington Post, Wednesday, May 5, 2010]. Impacts such as water supply, air quality, and traffic often do not manifest themselves fully until years after a project's implementation.

One of the justifications for suspension of AB 32 cited by initiative proponents is that analyzing global warming and the impacts of greenhouse gases emanating from individual projects subject to CEQA will require the implementation of mitigation measures that are not attainable or feasible. Opponents to the initiative argue that the State's determination that mitigation for greenhouse gases is attainable, feasible, and required as part of CEQA review in passing Senate Bill 97 in August 2007 and adopting CEQA Guideline § 15126.4(c), identifying five general methods for mitigating greenhouse gases under CEQA (Center for Biological Diversity Letter to Legislative Analyst's Office, June 10, 2010, p. 5).

B. Exemption Supporters Allege Abuses of CEQA Litigation

Proponents of CEQA exemptions have cited alleged abuses of CEQA as a reason to provide for exemptions from CEQA court challenges. "The process is misused, the government agency is ignored," Assemblyman Charles Calderon said ["Schwarzenegger, Calderon propose relaxing environmental laws for development," Rebecca Kimitch, San Gabriel Valley Tribune, 02/20/2010]. Some argue that "phony environmentalists" use legal challenges "to stall projects, sometimes for reasons having less to do with environmental protection than with protecting property values or excluding new residents" [Barbour and Teitz, "CEQA Reform: Issues and Options," Public Policy Institute of California, p. 11].

Most projects do not require EIRs and litigation over the adequacy of environmental review under CEQA is relatively rare. While there does not appear to be recent data on CEQA litigation activity, in a survey from 1986–1990, only one out of every 354 CEQA reviews was the subject of litigation [Barbour and Teitz, p. 13]. A typical California county conducted 125 project reviews, with 96 percent of them resulting in a negative declaration, and five EIRs being initiated [Barbour and Teitz, p. 12]. A typical city processed 27 reviews, with 93 percent resulting in negative declarations, and only two EIRs being initiated [Barbour and Teitz, p. 12]. In addition, judicial review of the adequacy of an EIR is already subject to significant barriers that include a short statute of limitations period and the requirement that an entity seeking judicial review exhaust its administrative remedies by participating in the public process leading up to EIR certification [Pub. Res. Code §§ 21167, 21177]. Thus,

current statutory limitations function to greatly limit the rights of private entities to bring a CEQA action.

Proponents of CEQA exemptions assert that unions have brought CEQA claims to assert leverage in negotiations to obtain wage concessions, unionize shops, and other objectives that are viewed as non-environmental. Courts have viewed union involvement as somewhat irrelevant. In 2004, community activists affiliated with the UFCW stopped the construction of two Wal-Mart stores until their environmental impact reports were revised to include a discussion of the cumulative impacts, air quality impacts, and urban decay impacts of the two stores [*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 22 Cal. Rptr. 3d 203]. The court stated, "unions have standing to litigate environmental claims" [124 Cal. App. 4th at 1198]. Health and long term job sustainability are often concerns of unions that rely on CEQA [*see, e.g., California Unions for Reliable Energy v. Mojave Desert Air Quality* (2009) 178 Cal. App. 4th 1225, 101 Cal. Rptr. 3d 81; *Environmental Protection Information Center v. California Dept. of Forestry* (2008) 44 Cal. 4th 459, 80 Cal. Rptr. 3d 28, 187 P.3d 888].

Another frequent complaint is that businesses and economic competitors abuse CEQA to reduce competition. Cases such as *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* [(2000) 83 Cal. App. 4th 74, 99 Cal. Rptr. 2d 378] and *Galante Vineyards v. Monterey Peninsula Water Management Dist.* [(1997) 60 Cal. App. 4th 1109, 71 Cal. Rptr. 2d 1] show that some California businesses such as agricultural companies depend on the quality of the environment for their own economic well being. Therefore, CEQA helps preserve California's vibrant economy. Courts have established that businesses are not allowed to bring lawsuits solely for anti-competitive reasons unrelated to the environment because such interests are outside CEQA's zone of interests [*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1229, 94 Cal. Rptr. 2d 740]. However, businesses that seek to advance environmental concerns and notice requirements do have standing [*Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal. App. 4th 1133, 1139, 119 Cal. Rptr. 2d 410].

Finally, lawsuits brought by public agencies such as cities and counties against adjacent cities or counties are frequently denounced as abusive. In the NFL Stadium litigation leading to passage of a CEQA exemption in 2009 through AB3x 81, representatives of the project proponent complained that the City of Walnut was abusing CEQA and "extorting" them for money for traffic mitigation and other measures [http://nfl.fanhouse.com/2009/07/14/billionaire-ed-roski-wants-your-nflteam-in-los-angeles]. But the City of Walnut was really attempting to obtain mitigation, and the cost of that mitigation was characterized by the project proponent, with no opportunity during the legislative proceeding for Walnut to correct the Legislature's misimpression. Indeed, challenges under CEQA by adjacent jurisdictions are often the only opportunity for obtaining modifications of projects in adjacent jurisdictions that could severely impact them, for instance, by creating significant traffic or water supply impacts [*City of Lomita v. City of Torrance* (1983) 148 Cal. App. 3d 1062, 196 Cal. Rptr. 538; *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal. App. 4th 1100, 72 Cal. Rptr. 2d 134; *County of Inyo v. City of Los Angeles* (1976) 61 Cal. App. 3d 91, 132 Cal. Rptr. 167]. In addition, because local governments often use CEQA to ensure impacts they may experience from a project located outside their jurisdiction are properly mitigated, these entities could have to assume the costs of mitigation themselves absent enforcement of CEQA's requirement for projects to mitigate their own environmental impacts.

The Association of Environmental Professionals acknowledged the possibility of abuse of CEQA litigation, but then noted "AEP believes that exempting projects from judicial review is fraught with its own set of potential abuses and does not directly address the heart of the abuses of the CEQA process" [AEP Letter to Legislators, February 24, 2010, www.califaep.org/resources/Documents/018d_CEQA-Litigation_Proposal_Opposition_Letter_Final_100224.pdf].

V. Opponents Argue that Environmental Exemptions Could Invite Corruption and Deprive Citizens of Their Day in Court

A. Providing Exemptions from Environmental Review May Be an Invitation to Corruption

Many people see the Governor's proposal for exemption of various projects from CEQA as an invitation to corruption. David Pettit of NRDC said, "It is going to be a race to the trough, some very ugly politics" ["Schwarzenegger, Calderon propose relaxing environmental laws for development," Rebecca Kimitch, San Gabriel Valley Tribune, Feb. 20, 2010].

In the wake of the NFL stadium exemption, various reports surfaced that significant donations were made to the supporters of the exemption. A reporter with the Sacramento Bee stated: "Exactly two months after it [the NFL Stadium exemption] was signed into law, [Ed] Roski's Majestic Realty donated $300,000 to a campaign for a ballot measure that would loosen up the state's legislative term-limit law, thereby allowing lawmakers to enjoy

longer careers in Sacramento. Coincidence? Somehow one doubts it" [Walters, "Schwarzenegger's environmental plan invites corruption"; www.sacbee.com/2010/02/21/2552775/dan-walters-schwarzeneggers-environmental.html, Sacramento Bee, Feb. 21, 2010]. Walters recognized that CEQA should be reformed if it is abused but "giving post-Schwarzenegger governors the sole power to exempt high-dollar projects is simply an invitation to political corruption."

One commentator noted the influence of political contributions more bluntly, stating that Majestic Realty's Ed Roski "just happened to have made the following contributions to the sponsors and co-authors of the bill that exempted him from everyone else's environmental laws" and listed various monetary contributions of hundreds or thousands of dollars to various legislators [Carter Clews, "Ed Roski, Jr., and the World's Oldest Profession," http://blog.getliberty.org/default.asp?Display=1935].

AEP expressed a similar concern: "AEP is also concerned that the proposed legislation is not without its own potential for abuse as private beneficiaries of project development resort to tactics intended to corrupt the process for selecting projects entitled to judicial immunity" [AEP Letter to Legislators, February 24, 2010].

B. CEQA Exemptions Deprive People of their Recourse to the Courts

The intention of the CEQA exemption legislation is to streamline approval processes so they are not tied up in possibly lengthy litigation. Opponents of CEQA exemption legislation point out the legislation would deprive citizens of recourse to the courts. "A citizen's right to turn to the courts for protection from government abuse—in this case, project approval—ought to be sacred" ["CEQA 'reform plan' open to shadiness, The Bakersfield Californian," Feb. 27, 2010; www.bakersfield.com/opinion/editorials/x1305354275/CEQA-reform-plan-open-to-shadiness]. The Association of Environmental Professionals wrote "AEP believes that exempting certain projects from judicial review is inconsistent with the rights of California citizens to participate in, and challenge, the decisions of governmental agencies" [AEP Letter to Legislators, February 24, 2010].

VI. Conclusion

Efforts to reform CEQA and relax environmental laws are not new and are likely to be repeated. Numerous studies have analyzed potential reforms to CEQA and land use laws in California, including The California Performance Review Commission in 2004, the California Legislative Analyst's Office in 1997, and the State Bar in 1995 [Barbour and Teitz, "CEQA Reform: Issues and Options," Public Policy Institute of California, 2005, p. 37]. The latest crop of reform proposals appear to be consistent in some ways with past proposals, but in many ways much farther reaching. AB 32 has only begun to be implemented, with the California Air Resources Board promulgating new regional goals for GHG reductions and progress in reducing emissions being made. With the continuing lethargy in the state's economy, it remains to be seen what the Legislature and electorate will ultimately decide about the future of CEQA and AB 32.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Cases

Water Supply Assessment Required for Proposed Outdoor Composting Facility

Center for Biological Diversity v. County of San Bernardino
No. D056652, 4th App. Dist., Div. 1
184 Cal. App. 4th 1342, 2010 Cal. App. LEXIS 739
May 25, 2010 (cert. for part. pub.)

Plaintiffs successfully raised a CEQA challenge to the county's approval of an open-air human waste composting facility on the grounds that the final environmental impact report did not adequately (1) analyze the feasibility of an enclosed composting facility as an alternative to an open-air facility, or (2) address the issue of water supply for the facility. The trial court properly determined that the project was subject to Water Code § 10910, which requires either the public water system that may provide water for the project, or the city or county when no public water system is identified, to prepare a water supply assessment (WSA) that analyzes whether there are sufficient water supplies for the project. The EIR was inadequate because it did not include a WSA as required by section 10910.

Facts and Procedure. Nursery Products proposed to develop and operate a project that "would compost biosolids [derived from human waste] and green material [derived from plants] to produce agricultural grade compost" (the Hawes Project). The Inland Empire area,