Ulterior Motives:
How Abusive Lawsuits in California’s Central Valley Suppress Job Growth in an Already Depressed Economy

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Abusive litigation is robbing the Central Valley of economic growth opportunities. Lawsuits are being used to shut down, delay and otherwise obstruct business development in the economically-depressed Central Valley. California is one of the most litigious states in the country with more than one million lawsuits filed every year, costing jobs and slowing economic recovery — and the Central Valley has been particularly hard hit.

As economic development projects are proposed, California environmental law is being evoked, often with specious environmental claims, with the goal of delaying and stopping economic growth to further the goals of special interests. Lawyers from the Bay Area and Sacramento Area are filing questionable lawsuits alleging violations of the California Environmental Quality Act (CEQA) as a legal façade to harass private companies because of the way they operate. This abusive environmental litigation by these attorneys and their special interest clients has been referred to by the media as a form of “greenmail.”

“With shameless abandon, lawyers and moneyed players are abusing the state’s premier environmental law — the California Environmental Quality Act.”

“CEQA’s being hijacked; where are the enviros? Environmental groups watch silently as special interests misuse state’s key statute” Sacramento Bee editorial, February 2, 2008

The Central Valley: A Region in Crisis

California’s economic recovery, which has been slow and painful at best, has largely bypassed the Central Valley. California was one of the states hardest hit by the Great Recession, and recovery has been slower than much of the rest of the nation. Even so, much of the Central Valley has been left behind.

During this recession, unemployment has shot above 20 percent in many parts of the Central Valley and remains at frighteningly high levels. The lowest unemployment rate in the Central Valley, incredibly, is 16 percent in Kern County, while the highest rate is 20.6 percent in San Benito County. In stark contrast, California’s overall unemployment rate has finally fallen below 12 percent from a high of 12.5 percent.

Economic forecasts predict double-digit unemployment in California through 2013 or longer, with much higher rates in the Central Valley. Our state and local governments are facing ever-growing budget shortfalls, as federal stimulus funds dry up and tax revenues fail to make up the difference. The net result is fewer people working, more people relying on the government for support and less public funds available for critical services such as public safety, fire protection, the criminal justice system and education.
These abusive lawsuits undermine genuine environmental protection efforts. CEQA was passed in 1970, reflecting a growing acknowledgement among the public that the environmental impacts of increased development should be mitigated as much as reasonably possible. Abuse of this landmark law raises questions about the motives of bona fide environmental protection efforts.

When the legal system is used for greed and not justice, everyone in the Central Valley pays. Halting job creation stifles economic development and creates entrenched unemployment in an area already suffering from sky-high unemployment rates. What’s more, the loss of potential local tax revenues can cause reductions in public safety, education and other community services.

Consider the following examples of CEQA lawsuit abuse constraining California employers who are trying to create jobs in the Central Valley.

Truckers Against Trucks in Visalia?
Visalia lies in the heart of California’s Central Valley, 35 miles south of Fresno, and has a population of 124,442. Visalia’s unemployment of 11.9 percent is similar to that of California as a whole. In surrounding Tulare County, however, the unemployment rate is 16.4 percent with more than 38,000 unemployed citizens.

A global distributor of research laboratory products reached an agreement with the City of Visalia in August 2010 to build a 500,000-square-foot medical products distribution center in Visalia. The city manager and mayor hailed the agreement as it would provide up to 200 new jobs for area residents.

“Since the late 1980s, unions have manipulated the state’s environmental laws to delay commercial and industrial projects until the owners agree to build their projects or operate their facilities exclusively with unionized workers. People in the business of approving permits for construction projects often call the practice ‘greenmail’ because it is extortion using environmental laws...”

“Action opposing VWR plan is extortion,” Russell Johnson, Associated Builders and Contractors, Central Valley Chapter, opinion editorial, Visalia Times-Delta, February 8, 2011
In December 2010, the Teamsters Joint Council 7 filed a lawsuit seeking to stop the project, alleging that trucks entering and exiting the facility will cause an undue impact on the environment.

The irony of a union of truckers suing in protest of the environmental impact of trucks was not lost upon many community leaders, including Assemblymember Shannon Grove:

“The union, in an attempt to intimidate VWR International into signing a union labor agreement at a proposed new facility in Visalia, is using CEQA to allege that trucks entering and exiting the facility will cause an undue impact on the environment. This large facility is likely to employ more than 100 people in a community that desperately needs jobs, yet there are truckers trying to stop the use of trucks!”

“Bill addresses abuses of environmental law,” Assemblywoman Shannon Grove opinion editorial, Bakersfield Californian, April 9, 2011

While the litigation threatened to suspend project construction, a Tulare County Superior Court judge recently issued a tentative ruling dismissing the various CEQA claims in the case. A final judicial decision is expected soon. Even if the project is allowed to proceed, this abusive lawsuit has prevented more than 100 jobs from being created in a community that urgently needs them.

**Jobs Drying Up in the Valley Sun**

San Benito County lies on the Western edge of California’s Central Valley, and remains in the grip of the Great Recession. Unemployment in the relatively small county of 55,269 is a dismal 20.6 percent. The county’s budget for fiscal year fiscal year 2010-2011 totaled more than $37.5 million, with a budget gap of more than $9.2 million.

“For several years, a group called California Unions for Reliable Energy has used CEQA to slow or block power plants, including a geothermal plant in Imperial County.”

“CEQA’s being hijacked; where are the enviros? Environmental groups watch silently as special interests misuse state’s key statute” Sacramento Bee editorial, February 2, 2008

In November 2010, the San Benito County board of supervisors approved the construction of a 399-megawatt solar farm facility that encompasses nearly 5,000 acres and sets aside an additional 11,000 acres for conservation purposes. The project was estimated to create as many as 200
construction jobs during the development phase and 50 permanent jobs once completed, making it one of the top ten employers in the county during its construction.

Construction of the project would have provided jobs for a wide variety of occupations, including electricians, office and management support staff, environmental monitors and many others. In addition, the developer offered to pay the county $1 million per year during the life of the plant.

During the approval process, opponents of the solar farm project raised a number of objections based on alleged CEQA violations. The California Unions for Reliable Energy, a union-backed group that uses the environmental review process to further its own objectives, submitted a package of comments drafted by its Bay Area law firm in an attempt to delay the project.

“The law firm [blocking the project] also has represented California Unions for Reliable Energy (CURE), chaired by... the president of the building and construction trades council. CURE has intervened in most state applications for major new power plants over the past few years. In all but a couple of cases the power-plant builders have resolved the issue by signing project labor agreements sought by CURE, guaranteeing union jobs.”


Both sides agreed to stay this case until government agencies produce additional environmental reports during the next three to four years. Yet again, organizations with ulterior motives used the legal system to halt progress on a solar energy project that would generate hundreds of jobs.

“Critics of the group have charged for years that CURE is primarily interested in pressuring project developers to hire union workers, and that it often sues project developers that do not intend to hire their workers, alleging environmental violations.”

Given the political priority to build renewable energy generation facilities in California, the industry promises to become an important element of the state's future job growth. Unfortunately, the tactics of groups who use the legal process to delay projects threaten to kill the budding industry in its infancy.

“At least two dozen solar wind and other energy projects currently tangled in bureaucratic and environmental red tape could give a California a multibillion dollar boost if they were to move forward, a new report says.

The study, commissioned by the US Chamber of Commerce, estimates that building and operating 31 stalled energy projects in the state would create 142,100 jobs and pump nearly $60 billion into the economy…”

“Stalled projects’ big potential; Study says energy efforts would create 142,100 jobs a year, bring state billions,” Los Angeles Times, March 11, 2011

How Many Abusive Lawsuits Does It Take To Delay 1,200 Jobs in Merced?

The Central Valley City of Merced, with a population of 78,958, has an unemployment rate exceeding 20 percent. The city’s General Fund has a deficit of $5.5 million out of a total budget of more than $35.3 million.

In September 2009, the Merced City Council approved the construction of a 1.1 million-square-foot distribution center that would sit on 230 acres. The council approved the project after three years of studies and significant public debate.

The distribution center would produce significant economic benefits for the region – including 1,200 long-term jobs, 600 short-term construction jobs and an annual payroll of $42 million. These jobs would have a starting salary of $13-$14 per hour, compared to the average starting pay of $8.08 for other jobs in Merced County. The distribution center’s projected 1,200 long-term jobs would match the city’s third-largest employer, an AT&T Wireless Customer Service Center.

The distribution center would also provide $600,000 in annual property taxes and payment of $6-$7 million for impact fees related to the building permit. Local schools would receive at least $400,000 of the initial impact fees associated with the project. City staff also estimated that the project would pay approximately $4.19 million in facilities fees and more than $1.5 million in transportation impact fees.
One month after the project was approved by the City Council, San Francisco attorney Keith Wagner filed the lawsuit on behalf of the Merced Alliance for Responsible Growth (MARG) seeking to overturn the city’s approval of the distribution center. Wagner had previously been involved in several efforts to stop development elsewhere in California, and stated that attorneys’ fees awarded in some of these cases enabled him to continue filing cases, proclaiming, “Fortunately, litigation pays.”

“With 21 percent-plus unemployment, we need the jobs the center could bring. Some reckon up to 1,200 employees would be hired for the 24-hour-a-day operation…

So please, MARG, if you are in fact well intentioned in your quest to take care of our residents, please consider the harm that your continued opposition will do to the livelihood of many Mercedians.”


On March 14, 2011, Merced County Superior Court Judge William Burby ruled decisively in favor of the city. The court found no valid legal claims and denied additional requests to block the project. Accordingly, the court permitted the distribution center project to move forward, but not before the litigation had stalled for a year and a half the creation of more than 1,800 jobs.

**Who Funded the Litigation in Merced?**

The litigation filed by Wagner in October 2009 served as the culmination of a four-year campaign by MARG to derail the distribution center. As local elected officials studied the development proposal, MARG published a 12-page newspaper and a television ad criticizing the project. The carefully choreographed effort by MARG raised serious questions throughout the process as to the group’s makeup - especially given the group’s repeated refusal to disclose the funding sources for its activities. MARG did, however, publicly claim that its membership included the Merced-Mariposa Central Labor Council, a local teachers union and an environmental group.

MARG’s funding became a central issue during the CEQA litigation after The Wall Street Journal published two investigative stories detailing how unions and competing supermarket chains had funded covert political, public relations, grassroots organizing and legal campaigns around the
country to oppose development projects. Importantly, the second story focused particular attention on the effort in Merced:

“The Wal-Mart filed the discovery motions after a June article in The Wall Street Journal said grocery competitors... secretly funded hundreds of lengthy battles across the country opposing Wal-Mart’s efforts to open supercenters, which sell groceries and general merchandise. In some instances, the grocery chains' efforts were aided by grocery-worker unions, which fear that Wal-Mart will suppress industry wages and benefits.”


The Wall Street Journal stories appear to confirm the suspicions of local Merced residents who supported the distribution center project and who questioned the motives of those who opposed a project that would give such a significant boost to the local economy.

“While MARG and Wal-Mart battle it out in the courts, our community suffers and we may never learn the true identity of those responsible for a lawsuit that is not motivated by correcting some great injustice, but rather it is an attempt to persuade the company to avoid a costly legal battle by opening their distribution center elsewhere.

If not, perhaps state legislation should be introduced requiring MARG and other purported “concerned citizen” groups to disclose who is financing their operations so that the public and the courts can determine whether public opposition is truly funded locally or by Wal-Mart competitors engaged in what The Wall Street Journal reports as ‘black arts’ tactics.”

“Who funds Wal-Mart foes?” Ellie Wooten, former mayor of Merced, opinion editorial, Merced Sun-Star, August 4, 2010

While the courts eventually ruled in favor of creating jobs, the fact remains that MARG, a group with undetermined sources of funding, was able to hold 1,200 long-term jobs and 600 construction jobs hostage through abusive litigation, in a city where more than 6,700 people continue to struggle to find employment.
Similarly, in Galt, a small Central Valley city facing a $1.3 million 2011 general fund deficit, a group calling itself Galt Citizens for Responsible Planning filed a May 2010 CEQA lawsuit seeking to halt a project estimated to create 300 jobs and $600,000 in annual sales tax revenue. Among the more than 100 alleged violations of CEQA and other zoning and planning laws, the court found only two to be valid. The project, and the jobs it would create, is still pending.

Attorney William Kopper, legal counsel to the Galt Citizens for Responsible Planning, has a long history of filing legal actions aiming not to protect the environment, but to stop construction and other development projects all over the California. Notably, news coverage of Kopper’s legal engagements refer to him as a “greenmail litigator” who really works for union organizations that have motives far removed from environmental considerations.1

How To Rescue Jobs Held Hostage?

For decades, laws intended to protect California’s environment and natural beauty – and the state’s already overburdened legal system – have been abused by private interests with their eyes on their own bottom lines.

“In an all-too-common scenario, labor union interests are often behind CEQA lawsuits filed against a construction project on the valiant claim that they are merely looking out for the environment, only to drop the suit once the business owner agrees to employ unionized labor. This practice, properly known as ‘greenmail,’ is rampant up and down the state.”

“Bill addresses abuses of environmental law,” Assemblywoman Shannon Grove opinion editorial, Bakersfield Californian, April 9, 2011

In just the few examples detailed in this report, more than two thousand jobs for the recession-impacted Central Valley have been delayed or lost altogether – along with millions in tax revenue that could benefit cash-starved local governments – directly attributable to abusive litigation.

What’s worse, these special interests are denying workers their livelihoods in regions where they may not be able to find another occupation. Unemployment in the counties comprising California’s Central Valley averages a full four points higher than the state as a whole, and in some areas exceeds an alarming 20 percent.

1 See, for example, “City preparing responses to Wal-Mart EIR,” Galt Herald, February 17, 2010
“The 35-year old California Environmental Quality Act (CEQA) provides power that has nothing to do with bad air or traffic. Opponents can use it to delay construction of a project long enough to cost a company millions of dollars.”


California's leaders need to reform the litigation process so that it continues to protect our communities while discouraging and eliminating abuses of the law by those with ulterior motives. If we are serious about helping our state move past the Great Recession, grow our economy and attract new jobs, then it’s time we stand up and stop this abuse.

California Citizens Against Lawsuit Abuse (CALA) is a nonpartisan, grassroots organization dedicated to educating the public about the negative effects of lawsuit abuse and challenging those who abuse our legal system for personal gain. This report was prepared based on media reports and other public documents.

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