

Residents group sues air district over 'extreme' status

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For the Shafter-based Association of Irrigated Residents, "extreme" air does not mean cleaner air. The citizens group on Monday filed suit against the San Joaquin Valley Air Pollution Control District, claiming the district failed to consider the public-health effects of its decision to reclassify valley air quality as "extreme."

That classification is the worst allowable under the federal Clean Air Act, and no other region has ever volunteered for it. But the air district's governing board did so on Dec. 18, claiming it needs another five years to meet clean-air standards. The redesignation would extend the cleanup deadline from 2005 to 2010.

But the Association of Irrigated Residents says the air district should have first studied which legal designation will best protect the public from harmful smog. It claims the district violated state law when it failed to perform an environmental impact report on the decision.

"We want to see a study done that will show this delay is actually going to be better for our air quality," said Tom Frantz, president of the association. "It's the right decision if this will actually clean up our air sooner, but it's basically immoral to delay cleaning up the air right now with all the health problems we're seeing. We're asking for (a report) to justify their decision."

The U.S. Environmental Protection Agency must still approve the requested downgrade to "extreme." If the lawsuit overturns or delays the request, the valley could face federal penalties, including the loss of \$2.2 billion annually in highway funding; higher fees for new and existing businesses that could cost \$36 million annually; and a federal takeover of the valley's smog-control program.

Frantz said these could all be valuable incentives to clean up valley smog faster. He argues that opting for "extreme" status just delays the hard choices necessary to attain federal clean air standards.

But air district officials say the valley can't meet the 2005 cleanup deadline without federally mandated improvements to fuels and vehicles, which don't take effect until after the deadline. Nearly 60 percent of valley smog is caused by vehicles.

"The reason we went to extreme is to maintain local control," said Dave Jones, air district planning director. "We don't think the federal government right now is going to be proposing a plan that gets us to attainment any quicker than 2010. They have to wait for fuel and vehicle controls too."

Jones said the air district isn't required to do an environmental impact report because the requested downgrade to "extreme" is not considered a "project" under the California Environmental Quality Act. Also, the district merely requested the change; the final decision is made at the federal level.

But Frantz claims state law requires the air district to disclose the health effects of its actions.

He also alleged that the air district opted for the longer cleanup deadline merely to save the valley's polluting industries from steeper fees that would be imposed for missing the 2005 deadline.

Jones denied that, saying the longer deadline under "extreme" is the only practical option.

"What we're looking at is, how do we maintain some sense of order and still get us to attainment? And we thought that was going to 'extreme,'" Jones said.

An initial hearing on the lawsuit will be held in Kern County Superior Court this morning at 8:30. The Association of Irrigated Residents will ask the court to set aside the air district's decision and prevent further action on the reclassification until the lawsuit is resolved.

The group will also urge the court to resolve the case before the first federal penalties are due to hit on March 18. Asked about the effect these sanctions could have on the valley's economy, Frantz said the reward could be fewer health costs associated with smog if the air can be cleaned up sooner.

"They're really ignoring the health benefits of cleaning up the air," said Frantz. "We've got a fairly poor group of working-class citizens in this valley, and when their health is suffering unnecessarily, it's really a huge economic loss."

Clean air group in Valley files suit It fights air board's extreme designation.

By Mark Grossi
The Fresno Bee

(Updated Tuesday, January 27, 2004, 7:25 AM)

Saying air quality officials emphasized business over human health, activists filed suit Monday to stop the San Joaquin Valley from dropping into the country's worst category for smog polluters.

The Association of Irrigated Residents, a South Valley-based group, says regional air quality officials failed to review the health impacts of making the move, which will avert costly federal sanctions for businesses.

"We contend they violated state environmental law when they made this decision without an analysis of health," said lawyer Brent Newell of the Center on Race, Poverty and the Environment, representing the activists.

The lawsuit was filed in Kern County Superior Court.

It asks the judge to stop the December decision by the San Joaquin Valley Air Pollution Control District -- which stretches from Stockton to Bakersfield -- to move the Valley into the so-called "extreme" polluter category. The extreme status, which the federal government has not yet approved, would delay the Valley's clean-air deadline from 2005 to 2010 and avoid millions in business sanctions for missing the earlier deadline.

Only smoggy Los Angeles occupies the extreme category.

The Valley's unprecedented request is needed for the extra five years it will take to clean up the 25,000-square-mile basin, which is the second-smoggiest place in the nation behind Los Angeles.

Ozone, the main ingredient in smog, is a corrosive gas that aggravates asthma and other breathing difficulties.

Extending the deadline will make Valley residents breathe the dirty air longer, Newell said.

The air district needs to address the health issue, he said.

"I have asked for the last year and a half to have them tell the public what the health impacts will be," Newell said. "They refused to make the analysis."

Valley air district officials have not read the lawsuit yet, so they could not comment Monday.

But they said they do not need an in-depth environmental study for the switch to extreme status because it is not a project.

State law, they said, requires such studies only on projects.

They added that sanctions, amounting to millions of dollars for missing the deadline, would begin March 18.

The district cannot clean up the air fast enough to meet the current deadlines, mostly because stringent state and federal controls on vehicles and fuel won't kick in until 2007.

But activists believe financial penalties from missing the 2005 deadline would help buy clean air before 2010.

The penalties, estimated at \$36 million by 2007 for the business community, would help pay for mass transit and other pollution-fighting efforts.

Another sanction would require large new and expanding businesses to pay more for pollution reduction.

The federal government would withhold more than \$2 billion in road-building money from the Valley, except for projects that promote the environment or safety.

Perhaps the biggest sanction would be a federal takeover of cleanup plans.

Officials fear loss of local control in such a takeover, but that is not how activists see it, said Tom Frantz of the Irrigated Residents group.

"Reaping the environmental benefits of sanctions would have reduced smog-forming pollution faster," said Frantz, a Kern County resident.

Sanctions are a short-term fix, said Don Hunsaker, supervising air quality planner for the Valley district. He said long-term reductions in pollution come through rules and controls.

"The prudent path is development of rules and allowing the new fuels and engine standards to take hold," he said.

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Air panel sued

Advocates want action on cleanup

By Audrey Cooper

Record Staff Writer (The Stockton Record)

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A group of clean-air advocates sued regional air regulators Monday over a decision to categorize the San Joaquin Valley as one of the country's smoggiest areas, a move that gave regulators an extra five years to clear the Valley's polluted skies.

The Association of Irrigated Residents claims the San Joaquin Valley Air Pollution Control District should have disclosed the health impacts of the deadline rollback. Instead, the air district only concerned itself with economic sanctions that would have been imposed once the original 2005 cleanup deadline passed.

The air district will get an extra five years to meet federal health-based smog limits once the U.S. Environmental Protection Agency approves the air district's request to be considered an "extreme" smog zone -- a label that before only described the Los Angeles area. The EPA is expected to sign off on the status change this spring.

AIR, which filed the lawsuit in Kern County Superior Court, plans to ask a judge today to prevent any official move to the extreme classification, pending a review of the lawsuit.

Air-district officials said the deadline extension was necessary, because upcoming federal limits on diesel-vehicle emissions are needed for the Valley to hit its cleanup goals. Only the federal government -- not the local air district -- has power to cut emissions from vehicles, which make up more than half of the Valley's smog-forming emissions.

The reclassification to the extreme level was endorsed by a coalition of farm groups, oil companies, business groups and the manufacturing industry.

Businesses in the Valley would have been hit hard if the air board had not sought the deadline extension. Major polluters would have been stuck with thousands of dollars in fees, and it would have cost more to expand or start a business in the Valley.

The region also would have lost \$2.2 billion in federal road-building funds, and the EPA would have taken over efforts to write a pollution-reduction plan.

Yet the group that sued the air district said all those sanctions would have forced major reductions in pollution and could have cleared the air ahead of the 2010 deadline.

"The air district ... (has) always approached this issue looking only at the economic impact of sanctions on businesses. We have asked for more than a year and a half for the air district to disclose the public health consequences of the extreme reclassification. Unfortunately, we must go to court to force that disclosure," said Tom Frantz, president of AIR.

Dave Jones, the air district's planning director, disagreed. He said a full-blown environmental impact report was not legally required to get a reclassification to extreme. He also said that federal sanctions wouldn't have cleared the air any earlier.

"We were really concerned about losing local control of this issue and leaving it up to the EPA," he said.

The EPA has a history of relaxing air rules, and there is no assurance that they would have imposed any stringent air rules on the Valley, Jones said. Instead, local clean-air rules could have been delayed.

"We've gone beyond and done things here that the EPA wouldn't have touched," he said, adding that the air district has cut some pollution sources by more than 50 percent over the past decade.

Bill proposes break for electric engines

Florez wants farmers to switch from diesel, help cut air pollution.

By Jennifer M. Fitzenberger

Bee Capitol Bureau

(Published in the Fresno Bee - Monday, January 26, 2004, 6:40 AM)

SACRAMENTO -- Farmers who want to replace their pollution-spewing diesel engines with electric models might get help from the state Legislature.

State Sen. Dean Florez wants to lower growers' electricity bills, enticing them to make the voluntary switch and spare the sky a hefty dose of pollution.

Florez last year pushed through a package of bills to help clean the San Joaquin Valley's dirty air, but parts of it hit snags.

Senate Bill 703 stalled when no one could agree on the best way to make electricity more competitive with diesel fuel.

The Senate on Monday is scheduled to vote on a shell of the bill that declares the Legislature's intent to give farmers a break. Florez plans to hold public hearings to figure out the specifics. While expected to pass the Senate, the bill likely will face high hurdles in the Assembly, where lawmakers will demand details that have yet to be ironed out.

SB 703, when Florez introduced it in February, aimed to revoke expensive "standby" charges that growers pay to keep their irrigation pumps connected to the electrical grid.

Farmers say the charges can total as much as 40% of their electricity bills, even when the pumps are rarely used, leading many to choose cheaper, but dirtier, diesel fuel.

Doing away with about 8,200 agricultural diesel pump engines in use statewide would keep about 1,000 tons of particulate matter -- small bits of dust and chemicals -- from the sky each year. It also would cut about 13,200 tons of smog-forming nitrogen oxide and volatile organic compounds, California Air Resources Board officials said.

About 4,500 diesel agriculture engines are in the San Joaquin Valley.

"We'd like to see more and more of these be electric," said Dave Jones, planning director for the San Joaquin Valley Air Pollution Control District.

In July, Florez stripped SB 703 of its specifics, hoping more time and discussion would yield language everyone could agree on.

Florez, a Shafter Democrat, has one solution in mind: to raise or use a chunk of a surcharge already built into utility bills to pay farmers' standby charges.

The surcharge -- called the public goods charge -- accounts for about 1% of each customer's electricity bill for a total of about \$540 million statewide. Electricity companies use the money to pay for research and low-income assistance programs.

In Fresno County, nearly 81,000 Pacific Gas & Electric Co. customers with low or fixed incomes receive a discount because of a program funded with public goods money.

"This is a different way of using that money," said Karen Mills, associate counsel with the California Farm Bureau Federation. "It would be subject to the views of a lot of folks."

Opponents of SB 703 have argued it is unfair for all electricity users to pay for an agriculture subsidy. They also are against any increase to the public goods charge.

"Energy costs are already high," said Assembly Member Sarah Reyes, a Fresno Democrat who didn't support the original version of SB 703. "I don't know of any ratepayer who is willing to pay for one industry's problem because that will just increase their energy bills."

SB 703 likely will land in the Assembly Utilities and Commerce Committee, which Reyes chairs. She said her committee won't pass the bill unless Florez includes details. "Until then, it really is a nothing bill," Reyes said.

Growers are keeping an eye on Sacramento from their farms in the central San Joaquin Valley.

Keith Nilmeier, who grows peaches, apricots and oranges on 500 acres west of Sanger, said the only way most farmers could convert to electricity is if standby charges were eliminated.

But, even if that happened, some growers who don't have electrical infrastructure such as power lines and poles might not be able to afford to put them in.

These days, many Valley farmers watch every penny they spend.

Reeling from a sagging agriculture economy, Nilmeier's farm has lost money for three years in a row. Several of his neighbors have gone broke.

Nilmeier started converting his irrigation pumps to diesel from electricity about 15 years ago to save money.

"Diesel fuel was very cheap at the time," Nilmeier said. "We sat down and put a pencil to it and saw what we could save in our own operation."

Nilmeier said he saves about 35% by moving water with a diesel-powered pump over one powered by electricity.

Ted Sheely, who grows tomatoes, garlic and pistachios on 8,000 acres near Huron, said it costs him up to \$2,000 per month just to keep electricity hooked up to a well. It costs an additional \$15,000 or so per month when the pump is running.

In all, he runs his pumps just 150 days per year.

Sheely said he factors the standby charge into the overall cost of operating a well. About 60% of Sheely's wells are electric.

"If you took away the standby charge, you'd be closer to the cost of diesel," Sheely said.

Electricity officials say standby charges are needed to keep businesses hooked up to the grid.

"It is a necessity to have your pumps work when you need them," said Liz Gomez, a spokeswoman for PG&E.

Danny Johnson, customer service manager for Southern California Edison, likened supply charges to leasing a car: "Just because you have the car doesn't mean you only pay to drive it on the days you drive it."

As for using the public goods charge to give farmers a break, "I guess that's something they can maybe look at," Gomez said. "I hope it is fair and equitable for everyone involved."

The state Public Utilities Commission, which regulates electric companies, has no position on SB 703, and its officials declined to discuss it.

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Bill to tackle pump fees approved

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SACRAMENTO -- The last remaining major bill in a package of legislation to require help from farmers in cleaning up the Central Valley's air won approval from the state Senate Monday. The measure by Sen. Dean Florez, D-Shafter, is aimed at the standby fees charged by PG&E and other utilities to keep irrigation pumps hooked up to electrical lines.

The fees have been a factor in the conversion of many pumps to diesel engines, which contribute to the valley's smog problem, Florez says.

He and clean-air advocates want to encourage farmers to use more electricity and less diesel to power their pumps. But many farmers say electricity is too expensive because of the standby charges, which are assessed during the winter and other times when the pumps are not running.

The standby bill was left behind last year when the Legislature passed a sweeping series of clean-air bills by Florez, and they were signed into law by then-Gov. Gray Davis. Those bills ended agriculture's traditional exemption from air pollution regulations and required such things as a phaseout of open-field burning of farm wastes.

The standby bill was bogged down in controversy over how to provide relief to farmers from the charges.

But the bill that passed the Senate 34-2 on Monday did not resolve the issue. It was watered down with vague language, but the Senate's action allowed it to clear a legislative deadline and stay alive for further negotiations in the Assembly.

County board weighs air-quality issues

New cleanup deadline carries compliance rules

By Laura Florez, Staff writer

Tulare Advance-Register

Originally published Monday, January 26, 2004

VISALIA -- The Tulare County Board of Supervisors will be asked Tuesday to do its part in the next six years to help ditch the Valley's reputation of having the nation's second-worst air.

Last year, the San Joaquin Valley voluntarily dropped into the country's worst-offender category -- joining only Los Angeles. The move extended the deadline for Valley officials to come into compliance with smog-cleanup requirements to 2010.

The move also helped the Valley dodge business penalties and keep local control of a \$2 billion federal fund to build roads.

But by taking on the extreme designation, the county, along with other governmental entities within the San Joaquin Valley Air Pollution Control District, must say they will go along with plans to clean up ozone.

In order to adopt the Extreme Ozone Attainment Demonstration Plan this year, the Clean Air Act requires that control measures be implemented.

Those measures include things such as asking school districts to encourage students to walk to school, expanding public transit services and coming up with commuting solutions.

If not implemented already, the county will update measures within the county with local money or funding from state and federal transportation dollars, according to a staff report.

Each city, county and metropolitan planning organization in the air basin must adopt its own set of measures as part of the Extreme Ozone Attainment Demonstration Plan.

The three general approaches for consideration include: existing measures which could be strengthened, commitments to implement new measures and the allocation of pass-through money to support emission reduction programs.

The Valley's air quality is classified as extreme by the Environmental Protection Agency because it exceeds federal health-based standards for ozone, which is the main component of smog.

Builder, group debate project

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The Kern-Kaweah Chapter of the Sierra Club has filed a letter of concern over a housing development at the corner of Hageman and Heath roads. These days, that's nothing new. The Sierra Club has filed similar letters and even lawsuits over a number of proposed housing developments.

What is new is the letter came even though the project developer worked to reduce any impact on air quality to zero.

The Hageman project would contain 412 large-lot homes on 160 acres.

And it won't, according to planners for the county of Kern, worsen Bakersfield's horrendous air quality.

That doesn't mean the homes won't generate air pollution. They are expected to put out 9.24 tons of ozone-creating emissions each year.

But developer Hageman Northwest LP has agreed to crush cars, buy clean buses and remove other sources of pollution until 9.24 tons of pollution is eliminated from the air in other ways.

Subtract 9.24 tons from 9.24 tons and you get zero.

But the Sierra Club is skeptical of the idea and how it will work.

Housing developments are allowed, by the San Joaquin Air Pollution Control District, to generate no more than 10 tons of air pollution each year.

Technically, said Kern County planner Lorelei Oviatt, the developers didn't have to get to zero emissions.

But there has been a growing awareness of the area's bad air and how homes, and the cars they bring, impact the air, she said.

The developer and the county came up with the zero-pollution plan, Oviatt said, and it is tied into the environmental clearance for the project so the developer has to keep its promise.

Planning officials with the city of Bakersfield said other developers are beginning to look at the zero-impact plan as a possible way to blunt air quality concerns from the community.

Many of those concerns have been raised by the Sierra Club.

Sierra Club activist Gordon Nipp has challenged a wide collection of recent development projects around Bakersfield. He's filed lawsuits questioning the city and county's environmental clearance for new homes.

The club has been successful at wringing concessions out of prospective home builders -- usually as settlements of lawsuits.

The most common concession is a \$1,200 air quality mitigation fee per home.

The money would be paid to a five member committee, which has yet to be created, which would use the money to help improve air in Bakersfield.

It would do that by crushing old, smoky cars, replacing diesel agriculture pumps and retrofitting government vehicles to burn cleaner fuels.

That's pretty much the same thing Hageman Northwest LP has promised to do.

But Nipp is skeptical of the private company's plan and raised a list of concerns as the project moves toward next month's Kern County Planning Commission hearing on the project.

Nipp said he doesn't think the developer and the county are figuring air quality numbers correctly. The zero-pollution plan won't pay as much to clean the air as the Sierra Club's air pollution fee, he said.

"We certainly support the basic notion" of the county/developer plan, Nipp said.

But he thinks the public won't have a lot of say in how Hageman Northwest LP will mitigate its air quality impacts.

Oviatt said the measures the developer will use to meet the zero-pollution level have been chosen by the San Joaquin Air Pollution Control District.

Nipp said he wasn't just looking to have the Sierra Club control the mitigation of air pollution from new homes.

"I don't care who administers the program as long as there is public input," he said.

Representatives for Hageman Northwest LP were not prepared to comment on the project or the Sierra Club concerns on Monday.

Hub status still up in the air

Tuesday, January 27, 2004

- Merced Sun-Star

A lengthy report being released this week may show whether or not Merced could be a stop - and maintenance hub - for California's proposed high-speed train.

The California High-Speed Rail commission will unveil its draft environmental impact report for the 700-mile project on Wednesday.

The train is expected to eventually connect Sacramento to San Diego and have stops throughout the Central Valley.

The route the train would take over hills separating the Bay Area from the Central Valley has yet to be chosen. Two possible routes will be identified in Wednesday's report, along with their potential environmental impacts.

One route would go over Pacheco Pass and another would go through Diablo Canyon.

If the Diablo route is chosen, Merced will remain in the running for the construction hub. If the Pacheco route is chosen, the Merced stop would likely be put in Los Banos, and the area's chance at becoming a regional hub would be all but ruled out.

Following the unveiling of the EIR, a 90-day public comment period will begin Feb. 13, according to Carrie Pourvahidi, deputy director of the California High-Speed Rail Authority.

No decision about the route will be made for some time. Still, Wednesday's report will have a decisive role in determining which route is most economical and will have the least impact on the environment.

The proposal to build more than 700 miles of track for trains running at speeds approaching 200 mph still faces considerable uncertainty.

A \$9 billion bond to pay for the first leg of construction is scheduled for a vote in November, but Gov. Arnold Schwarzenegger has said he wants to take the bond off the ballot.

Rail supporters say the bond's removal would delay the project but not kill it.

The environmental impact report will be unveiled at the California High-Speed Rail Authority's Wednesday meeting. It will be held beginning at 9:30 a.m. at Fresno City Hall at 2600 Fresno Street in Fresno.

[Community Voices, The Bakersfield Californian](#)

Air quality data faulted

BARRY HANSON, Bakersfield

January 27, 2004

I take great exception to the Community Voices letter claiming that clean air goals are somehow being compromised by business interests' and county officials' greedy pursuit of money, jobs, and a larger tax base. After reviewing the historical pollution trend data for PM-10 and ozone concentrations available to anyone at the California Air Resources Board Web site, I have the following questions and challenges for those complaining about our supposedly deteriorating air quality.

When has the air ever been cleaner? I am looking at the trend graphs for Kern County, and all sites show generally decreasing and occasionally stable trends in PM-10 and ozone concentrations at each of the 14 county sites listed.

I think any honest statistician would conclude that air quality is showing steady, continuous improvement in both categories at almost every site and that the combined county air quality is improving despite rising urbanization.

This despite the fact that monitors are understandably generally located in areas perceived to have poorer-than-average air quality -- high traffic areas -- which thus yields a generally pessimistic assessment of overall air quality.

The oldest data shown for Kern County only goes back to 1981, and most data only goes back to 1989 or later. Do air quality activists believe our county air was dirtier or cleaner in the 1950-1980 time frame than it is now? What is their basis for that opinion? Do air-quality activists pretend that the available data is sufficient to predict future air quality deteriorations that would justify more Draconian air regulations?

If so, I believe those claimants don't really understand statistical analysis techniques. If I'm wrong, show me how and why.

It has been my experience that air activists and regulators insist on talking about air standards and non-attainments instead of discussing actual trends in measured air pollution, and that they also insist on embracing the worst-case estimates of the impact of pollutants on life quality issues.

I agree that it is all about power, influence and money, but I am cynical enough to think it is the regulators' and activists' power and money that is really at stake.

I also believe that most media outlets generally fail, due to laziness and their own political agendas, to fully research and report key facts and rational opinions from all sides of contentious issues.

I might be wrong in this. It may just be a case of "good news is no news."

Meanwhile, it seems to me that the views expressed in the Community Voices letter is what has brought this state to its knees, and I, for one, am extremely tired of the anti-business/industry/oil/dairy/growth/farm/Wal-Mart -- did I leave anyone out?-- attitude that is poisoning this great state.

Barry Hanson of Bakersfield is an oil industry consultant. Community Voices is an expanded commentary that may contain up to 500 words. The Californian reserves the right to reprint commentaries in all formats, including on its Web page.