

## **Court slaps city on Wal-Mart Hearing process called flawed; half-built structure in limbo while Kohl's, Lowe's in jeopardy**

By JAMES BURGER, Californian staff writer  
Bakersfield Californian, Tuesday, Dec. 14, 2004

The gaping skeleton of a Wal-Mart Supercenter on Panama Lane near Highway 99 could remain an empty hulk for another year -- maybe more.

And the Lowe's home improvement store next door is now threatened with closure -- as is a Kohl's department store at Gosford and Harris roads.

The 5th District Court of Appeal in Fresno ruled Monday that the city of Bakersfield failed to properly examine the environmental impacts of the two large south Bakersfield retail projects.

Judges said the city bungled the hearings on the project's environmental effects and failed to study impacts on transportation and animals.

They gave the win to the Bakersfield Citizens for Local Control, the local group that sued to stop both projects in March 2003.

The hotly contested legal battle started two years ago as a citizens' fight against two Wal-Mart supercenters.

Fifth District judges invalidated the city's approval of projects at Panama and Highway 99 and Gosford and Harris roads. That will force the city and developers to repeat between six months and one year of studies and public meetings, said city attorney Ginny Gennaro.

"We will probably lean toward recommending that both developers complete a new (environmental report) for their projects," Gennaro said.

Monday's rulings threaten stores already open for business.

A Kern County Superior Court judge will have to decide whether those businesses should close their doors while the city repeats a process that started in October 2002.

Panama Lane and Highway 99 developer Lee Jamieson brushed that danger aside Monday.

He said he doubts a judge will close two stores that have been up and running for most of this year.

"We're not really happy about (Monday's) decision," Jamieson said. But "in the long run it doesn't make a difference. We'll fix what the court asked us to fix."

But Steven Herum, the attorney for Bakersfield Citizens for Local Control, said Jamieson is overly optimistic.

"The court must decide, should one or more of the existing stores be forced to cease operations," Herum said.

Developers shot themselves in the foot, he said, when they started building on projects that were being contested in court.

He said the judge has the power to force the developers to tear down everything they have built.

Craig Beardsley, the attorney for Gosford Village developer Castle & Cooke, said the judge has to decide how to deal with existing structures so that the environmental issues that might crop up in new studies can be addressed.

Both projects drew heated opposition from the Bakersfield Citizens for Local Control in fall of 2002.

The group was launched by a Ridgecrest woman who papered Bakersfield with slick, anti-Wal-Mart fliers paid for by an anonymous donor.

Officials for the city, Jamieson and Castle & Cooke said the United Food and Commercial Workers union was behind Bakersfield Citizens.

When the city approved the two projects, Bakersfield Citizens sued.

Kern County Superior Court Judge Kenneth Twisselman gave the group a partial win, which it then appealed to the 5th District.

But on Monday, judges said the battle was about the environment -- not Wal-Mart.

"We do not endorse BCLC's elitist premise that so-called 'big-box' retailers are undesirable in a community .... nor do we affirm its view that Wal-Mart, Inc. is a destructive force ..." judges wrote.

But judges also wrote that they would not dignify Castle & Cooke's arguments that Bakersfield Citizens was a front for the grocery workers union.

Judges awarded Bakersfield Citizens for Local Control their costs and attorney's fees in Monday's decision.

## **Burning advisory**

Tuesday, Dec. 14, Modesto Bee

Lighting your fireplace, wood stove or pellet stove today is discouraged in the Northern San Joaquin Valley. Burning manufactured logs is discouraged, too. The San Joaquin Valley Air Pollution Control District forecasts air that is unhealthy for sensitive groups. Following the burn recommendation is voluntary. The valley has the nation's worst air during the winter, as it is filled with particles of ash, soot and pollution from wood fires. These particles have been linked to asthma, heart attacks and premature death.

## **Clearing the air**

Tuesday, Dec. 14, Modesto Bee

The San Joaquin Valley Air Pollution Control District is scheduled to vote Thursday on whether to impose a \$2 fee on vehicle registration. The surcharge would raise an estimated \$4.8 million a year to help improve air quality.

## **Jobless in Kern County**

### **Agriculture is the engine that drives the local economy, but seasonal nature of work casts pall of unemployment over community**

By MATT PHILLIPS, Californian staff writer  
Bakersfield Californian, Sunday, Dec. 12, 2004

Taming Kern County's stubbornly high unemployment rate may mean changing the face of the county itself.

"It has happened elsewhere in California," said Hans Johnson, a research fellow at the Public Policy Institute of California. Johnson recently published a new report about population growth in the San Joaquin Valley.

Once, Los Angeles, Orange and Santa Clara counties were all farm-based economies with high unemployment rates, too.

But over time they became urbanized with loads of service-based jobs.

But that means fundamental changes. Is Kern ready? Is that what we want?

Institutional unemployment

Kern's high jobless rate -- 11.9 percent in November -- is structural, meaning it's based on our primary business, farming, which is seasonal.

Farm jobs provide the county's thickest slice of private sector employment. In 2003, more than 16 percent of the county's total jobs were in farming.

Kern's other big economic driver, oil, is also extremely cyclical, based on the prices of oil and natural gas. So, even though oil can be sucked out of the ground all year, it does nothing to tamp down our high unemployment rate.

So, is there no hope?

"Even if it's structural perhaps there can be things done about it," said James Haskell, an economist with the USDA's Rural Development office. "That's by finding the appropriate kinds of business that would be suitable for that particular area."

### **Shift in the wind**

At least one economist sees change afoot already.

And the picture never really was that bleak, insisted Abbas Grammy, an economics professor at Cal State Bakersfield.

If you throw out the farm portion of the unemployment equation and just look at non-farm-related unemployment, Kern's rate is closer to 7.8 percent, Grammy said.

That was his conclusion during an economic summit last March in which he pegged Kern's "natural" unemployment rate at 10.5 percent.

The actual unemployment rate for March 2004 was 15 percent, according to the Economic Development Department.

Kern's average yearly unemployment rate has hovered in the upper 11 percent range for the last five years: 12.3 percent in 2003; 11.7 percent in 2002; 10.7 percent in 2001; 11.3 percent in 2000 and 11.4 percent in 1999.

"People who say we suffer from unemployment are looking at the overall picture, not the nonfarm sector," Grammy said.

Grammy's method of looking at unemployment in Kern may be an oversimplification, other experts say.

You can adjust unemployment data any number of ways, said Michael Teitz, a senior fellow at the Public Policy Institute of California.

"Although it may make the local economy look good and be nice for the boosters, you don't make just one adjustment that can only send the number one way," Teitz said.

Still, Grammy said, industries such as manufacturing and construction are doing well.

There is forward movement outside of farming:

\* Alfa Leisure, an RV manufacturer, bought 40 acres off Lerdo Highway and hopes to bring 600 jobs to Kern.

\* The Target Distribution Center near Shafter hired 450 workers.

Farming to finished goods

If Kern isn't ready to let go of farming, Grammy said, it should find ways to squeeze more jobs out of it.

"I think the way to get out of this is to use our advantage in agriculture to move from raw material production to processed food manufacturing," said Grammy.

For example, instead of just growing pistachios a company could process, package and export the finished food.

"We have to make the transitions from raw material production to processed food production if we want to lower our unemployment rate to single digits," Grammy said.

He pointed to existing examples such as Grimmway Farms, which grows, packages and sells its carrots, and the Frito-Lay plant, where more than 700 workers make potato chips and corn chips in Bakersfield.

Jobs in food manufacturing have grown. Between 2000 and 2003, food production industries added 1,200 jobs in Kern, according to the Employment Development Department. That's an increase of around 35 percent.

There is some disagreement about whether such processing plants would have the effect Grammy predicts.

Running a factory is only profitable if the county has enough product to keep it open year-round, said Peter Belluomini, manager for potato grower Lehr Bros. Inc. and president of the Kern County Farm Bureau.

The farm laborers picking the crop likely wouldn't work in the factory during the off-season.

Local economic development groups have identified other types of businesses that might be a good fit for Kern, such as warehousing and logistics centers.

[Critics argue that warehousing and trucking have environmental drawbacks, worsening air quality by increasing heavy duty diesel truck traffic.](#)

["In terms of air quality and public health that's not where the American Lung Association of Central California would like to see jobs develop," said Josette Merced Bello, president and CEO of the American Lung Association of Central California.](#)

### **Machines might be the rage**

Other heavily farm-oriented regions don't suffer the same unemployment woes.

"The crops are even more seasonal in Iowa; they have a very low unemployment," said Philip Martin, a professor of agricultural economics at University of California, Davis.

But those Iowa crops are mostly planted, tended and harvested by machines.

California's main crops -- such as fruits and vegetables -- are harder to harvest by machine, Martin said.

Therefore California farms often need large numbers of workers for relatively short harvests, he said.

Mechanizing many of the tasks now done by hand in Kern County could help control the seasonality of farming economies.

"It would call for a lot of mechanization," Martin said.

But it wouldn't be easy, and some think it's impossible.

And in the short-term mechanization could have painful effects, displacing thousands of workers who are trained for little but farm work.

"That's certainly not a short-term solution for the high unemployment rate in the Central Valley," said Johnson, of the Public Policy Institute.

### **Catch-22**

Other single-industry counties have lessons for Kern as well.

Shasta County once relied heavily on the timber and wood manufacturing industries, which came with high unemployment.

But in recent years a more balanced economy has emerged as those industries weakened.

The economy bounced back, in a way. Jobs emerged in tourism, recreation, trucking and warehousing, said David Lyons, labor market consultant with the Employment Development Department.

Unfortunately the pay for those jobs is low.

"In essence we've created a lot of jobs in total numbers in Shasta County," said Jim Zauher, president of the county's Economic Development Corp. "But the wages aren't very good. So that's a real Catch-22."

### **Side effects**

Kern can't change high unemployment and stay the same.

Experts rattle off lists of improvements that could help: Boost education levels; encourage agriculture-based tourism; offer vocational programs; promote self-employment.

They also warn that changing our economy could have unwanted -- and unforeseen -- consequences.

"A lot of people look at Los Angeles and Orange counties and think they don't want to become that," Johnson said.

## **Environmental Injustice**

### **Hilmar Cheese Co. able to avoid millions in potential fines despite polluting air and water, records reveal**

By Chris Bowman, Sacramento Bee

Tuesday, Dec. 14, Modesto Bee

HILMAR — For more than a decade, California water-quality enforcers have given the world's largest cheese factory a free ride, sparing the politically connected company millions of dollars in sewage treatment and allowing it to foul nearby water supplies and the air.

Every day, Hilmar Cheese Co. makes a million pounds of cheddar, Colby, mozzarella and Monterey Jack at its factory and dumps an average 700,000 gallons of waste onto land leased from company owners and dairies that supply its milk.

And virtually every day for 16 years, state records show, wastewater volume and salinity have far exceeded limits by the Central Valley Regional Water Quality Control Board. The board has recorded at least 4,000 violations against Hilmar Cheese in the past four years, making it one of California's most chronic offenders of clean-water laws.

Yet, for years no fine or injunction was issued. Instead, the valley water board kept raising the limit on volume at the company's request, as production grew. Board records show regulators agreed to increases four times from 1990 to 1997 — each time counting on company promises to cut pollution.

Often fixes did not follow. Sometimes they flopped.

"This is a clear case of environmental injustice," said Rafael Maestu, who last year reviewed the state's file on Hilmar Cheese as an inspector for California's nine regional water boards. "Basically, they are above the law."

Only after The Bee spent three months investigating the plant did the board take its first enforcement action, on Dec.2. The "cleanup-and-abatement" order demands major corrections:

- An end to the odors coming off 124 acres of fields by Jan. 1.
- Testing of nearly 100 residential and irrigation wells within a half-mile of the plant.
- Cleanup of groundwater polluted by years of dumping a milky soup of whey, salts and caustic cleansers.

The order "does not preclude" the possibility of fines for past violations, according to water board Executive Director Thomas Pinkos. He acknowledged that the timing of the order was tied to The Bee's investigation, but said other factors also motivated him to finally act.

Among them was a state attorney general's investigation launched a year ago after neighbors complained of sour-milk odors, swarms of flies and polluted tap water, and after a former employee alleged illegal dumping into an irrigation canal.

Hilmar Cheese officials maintain they should get credit for progress in the past few years.

"We recognize that we've had to improve the system," said John Jeter, Hilmar's chief executive officer. "We really work extremely hard."

Three years ago, the company began removing some of the saltiest waste from sewage. Jeter said he expects all wastewater will be cleansed to state standards with the completion of a \$37 million treatment plant this month. That's a decade after such a system should have been operating, regulators said.

Hilmar has stepped up fly and odor controls and offered to supply bottled water to neighbors, no matter the source of their well contamination.

"Our goal is to be a great neighbor and put ourselves in their shoes," Jeter said.

### **Access to governor's office**

The company sold \$455 million worth of cheese last year, state records show. As it grew, Hilmar Cheese gained access to the governor's office.

The company was among the first of Gov. Davis' major donors to switch to Arnold Schwarzenegger during the 2003 recall, giving the Republican \$21,200 — the maximum corporations can give gubernatorial candidates.

Three months after taking office, Schwarzenegger named Chuck Ahlem, a Hilmar Cheese founding partner and part owner, undersecretary of agriculture.

Ahlem, a leading industry voice on environmental regulation, said he never has sought special treatment for his company.

But water board records and interviews with board officials indicate Hilmar officials lobbied valley water board executives for lighter scrutiny — with some success.

Gary Carlton said Ahlem phoned him in spring 2001, when Carlton was executive director of the valley water board.

Engineers and geologists had filed the harshest report to date on Hilmar, records show. Hilmar officials were offended that board staff planned to cite the company, according to Carlton.

"The essence of (Ahlem's) call was, 'We're upset. . . . We think we can solve these problems, and (board officials) are giving us undue levels of attention,'" said Carlton, now a Schwarzenegger appointee to the statewide Water Resources Control Board, which oversees the regional boards.

Along with Loren Harlow, head of the valley board's Fresno office, Carlton accepted Ahlem's invitation that summer to tour the plant's first wastewater treatment works — a flawed system the company later abandoned.

Carlton and Harlow said they did not cut Hilmar slack as a result of the visit, and Ahlem said, "I never wanted to have leniency applied."

But shortly after the tour, Harlow issued a directive.

Harlow said his instruction to route Hilmar inquiries through him was "standard process." But Van Voris said he'd never experienced anything like it in 16 years with the board.

'Field is full. Stinks bad'

Every day, tanker trucks hauling the milk of 150,000 cows turn off Highway 99 and glide into docking stations at the factory. The plant's backside is largely hidden behind of tall bushes.

There, nearby resident Frank Enes videotaped disposal methods. His footage shows wastewater gushing from pipes with the force of an open hydrant. The water floods fields.

"Field is full. Stinks bad," Enes says on his video the afternoon of April 11, 2003. "It's pretty creamy."

Disposing organic wastewater on land is legal. California allows the practice if it doesn't pollute groundwater or create a public nuisance.

Enes, who lives about a quarter-mile from the plant, says the smell alone told him Hilmar's dumping was out of control. Water board officials concurred in inspection reports.

"Nobody has a problem with them being here," Enes continues in his narration. "They have a good business. But good neighbors don't stink up the town and act like they care about the community."

Enes leaned on water board officials, and after trading many phone calls, a statewide inspector visited him July 29, 2003. Enes popped one of his tapes into the VCR.

The inspector, Boris Trgovcich, said he was struck by footage of land drowning in wastewater. Hilmar officials had assured regulators that wastewater stood in the fields no longer than 48 hours, as their permit requires. Enes' videotapes indicated otherwise, Trgovcich said.

Hilmar, in a 2003 letter to the valley water board, denied that wastewater had been standing for five days, as Enes alleged.

State enforcement auditors Maestu and Trgovcich completed an investigation of Enes' complaints 14 months ago. That report concluded that the board had failed to follow state policy calling for action against chronic violators.

The October 2003 report estimates that Hilmar Cheese had avoided spending at least \$27 million by operating outside pollution laws since January 1995.

The estimate, based on the company's treatment and disposal cost projections, includes \$15 million saved by the installation of a conventional treatment works.

Hilmar spared itself \$12 million in transportation costs and disposal fees by not hauling the saltiest waste to a treatment plant — a process that began three years ago, according to the analysis.

Hilmar officials were baffled when The Bee informed them of the state's savings estimates.

"I've never seen it put that way," Jeter said, outlining pollution-control investments the company has made.

Despite those investments, the Dec. 2 order notes that Hilmar's disposal has caused a fivefold increase in groundwater salinity, citing company tests.

Furthermore, the order says, since 2000, neighbors have complained of odors and flies with "increasing frequency, blaming the conditions on (Hilmar Cheese)."

Hilmar officials are unaccustomed to such close scrutiny.

### **Years of violations**

Merced County approved Hilmar's 1984 application to build the factory with just one sentence on environmental restrictions: "This use shall not be obnoxious or detrimental to surrounding properties."

The county left it to the state to ensure Hilmar lived up to those words.

Four years passed before the valley water board visited the plant, according to board records. No sooner did the board issue Hilmar a permit capping daily flow at 60,000 gallons, than the company began violating it, records show.

Another year passed before regulators noted that offenses were daily occurrences.

By then, March 1990, the flow had grown to 140,000 gallons a day, more than double the permitted limit.

Seven more years of violations passed before Hilmar officials agreed that their waste had overwhelmed the land's cleansing capacity, water board records show. In 1997, with Hilmar's Ahlem on the water board, the company offered to build a filtering system it said would "greatly diminish" pollutants.

The company also hoped to make money by selling the filtered-out proteins for calf feed.

The \$15 million system failed on both counts. Calves couldn't digest the feed, Jeter said, and the system kept breaking down. But production kept growing, as did the volume of wastewater.

By 2001, officials had begun to get complaints from neighbors.

The following year, 2002, regulators received the most complaints about flies and odors. Flies seeped into Frank Silveira's house through vents on his gas range.

"How do they get away with that?" asked Silveira, a dairyman who has plenty of state rules to follow when irrigating crops with wastewater. "I'm not allowed to have standing water in my fields."

Jeter called a town meeting, apologized for the nuisance and promised relief: The company would pipe much of its wastewater four miles to Turlock's sewage plant.

About six months later, Hilmar officials decided the plan wasn't going to work. Jeter said the plant was out of room; Turlock officials said Hilmar didn't want to pay for the service.

By then, 2003, the company was planning to expand production again, creating an average waste flow of 2 million gallons a day.

In a letter to the company, the water board listed a litany of violations, but instead of denying the expansion, the board said it would set "minimum performance standards."

### **Regulators loath to act**

By law, the state board can direct a regional board to take enforcement action or can impose penalties, according to Craig Wilson, chief counsel for the board. But it rarely exercises that authority — and it did not do so with Hilmar.

Trgovcich, one of the statewide inspectors, has a theory about why the valley board did not act either, until this month.

"We only take cases where we are 100percent sure we are going to win," he said. "We only go after the guys who aren't going to fight us. They know Hilmar is going to fight it. This is why it pays to pollute."

Backed by California's water pollution laws — considered the nation's strongest — state enforcers could have fined Hilmar up to \$104 million for violating just one of several permit provisions: a prohibition on dumping highly concentrated waste onto fields.

Regulators found that between April 2001 and January 2003, with equipment breaking down, Hilmar dumped 10.4million gallons of high-saline water that was supposed to be hauled away, records show. The maximum penalty for that violation is \$10 per gallon.

The Fresno office can't use short-staffing as a reason.

The office has spent more hours policing Hilmar Cheese's land disposal than on all but one of 800 other companies it allows to spread organic waste on land — the Musco Family Olive Co. of Tracy according to Van Voris.

In the case of Musco, the company paid a \$150,000 fine in 2002 and is contesting a recent penalty of \$493,500 for failing to meet deadlines for fixes.

Yet with Hilmar, state inspector Maestu said, for a decade regulators "had all the information available to them. They had the resources. And they didn't act."

Carlton, the statewide water board member, characterized Harlow — who has worked for the water board since 1971 — as among a few veteran managers who reserve enforcement for the most recalcitrant violators.

"Enforcement was viewed as failure," Carlton said. "If you have to hit someone with a hammer, then you haven't done your job."

Harlow denies he has been weak on enforcement and blames Van Voris for failing to keep him abreast of Hilmar's violations.

"Frankly, I was unaware that these lingering problems were not being addressed until six or seven months ago," Harlow said. "Enforcement action should have been taken three to four years ago."

With the water board's cleanup order earlier this month and the ongoing state attorney general's investigation, lingering suspicions of some Fresno regulators are gaining currency.

The 'schizophrenic well'

For Jo Anne Kipps, one of the Fresno engineers, suspicions began four years ago with screwy test results coming across her desk.

"I would see the groundwater-monitoring data fluctuate between good quality and bad," Kipps said. "I thought, 'What is going on here? It's a schizophrenic well.'"

It was not long before engineers figured it out.

The state had required Hilmar to drill downstream testing wells and routinely sample them so enforcers could see whether wastewater was contaminating groundwater. But clean water seeping beneath an irrigation canal was diluting those wells, according to an August 2000 inspection report.

Meanwhile, upstream monitoring wells that were supposed to sample groundwater unaffected by Hilmar were steeped in the cheese pollution, according to state engineers.

Why?

The company was applying so much wastewater to land it had caused groundwater to reverse direction toward the upstream wells, inspectors said.

Hilmar officials said the phenomenon, if it happened, was unintentional.

More recently, a former Hilmar employee tipped state officials to an underground plumbing system he maintains the company installed to shunt wastewater to an irrigation canal, which flows to the San Joaquin River. Hilmar's wastewater permit prohibits canal dumping.

Ken Rodrigues, who managed the company's wastewater in the mid-1990s, said his bosses closely tracked water table levels beneath waste fields soon after underground drains were installed, in 1997. Water levels dropped 2feet to 4feet the following two months — evidence, he says, that drains were carrying wastewater to the canal.

Hilmar officials dismiss Rodrigues as a disgruntled former employee. Jeter said the drain system was installed to benefit nearby Hilmar Covenant Church, where rising groundwater flooded the basement.

Water board officials said they have no doubt the drains carried waste to the river.

"You're putting this much waste in a concentrated spot with a relief point around it," Van Voris said. "As soon as that water table comes up, that's going to go somewhere. Where can it go? Well, it's pretty obvious."

Hilmar officials plugged the drain in early 2003 at the regulators' insistence, according to water board records.

## **Caldecott Tunnel study shows drop in air pollution Decrease, which scientists say applies to entire Bay Area, is attributed to use of newer vehicles**

By Ian Hoffman, Tri-Valley Herald, December 14, 2004

SAN FRANCISCO - Using the Caldecott Tunnel as a laboratory, scientists say car and truck pollution in the Bay Area has declined dramatically over the last decade. The sharpest, "near exponential" drop in virtually every category of vehicle pollutant occurred in the last six years, according to a presentation Monday by NASA and University of California, Berkeley, scientists at an American Geophysical Union conference here.

The reason isn't California's fuel reformulations, such as the addition of MTBE, which has boosted gas prices and triggered groundwater contamination problems statewide. Rather, it's the demise or retirement of older, dirtier cars and trucks.

"It's improved vehicle technology," said Robert Harley, a UC Berkeley environmental engineering professor.

Passenger cars and light trucks, including sport utilities, have better catalytic converters. Heavy-duty diesel truck emissions improved even more for several pollutants, the result of redesigned engines that spray fuel in a fine mist that burns more efficiently and also particle filters at the tailpipe.

Carbon monoxide from both vehicle types was cut in half from 1994. Since 1997, the smallest particles of soot and other aerosols of inhalable size dropped to a third of their 1997 levels for heavy duty trucks and two-thirds for lighter-duty cars and pickups. Several measurements of airborne carbon dropped to three-fourths or slightly less of their 1997 levels for both classes of vehicles.

The Caldecott Tunnel is a near-perfect chamber for studying car and truck pollution, said Harley, who has been measuring particles and gases there since 1994. The tunnel isolates vehicle emissions from other air pollutants and intensifies them for easy measurement, and the third bore of the tunnel is off-limits to trucks, so scientists can separate car and heavy truck emissions.

"It's an excellent lab for measuring vehicle emissions," Harley said.

## **Leavitt, a good GOP soldier, wistful about leaving EPA for HHS**

John Heilprin, Associated Press Writer

Published in the S.F. Chronicle, Tuesday, December 14, 2004

WASHINGTON (AP) -- Mike Leavitt won votes in Utah as an affable and energetic promoter of big ideas, then moved up in national Republican circles as a loyal soldier and shrewd tactician.

Those qualities and managerial skills from 11 years as Utah's governor and one year as head of the Environmental Protection Agency led to Leavitt's nomination Monday as secretary of Health and Human Services in President Bush's second-term Cabinet.

Leavitt, 53, who left Utah in November 2003 to take the EPA job with a year left in his third term as governor, said Monday he had learned only hours earlier of the new job on offer.

"This happened fairly suddenly. Sunday evening I got a call from the president," he told EPA employees Monday. "I have an understandable feeling of regret as I contemplate leaving EPA."

A Mormon and father of five, Leavitt was president and chief executive of The Leavitt Group, a regional insurance firm in Salt Lake City, before being elected governor.

Some critics have viewed his enthusiasm as sometimes greater than his follow-through, but even outnumbered Democrats in the heavily Republican and Mormon state of Utah saw him as an accomplished leader.

"He's good at seeing the big picture and articulating goals, having a sense of where he'd like to see things go," said Scott Matheson Jr., a Democrat who took leave as dean of the University of Utah law school and ran unsuccessfully for governor in November. Matheson's brother, Jim, is Utah's sole Democratic congressman, and their father, Scott, was a popular two-term Utah governor from 1977 to 1985.

Leavitt, who was born in Cedar City, Utah, was 41 when he first was elected governor, the state's second youngest.

He was chairman of the National Governors Association. His biggest accomplishments as Utah's governor were overseeing the safe and popular 2002 Winter Olympic Games in Salt Lake City and the \$1.5 billion rebuilding of Interstate 15 through the city, on time and under budget.

"The issues that he will face on the national stage are a natural continuation of some of the policy areas he focused on here," Matheson said. "He took a strong interest in health care policy and reform during his time as governor."

While in Utah, Leavitt cut environmental deals with the Bush administration, including settling a long-standing dispute over ownership of roads through federal lands and negotiated exchanges of state and federal land, some deals questioned by Interior Department auditors.

He had advocated a major highway extension through wetlands and wildlife habitat near Great Salt Lake, a project halted by the federal appeals court due to wildlife needs.

At the EPA, Leavitt built a reputation as a Bush loyalist who shares the president's penchant for technological and market-based approaches to fixing problems. Leavitt promoted Bush's regulatory strategy on air pollution, putting in place rules that require cleaner-burning diesel engines and diesel fuel and more protective health standards for reducing ozone pollution.

Leavitt expressed optimism about a new opportunity. "But for the most part, I'm feeling lots of feelings of loss as I meet with people and talk with them and begin to adjust to this new thought," he said.

## **Bush Selects EPA Chief as Health Secretary Mike Leavitt would face challenges in setting up a Medicare prescription plan while potentially dealing with deep budget cutbacks.**

By Ricardo Alonso-Zaldivar and Elizabeth Shogren  
Los Angeles Times, December 14, 2004

WASHINGTON - Shifting his Cabinet reorganization back into high gear, President Bush on Monday nominated Environmental Protection Agency Administrator Mike Leavitt to head the Department of Health and Human Services, which faces a fiscal crunch over the massive medical costs of the elderly and the poor.

The morning announcement at the White House underscored Bush's determination to move beyond the withdrawal Friday of Department of Homeland Security nominee Bernard Kerik amid disclosures that a nanny he had hired may have been an illegal immigrant and that he had not paid all her Social Security taxes.

Homeland Security remains the only unfilled post of the 15 Cabinet positions, nine of which are changing hands.

Leavitt, 53, is a former governor of Utah who served a little more than a year at the EPA - not long enough to leave a substantial legacy. A pragmatist who sought to balance competing policy

interests, he was criticized by environmental groups for falling short in efforts to reduce power plant emissions, although he did institute a regulation to reduce diesel pollution.

Addressing EPA employees Monday, Leavitt said the president had called him Sunday evening to ask that he take a new job.

"This happened fairly suddenly," he said.

"EPA and HHS, in large measure, share a mission of protecting human health," Leavitt added.

Praising Leavitt's work at the EPA, Bush said Leavitt had enforced high standards with "a spirit of cooperation and with good common sense."

The Senate is expected to easily confirm Leavitt. Sen. Edward M. Kennedy (D-Mass.), who sets his party's tone on many social welfare issues, welcomed Leavitt's nomination and said he was looking forward to working with him.

As head of HHS, Leavitt would oversee an agency with 67,000 employees and a \$573-billion budget - bigger than the Pentagon's.

Its wide-ranging missions include paying the healthcare bills of the elderly under Medicare and the poor under Medicaid, assuring the safety of prescription drugs, protecting the nation from naturally occurring epidemics as well as from bioterrorism, and sponsoring cutting-edge medical research.

If confirmed, Leavitt's challenges would begin immediately. He would oversee the regulatory groundwork to set up a new Medicare outpatient prescription benefit in 2006, the biggest change for the program in 40 years and one that its 40 million beneficiaries have clamored for.

Congressional aides and independent policy experts say that to fulfill Bush's pledge to halve the deficit, Leavitt also may have to push for significant cuts in Medicaid and Medicare, which account for almost \$475 billion of the agency's 2005 budget.

"If you look at the numbers, something big is going to have to happen if we are going to try to cut the deficit in half," said Diane Rowland, executive director of the Kaiser Commission on Medicaid and the Uninsured. "If we see a budget [reduction] bill this year, both Medicare and Medicaid are largely the places they are going to have to turn to try to get savings."

Medicaid, which covers more than 50 million people, is a federal-state program that pays the medical bills of the poor and the nursing home costs of many elderly. It also provides health insurance for the children of low-income working parents. In the past, the administration has proposed capping the federal contribution for medical costs of the poor, currently about \$100 billion a year, while giving states greater flexibility on how to use the funds.

Medicare faces pressure to cut payments to hospitals and other providers.

Also related to the healthcare agenda, Bush is battling for a national limit on jury awards in medical malpractice cases and for an expansion of a new type of insurance based on tax-free individual savings accounts.

The president also said Monday that he wanted Leavitt to expand funding for faith-based organizations. In 2003, the department provided \$568 million in funding to faith-based groups for community health programs, drug abuse treatment and other services.

A former Democratic governor of Oregon who worked with Leavitt when both were state chief executives offered a strong endorsement.

"Mike is a very bright guy, a moderate Republican who is interested in finding solutions," said Gov. John Kitzhaber, who is a physician. "I also think there's a real value to having a governor in the Cabinet. If they in fact are going to whack the money in [health] programs, Mike is certain to be in the position of dealing with other governors, who undoubtedly will come unglued when that happens."

As governor of Utah, Leavitt undertook a modest experiment with healthcare reform. With federal approval, he shifted some Medicaid funds to provide low-income workers with the choice of either preventive benefits or a partial subsidy to buy health insurance through their employers. Of the 250,000 adults in Utah without health coverage, about 16,000 enrolled in the programs, according to news accounts.

Before becoming governor, Leavitt had been an executive in his family insurance business, the Leavitt Group, which sells life, auto and healthcare coverage to businesses and individuals.

His tenure at the EPA produced a mixed record. He faced intense criticism from congressional Democrats and environmental activists over a proposal to control mercury emissions from power plants, which critics said fell far short of Clean Air Act requirements.

And he was unable to complete a plan to reduce emissions of nitrogen oxides and sulfur dioxide from power plants to help states meet stiffer health-based air-quality standards for ground-based ozone and fine particles, contaminants that can cause life-shortening illnesses.

Leavitt had promised to complete the latter plan - the Clean Air Interstate Rule - by the end of this year.

Over the weekend, however, administration officials said the plan would not be released until March. That would give the new Congress a chance to act on another administration proposal, known as Clear Skies, which would give the power industry relief from many regulatory requirements.

"Within the constraints imposed by the White House and the Clear Skies straitjacket, [Leavitt] was looking for ways to advance a positive public health agenda against air pollution," said John Walke, a senior attorney for the Natural Resources Defense Council. "Just this weekend we saw how unsuccessful that was."

The EPA job was not known to be open, and Leavitt's departure touched off a new round of speculation over his successor. Among those mentioned were James L. Connaughton, a lawyer who chairs the White House Council on Environmental Quality, and Idaho Gov. Dirk Kempthorne, who was considered a candidate for the job last year.

If confirmed, Leavitt will replace Tommy G. Thompson, a former governor of Wisconsin. Thompson announced his resignation two weeks ago.

## **Million solar homes achievable by 2018**

By Don Thompson, AP

Published in the Tri-Valley Herald, December 14, 2004

SACRAMENTO - California could have 1 million buildings producing solar energy by 2018, with half of all new homes powered by the sun, administration officials said Monday as they outlined ways to meet one of Gov. Arnold Schwarzenegger's more ambitious campaign promises. The goal is to create a self-sustaining solar industry in 10 years, making the zero-pollution power source so commonplace and cheap that costly incentives are no longer necessary, said Joe Desmond, Schwarzenegger's deputy secretary for energy.

Until then, environmental officials are considering funding methods that could include a charge on electricity bills to pay the estimated \$700 million to \$1 billion cost. That would return a projected \$3 billion to \$5 billion in benefits, Desmond said in an interview.

The goal is to generate 3,000 megawatts of power from the sun within 13 years, the equivalent of a dozen medium-sized power plants. One megawatt is enough to power about 750 homes.

To get there, solar manufacturers who move to California might be offered an investment credit, while homeowners' income and property tax credits, set to expire in 2006, might be extended, Desmond said.

The administration officials propose to require builders to offer solar power as an option in subdivisions of 50 homes or more by 2010.

And they want the California Energy Commission to consider requiring solar energy in the same way the commission has in the past mandated low-flush toilets, insulation standards, energy efficient appliances or low-energy lighting fixtures in bathrooms.

They also want to let owners of solar-powered buildings sell more of their electricity back to power utilities.

The proposals all come in the wake of the blackouts and spiraling power costs that plagued the state in 2000 and 2001 and reverberate today.

California already is the world's third-largest market for solar technology, but advocates say such a statewide incentive plan would put the state on a par with leaders like Japan and Germany.

Schwarzenegger backed a solar homes proposal that failed in the Legislature four months ago. Resource and Environmental Protection agency officials on Monday outlined their goals and solicited suggestions on how to meet his campaign promise, though Schwarzenegger has yet to endorse a new attempt at legislation.

Unlike the previous version, the latest variation would include commercial as well as residential buildings, which may make it easier and cheaper to reach Schwarzenegger's million-roof goal, Desmond said. That's also a goal of state Sen. John Campbell, R-Irvine, who is carrying a preliminary version of the bill with last year's legislative sponsor, Sen. Kevin Murray, D-Culver City.

"The devil will be in the details," said Bernadette Del Chiaro of the Environment California Research and Policy Center.

Her organization estimated that the state needs to pay homeowners at least \$2,800 for each kilowatt of solar power generation they install to make the investment worthwhile.

The California Building Industry Association has been generally supportive, but opposes mandates that would cost its members and wants to begin with a smaller program. Utilities and unions in August supported a less ambitious competing bill that Schwarzenegger aides said would have been unworkable.

[Fresno Bee editorial, Tuesday, December 14, 2004:](#)

## **Tired of waiting**

**State air board takes up the slack it cut diesel engine manufacturers.**

California's air pollution regulators finally ran out of patience with the diesel engine industry last week, and imposed mandatory requirements for cleaning up the emissions from such engines. This should have happened years ago.

In 1998, the state Air Resources Board thought it had won a settlement with the truck and engine builders, after the companies got caught cheating their way around air pollution rules. The engines were being equipped with devices that gave false readings when they were being tested for emissions, but were programmed to cut out the pollution controls at highway speed, thus increasing mileage — at the cost, of course, of fouler air in California.

Instead of landing hard on the necks of the cheaters, the board allowed them to pursue a voluntary program of retrofitting engines to remove the bypass devices. The goal was 35% compliance by this past November; the industry as a whole managed only around 18%.

The new ruling applies to some 58,000 trucks licensed in California, and another 300,000 to 400,000 vehicles that are licensed elsewhere but move through the state.

This is a particular concern in the Valley, where the nation's worst air pollution occurs, and is exacerbated by huge amounts of diesel engine exhaust from trucks that haul goods up and down the highways. The air board estimates that removing the bypass devices from state-licensed vehicles will prevent an estimated 30 tons a day of diesel pollution from entering the atmosphere. That's equivalent to removing 1 million cars from California highways. The out-of-state vehicles produce another 6 to 9 tons of diesel pollution each day.

That's serious business. Diesel engine exhaust contains tiny bits of soot, dust and chemicals that can trigger asthma attacks and cause other respiratory problems.

The change has national implications, because California is a leader in such regulations, and because the state's economy is so large. Other states often emulate the actions taken by California, which is why so many polluting industries try so hard to stave off regulations here — to keep them from spreading.

The Air Resources Board tried to be nice. The industry got caught cheating and was given a chance to clean up its act. It didn't. Now it faces a tougher task. That's all good news for Californians and especially those of us here in the Valley.

[Letters to the Fresno Bee, Monday, December 13, 2004:](#)

## **Ban them all**

Excellent "No burn days" editorial Dec. 8. Consider this: In the last five years, summer ozone pollution has exceeded the eight-hour national standard by an average of 108 days (out of 120 eligible summer days) and particulate pollution often exceeds its standard during the Nov. 1-March 1 winter season. Why not shut down all wood-burning fireplaces in Fresno completely and help diminish this excessive abuse of our lungs?

As is now known, particulates are linked to heart attacks and premature death, thereby causing more adverse health affects than ozone pollution. Wintertime wood burning in Fresno produces almost one third of the wintertime particulate matter. Wood burning is prohibited when the Air Quality Index (AQI) is above 150 but only discouraged when the AQI is above 100. Since the population that is adversely affected when the AQI is above 100 are children and the elderly, what does this say about our values?

Shutting down wood burning fireplaces is one area in which we can take back control and personally contribute to reducing wintertime pollution. Curtailing sales of fire wood will not significantly damage vital business interests. A gas or pellet fireplace provides a perfectly acceptable "ambience" alternative and heat source. Wood-burning fireplaces are already not allowed in new housing construction in Fresno. Why can't the rest of Fresno join in?

Is there any reason to continue to live with this unnecessary and deadly pollution source? Would people enjoy taking an evening stroll in cleaner air instead of the smokehouse environment that

now exists? Are people willing to take a personal stand against air pollution (because it is personal)? Are they willing to shut down their own wood-burning fireplace?

Dave Clarke, Fresno

[Letters to the Fresno Bee, Monday, December 13, 2004:](#)

## **Foolish fireplaces**

Am I the only reader that experiences this Bee double take?

Week after week, I read articles on deteriorating air quality, increasing child asthma rates, spare-the-air days, agriculture no-burn days and the Valley's top rankings in state and federal "worst air quality" lists.

Then, usually in the Sunday edition, I am treated to full-page color ads from our most prominent builders, displaying with enormous pride, their newest subdivisions sporting the features that Valley home buyers demand most. There it is! A beautiful, secluded exterior patio, featuring a huge fireplace that invites you and your loved ones to light up and provide needed heat to the great outdoors!

In spite of what the ads state, I find it counterintuitive to accept that the smart Valley home buyer thinks this is the right feature, at the right time, in the right place and at the right price. I would enjoy hearing some comments about this essential feature from our elected officials, planning commissions, air-quality boards, local physicians and others who are constantly quoted in Bee news articles, warning us about the state of the Valley's air quality.

I think this item is going to extract a far higher price; one that all of us in the Valley will eventually be called upon to pay.

Jim Daggs, Fresno