



CEQA and Environmental Justice—A View from the Legislature

Presentation by Kip Lipper
Office of California Senate pro Tem
Planning and Conservation League Conference
January 2024

Legislative Disclaimer



“The opinions expressed by the presenter are his alone and do not necessarily represent the views of the California Senate, or any member of the Senate.”

Presentation Summary



- Review key CEQA statutory law since 1970's
- Review key budgetary, policy, and political dynamics affecting CEQA especially in EJ Context
- Preview emerging CEQA issues in legislative and executive branches

CEQA in Legislative Context



- Little understood law in both executive and legislative branches (term limits, new Adm etc)
- Often under attack—despite lack of empirical data-- particularly during bad economic times
- Very few bills strengthen CEQA
- In recent years, CEQA debates tend to be polarized and uninformed (exemptions versus status quo). Few understand the law.

CEQA in Legislative Context

- Environmental groups defend CEQA (though some try to work through issues and some others do not make it a priority it once was)
- Business, developer groups oppose CEQA (distressingly weak CEQA Business lobbying bar)
- Administrations vexed by CEQA (ARB, Caltrans)
- Business fights with itself on CEQA issues (Stadiums, housing, competition)
- Organized Labor, tribes significant forces, though hardly monolithic (laborers, carpenters v pipe fitters)

CEQA in Legislative Context



- “Progressive” Democrats tend to defend, while “moderate” Democrats willing to amend.
- Republicans uniformly support modifying CEQA except where business (or occasionally labor) oppose.
- CEQA generally viewed as cumbersome and litigious. But little understanding or appreciation of its benefits, especially for disadvantaged communities
- Governors and Administrations often set stage for CEQA debates. (See e.g. Newsom 2023 Infrastructure Package)

CEQA Enacted by Legislature in 1970

- Environment important political issue (Santa Barbara Oil Spill, first Earth Day etc).
- Ronald Reagan Governor and Republicans controlled Assembly.
- Republican Speaker Bob Monagan created Select Committee on Environmental Quality. 34 recommendations, one of which was enacting California “Little NEPA”
- AB 2045 (Knox, Wilson, Briggs, Duffy, Monagan, and Schabarum) passed on lopsided bipartisan votes (59-7, 39-0)
- Law was low key until *Friends of Mammoth v. Mono County Board of Supervisors* ((1971) 8 Cal.3rd 247)

CEQA in 1980's—Deukmejian Era

- Prison construction boom--CEQA Exemptions “Plus”
 - EAS—”Environmental Assessment Study”
 - “Expert” Administrative Tribunal Review
- Loma Prieta Earthquake Repairs
 - Further use of “tribunals” (Resources, BTH, Environmental Affairs Secretaries) to review environmental effects in lieu of CEQA review

CEQA in 1990's—Wilson Era

- Early 1990's Recession hit state hard. Like today, jobs and economy major issues. Wilson scrambled to address.
- Formation of “Californians Against Red Tape” CART (Labor/business coalition)
- Various reports and recommendations submitted to Legislature urge CEQA Reforms (State Bar, Uberroth Report, Landis Report)
- CEQA Reform Act of 1993 (MEIR, FEIR, streamlining for mandated projects, new standing and evidentiary rules, CEQA judges etc)

CEQA in 1990's—Additional Developments

- Military base reuse and renovation—need to bring federal and state processes together
- Continuing conflict over certified regulatory programs (e.g. Forest Practices)
- Inchoate but growing interest in climate change (AB 4420/1988, SB 1771—1999)
- 1996--First “stadium” Bill--Giants Stadium Legislation

CEQA in New Millennium

- Increasing interest in climate change—lack of action at federal level—Enactment of AB 1493/2002 (GHG vehicle standards)
- Enactment of AB 32—Global Warming Solutions Act of 2006—identified GHG's as significant effect on environment. Collateral Impact on CEQA
- Jerry Brown Department of Justice, others bring actions under CEQA to enforce GHG mitigation for general plans, housing dev.
- CBIA, major developers, local governments protest

2011 CEQA Legislation

- Brown Administration, similar themes
- First six months occupied with more Budget/CEQA linkages (Rep/business pkg), which ultimately failed.
- Key New CEQA Template Emerged:
 - AB 900 (Buchanan et al)—“Environmental Leadership Projects”
 - Concurrent Preparation of the Administrative Record
 - Expedited Judicial Review

CEQA In the 2020's



- Increasingly focused on expediting Climate/Clean Energy Related Projects and Housing Projects
- Newsom 2023 Infrastructure Package—SB 149
- Infrastructure/Permit Streamlining for climate and clean energy projects.
- Driven by CA Interest in federal IRA Dollars
- Significant CEQA and CESA Reforms

2023 Newsom Infrastructure Package



- Applies to clean energy, transportation, water, and other projects.
- Applies similar streamlining as original AB 900 did (Concurrent preparation of the Adm Record, Expedited Judicial Review)
- Limits scope of information allowed in Adm Record (PRA documents, internal staff emails and non substantive information designed to delay proceedings)
- 270 Day Deadline for all claims to be adjudicated

The Importance of CEQA in Environmental Justice



- Public process and disclosure—Community voices must be heard
- Mitigation of impacts not always addressed in regulatory context
- Unique (and sometimes controversial) enforcement mechanism (Writ of Mandamus)

Closing Thoughts....

- CEQA at 50—middle-aged but still California's bedrock environmental law
- Legislative CEQA debate sometimes supersedes serious policy discussion over needed improvements
- Challenges ahead on CEQA—housing, clean energy and infrastructure, and, oddly the climate lobby
- Legislature reflects views of state as a whole (clean environment, strong economy both important)
- CEQA will always be in the process of being reformed as long as CaAGovernment and the Courts exist.



Thanks. Questions?