Ann is a little puzzled about what the environmental justice community hopes to achieve by suing the state over cap-and-trade: why would a carbon tax be better? she asks. Sean says that we need to understand that the EJ community is deeply committed to a series of process-oriented goals, and believe that these goals have been violated. Still, as he notes, it's hard to see why a carbon tax or direct regulation would solve the problem. And Dan suggests that the EJ movement might the Left's answer to the Tea Party.
I suppose I'm more cynical than my three colleagues, and hope that the EJ movement is, too.

This is a CEQA suit. When you file a CEQA suit, you look for whatever flaws you can find in a Draft Environment Impact Report. If it's biological impacts, then you focus on that. If it's historic resources, then you write about that. The *legal* claim has no necessary relation to what you really want. When I was in practice, we represented the Los Angeles Airport Department in trying to expand LAX. Local homeowners' associations of


The NIMBY's Favorite Butterfly

course hated the idea, and then became *extremely* concerned about the El Segundo Blue Butterfly, an endangered species living near the airport about which they actually knew little and cared less.

But of course part of that legal claim has to be something that impresses a judge, and it will impress at least some judge that CARB didn't really analyze carbon taxes or direct regulation.

So what do the EJ folks really want? I don't know, but Sean suggests:

> [AB 32] also clearly and specifically requires maximization of co-benefits and minimization of adverse impacts on communities already disproportionately impacted by pollution. The EJ community advocated for these features, and believe that this aspect of the law isn't being implemented robustly.

It looks to me, then that the EJ folks want to make life difficult enough for CARB that the Board gives in and gives their constituency something. If you don't like that attitude, you call it a shakedown; if you do like it, then you call it leverage.

A few years ago, when the developer of the Staples Center issued the Draft Environmental Impact Report, the "Figueroa Corridor Economic Justice Coalition" sent in hundreds of critical comments, making it very clear that they would challenge the project. But the project couldn't wait: Staples had to be ready in time for the 1999-2000 season. So they settled, creating a Community Benefits Agreement that stands as a model for similar agreements around the country, and has really helped the low-income communities of color near the arena.

The way a CEQA suit works is that the plaintiffs will try to delay and delay the project, and hope that either the political winds change (in the case of a public project) or the developer's financing falls through (in the case of a private project).

It's hard to see that working here: CARB has a lot of political backing for this, and to the extent it has resistance, it's not to make the program friendlier to EJ constituencies. But you go to court with the statute you have, not the statute you'd like to have, particularly if you represent low-income communities of color.

AIR is taking a real risk here: either they don't have leverage, in which case CARB will re-analyze and just move ahead, or they *do* have leverage, in which case the program might go defunct (I'm doubtful of this, but at some level AIR must believe this is a possibility). And since the prime victims of climate change will be low-income people of color in the Global South, calling it "environmental justice" in those circumstances will be, shall we say, ironic.