

4/4/2006 - Supreme Court Oral Arguments on Big Creek and CCFA vs. Santa Cruz County:

Background

At 10:00 a.m., April 4, 2006 in the Supreme Court Room of the Ronald Reagan State Office Building, in Los Angeles, the California State Supreme Court heard oral argument from both sides in Big Creek/CCFA vs. Santa Cruz County. The Supreme Court's seven justices hear cases as a body and make decisions by a majority vote. The current panel of justices are:

Ronald M. George, Chief Justice
Joyce L. Kennard
Marvin R. Baxter
Kathryn M Werdegar
Ming W. Chin
Carlos R. Moreno
Carol A. Corrigan

In January our attorneys requested that two justices who had been involved with the Big Creek vs. San Mateo County case (that forms the basis for much of the County's argument) recuse themselves. The County urged them not to do so, and they didn't.

We were second on the Court's calendar for that morning. Each side was given a total of only 30 minutes to make its arguments. In addition to the plaintiffs, Ginevra Chandler, attorney for the State Board of Forestry (who had filed an amicus brief on our behalf) was present. We agreed that, in order to make time for the Board of Forestry to speak in our support, Mr. Stewart would talk for both Big Creek and CCFA. As at previous court appearances, the County was represented by their contract attorney, Fran Layton.

Bud McCrary and Bob Berlage of Big Creek and Bob and Anne Briggs of CCFA were present for the arguments. Michelle Dias of CFA was also present. The proceeding was televised on the State cable channel, allowing some of our folks at home to hear or watch.

The Arguments

Fran Layton, attorney for the County, was called before the court first. Layton reserved five of her 30 minutes for rebuttal thus getting in both the first and last words. Craig Stewart was called immediately after Layton's 25-minute initial arguments. He yielded his last ten minutes to Ms. Chandler. All arguments from

the three lawyers for both sides were interrupted continuously with questions by various justices so that the prepared comments were not coherently presented.

County: The County's most telling arguments were:

- State law has always assigned zoning authority to county jurisdiction and this means that only the County can say where any activity including timber harvest may take place.
- Anyone who wants to can rezone his non-TPZ forestland to TPZ and this solves all of the forestland owner's problems. Layton falsely told the Court that there are no delays or complications to rezoning and that the County has rezoned many parcels to TPZ in the past couple of years. (Although a large number of rezoning applications have been pending for many years, our side found no opportunity to correct this false claim.)
- Since the State statute places the *conduct* of timber harvesting exclusively under the authority of the Board of Forestry, and the County argues that conduct means only how but not where timber may be harvested; thus the County can impose any restrictions, setbacks or exclusions it likes on the location of timber harvest.
- Preventing timber harvest in any one area doesn't impact the timber industry or forest product supply because the industry will just move the activity to another area.
- Layton made a comparison between State management of timber harvest and management of mining. She claimed that mining law gives the state control of how it is done but not where. She affirmed that therefore the State cannot say where timber operations can or cannot be conducted.

Big Creek/CCFA: Craig Stewart spent most of his 20 minutes answering questions and trying to respond to some of Layton's arguments. His most important points were:

- Stewart attempted to show that the use of the word "*conduct* of timber harvest operations" does includes the location in which they take place. He cited the grandfather clause in the statute that specifically cuts off all of the County's authority over management of timber harvest.
- Stewart contradicted the statement that preventing harvest in any specific location is unimportant because you can always

go to another location. He pointed out that merchantable trees are specific to a particular location and can only be harvested there. He considered a forestland owner who would be deprived of the use of his property on this basis.

- Stewart emphasized the fact that State legislation is designed to promote a strong California forest products industry on a statewide basis, requiring State management of the timber industry.
- Stewart did not address the multiply repeated mis-information that no impediments have been placed regarding rezoning to TPZ and that the County has rezoned hundreds of parcels with no delays or restrictions.

State Board of Forestry: Ginevra Chandler speaking for the Board of Forestry reiterated Stewart's comments on the State's interest in a vital timber production industry and supported our case that the County has no business intruding on the State's exclusive authority regarding timber management.

Conclusion

Based on the comments and questions from the justices, it is impossible to do more than guess at their positions. The opinion of those who saw or heard the proceedings is that it could go either way. Craig Stewart states that the court will announce its decision before the end of July. We will keep members and friends informed of any new information.