

6/30/95

50,743

FILED G

JUN 30 3 57 PM '95 19p.

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
AT FRESNO  
BY [Signature] 1016870

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PADRES HACIA UNA VIDA MEJOR, a	)	CV-F-95-5123-OWW
California non-profit	)	
corporation, FRANCISCO BELTRAN,	)	MEMORANDUM OPINION & ORDER
JUANITA FERNANDEZ, LORENZO	)	RE: MOTIONS TO REMAND OR TO
GARCIA, SAUL MORENO, SYLVIA	)	ABSTAIN
MORENO, SALVADOR PEREZ, JUAN	)	
REYES, and ROSA SOLORIO-GARCIA,	)	
	)	
Petitioner/Plaintiffs.	)	
	)	
v.	)	
	)	
COUNTY OF KERN, BOARD OF	)	
SUPERVISORS OF THE COUNTY OF	)	
KERN, VICTOR HOLANDA, Director,	)	
State Office of Permit	)	
Assistance,	)	
	)	
Respondents/Defendants.	)	
	)	
_____ LAIDLAW, INC., LAIDLAW	)	
ENVIRONMENTAL SERVICES--LOKERN,	)	
INC.,	)	
	)	
Real Parties in Interest	)	
and Defendants.	)	
_____ 	)	

I. INTRODUCTION

This matter comes before the Court on Plaintiffs' motion to remand the case to state court. Plaintiffs are residents of

1 Buttonwillow, a small, predominately Latino community located  
2 near a hazardous waste facility in Kern County.<sup>1</sup> They oppose the  
3 expansion of the facility, which was approved by the Kern County  
4 Board of Supervisors on December 12, 1994. On January 3, 1995,  
5 Plaintiffs filed this case in Fresno County Superior Court,  
6 seeking a writ of mandamus, injunctive relief, and declaratory  
7 relief. Defendants removed the case to the United States  
8 District Court for the Eastern District of California on February  
9 17, 1995. Plaintiffs now move for remand or, alternatively, for  
10 abstention.

11 Defendant Laidlaw Environmental Services--Lokern (Lokern)  
12 owns and operates a hazardous waste disposal facility in Kern  
13 County (Lokern facility). Defendant Laidlaw Inc. is the parent  
14 of Lokern. Defendants applied to Kern County for a permit to  
15 expand the Lokern facility to approximately twice its current  
16 size. They oppose remand of the entire case. Defendants Kern  
17 County, the Kern County Board of Supervisors, and Holanda also  
18 oppose remand. However, all parties agree that Plaintiffs' first  
19 through fifth and tenth claims be remanded to state court. The  
20 dispute is over whether the sixth through ninth claims should be  
21 remanded.

22 Plaintiffs allege that the Defendants have discriminated

---

23  
24 <sup>1</sup> Plaintiff Padres Hacia Una Vida Mejor is a California  
25 non-profit corporation "dedicated to informing, involving and  
26 organizing the Buttonwillow community for social and  
environmental justice." (Complaint at 4:16-19). Each of the  
individual plaintiffs is a founding member of Padres. (Id. at  
5:7-11).

1 against the Latino community of Buttonwillow by locating and  
2 expanding the Lokern facility near Buttonwillow. More than half  
3 of the Buttonwillow residents are farm workers of Mexican  
4 descent. Many do not speak any English. Plaintiffs contend that  
5 Defendants purposefully sought to exclude Latinos from  
6 participating in the permit process that resulted in approval of  
7 Lokern's request to expand its facility. They also allege that  
8 Kern County's approval of the expansion was improper because the  
9 Environmental Impact Report concerning the expansion was  
10 inadequate.

## 11 12 II. DISCUSSION

### 13 14 A. Section 1441(b).

15 Defendants claim that removal is proper under 28 U.S.C.  
16 §1441(b), which provides: "Any civil action of which the district  
17 courts have original jurisdiction founded on a claim or right  
18 arising under the Constitution, treaties or laws of the United  
19 States shall be removable without regard to the citizenship or  
20 residence of the parties." An action is removable under 1441(b)  
21 only if federal jurisdiction exists over every claim in the case.  
22 For example, if federal jurisdiction over one claim is barred by  
23 Eleventh Amendment immunity, the entire case must be remanded to  
24 state court. Robinson v. State of California, 836 F. Supp. 717,  
25 718-19 (N.D. Cal. 1993); Simmons v. State of California, 740 F.  
26 Supp. 781, 785-86 (E.D. Cal. 1990); see also Frances J. v.

1 Wright, 19 F.3d 337, 340-41 (7th Cir.), cert. denied, 115 S. Ct.  
2 204 (1994) (removal under 1441(a) improper where one claim barred  
3 by sovereign immunity); McKay v. Boyd Const. Co., Inc., 769 F.2d  
4 1084, 1087 (5th Cir. 1985). Contra Texas Hospital Ass'n v.  
5 National Heritage Ins. Co., 802 F. Supp. 1507, 1512-13 (W.D. Tex.  
6 1992).

7 Relying on Simmons, Plaintiffs argue that removal of the  
8 entire case under 1441(b) is improper because the Eleventh  
9 Amendment bars their first claim from being heard in federal  
10 court. Their first claim names Victor Holanda in his official  
11 capacity as director of the State Office of Permit Assistance  
12 (OPA). All parties agree that this claim falls within the scope  
13 of Eleventh Amendment immunity, as interpreted in Hans v. State  
14 of Louisiana, 134 U.S. 1 (1890). The State of California has not  
15 waived its immunity in this case. (Brief of Holanda, at 3:10-  
16 13). Since no federal jurisdiction exists over Plaintiffs' first  
17 claim, removal under 1441(b) is improper.

18 Defendants counter that Plaintiffs' claim against Holanda  
19 is fraudulent and should not be considered for removal purposes.  
20 Where the plaintiff asserts a groundless claim that would  
21 prohibit removal jurisdiction, courts have disregarded the claim  
22 and retained jurisdiction over the case. See Simmons, 740 F.  
23 Supp. at 786.<sup>2</sup> Whether a claim is "fraudulent" is determined by

24  
25 <sup>2</sup> Usually, this doctrine is applied to the fraudulent  
26 joinder of nondiverse parties. However, it has also been applied  
to cases involving federal question jurisdiction where the  
plaintiff asserts a groundless state law claim that precludes

1 examining the likelihood of recovery, not the plaintiff's state  
2 of mind. Lewis v. Time, Inc., 83 F.R.D. 455, 460 (E.D. Cal.  
3 1979), aff'd, 710 F.2d 549 (9th Cir. 1983). "The burden of  
4 proving a fraudulent joinder is a heavy one. The removing party  
5 must prove that there is absolutely no possibility that the  
6 plaintiff will be able to establish a cause of action . . . ."  
7 Green v. Amerada Hess Corp., 707 F.2d 201, 205 (5th Cir. 1983),  
8 cert. denied, 464 U.S. 1039 (1984); McCabe v. General Foods  
9 Corp., 811 F.2d 1336, 1339 (9th Cir. 1987) ("If the plaintiff  
10 fails to state a cause of action against a resident defendant,  
11 and the failure is obvious according to settled rules of the  
12 state, the joinder . . . is fraudulent."). In deciding whether a  
13 particular claim is fraudulent, the Court may consider evidence  
14 presented by the defendant.

15 Plaintiffs' first claim alleges that Holanda, as director  
16 of the OPA, violated statutory duties imposed by the Tanner Act,  
17 codified at Cal. Health & Safety Code §25199 et seq. The  
18 following duties are imposed upon the OPA:

19 The Office of Permit Assistance in the Office of  
20 Planning and Research shall, for any proposed  
21 hazardous waste facility project, do all of the  
22 following:

23 (a) Assist in identifying state and local permits  
24 required for the proposed hazardous waste facility  
25 project.

(b) Convene meetings or conferences, as necessary,  
prior to the submittal of applications for permits to  
state and local agencies, for the purpose of determining  
the scope of the hazardous waste facility project,  
identifying the questions that state and local agencies

26 removal. Simmons, 740 F. Supp. at 786-87.

1 will have concerning the project, and determining  
2 decisionmaking schedules.

3 (c) Assist state and local agencies in consolidating  
4 public meetings and hearings permitted or required by law  
5 or regulation for approval of the permits for the  
6 project.

7 (d) Encourage the joint review and processing of  
8 applications and permits.

9 (e) Work with the applicant and public agencies to  
10 ensure that decisionmaking deadlines are met.

11 (f) Call meetings or conferences to resolve  
12 questions or mediate disputes arising from applications  
13 for a permit for a hazardous waste facility project.

14 Cal. Health & Safety Code §25199.4.

15 Plaintiffs allege the following facts in support of their  
16 claim that the OPA violated its duties. Prior to approving the  
17 Laidlaw's application for hazardous waste permit, Kern County was  
18 required by law to appoint a seven member Local Assessment  
19 Committee (LAC). §25199.7(d). The membership of the LAC is to  
20 "be broadly constituted to reflect the makeup of the community."  
21 §25199.7(d)(1). Plaintiffs allege the LAC was not "broadly  
22 constituted" because only two residents of Buttonwillow were  
23 appointed. Both of these appointments were made long after the  
24 LAC had been formed. Moreover, only one Latino was appointed to  
25 the LAC, some 32 months after the LAC was created.<sup>3</sup>

26 Plaintiffs further allege that the LAC was not given  
sufficient time to review Laidlaw's application to expand the  
Lokern facility. The LAC's request that the County postpone its  
final decision until the LAC completed its deliberations and

---

<sup>3</sup> The Latino member, Eduardo Montoya, spoke only Spanish. He was not appointed until 32 months after the LAC was formed, when one of its members resigned so that a minority member could be appointed. (Complaint ¶ 81).

1 prepared its recommendations was denied by the County. The  
2 County also denied the LAC's request for independent counsel and  
3 technical consultants to aid its deliberations. The County  
4 refused to provide funds for translation of the Environmental  
5 Impact Report into Spanish.<sup>4</sup> The LAC sought assistance from the  
6 OPA to facilitate resolution of its disputes with the County and  
7 Laidlaw.

8 Defendants argue that no claim can be stated against the  
9 OPA. They contend that the OPA is obligated to convene meetings  
10 to facilitate dispute resolution, but has no mandatory duty to  
11 intervene in or mediate disputes arising out of the hazardous  
12 waste facility permit process. They have submitted the December  
13 9, 1994 letter from the LAC to the OPA in which the LAC requested  
14 assistance. The OPA responded by letter from Holanda that it  
15 would "coordinate a meeting between all of the concerned parties  
16 in the spirit of resolving any existing conflicts, but [would]  
17 not interfere with the legal process that Kern County is  
18 pursuing." Defendants contend this was an adequate response to  
19 the LAC's request. They point out that the LAC never replied to  
20 Holanda's offer to arrange a meeting between the interested  
21 parties.

22 Plaintiffs reply that the LAC did not respond to  
23 Holanda's letter because Kern County illegally disbanded the LAC  
24 on the same date that Holanda's letter was written, December 12,

---

25 <sup>4</sup> One of the members of the LAC spoke only Spanish, as do  
26 many residents of Buttonwillow.

1 1994. They contend that OPA knew or should have known of the  
2 problems that the LAC was having with the County and Laidlaw even  
3 before the December 9 letter.<sup>5</sup> They allege that OPA violated its  
4 duty to be informed of the LAC's progress and its duty to  
5 intervene in disputes arising out of the hazardous waste facility  
6 permit process. According to Plaintiffs, the OPA has a  
7 particularly great obligation to ensure public participation in  
8 the permit process. It points out that one of the legislative  
9 findings accompanying the Tanner Act was that "[p]resent  
10 procedures for approving hazardous waste facilities do not  
11 provide meaningful opportunities for public involvement and are  
12 not suitably structured to allow the public to make its concerns  
13 known and to cause these concerns to be taken into  
14 consideration." §25199(a)(3). Defendants contend that the terms  
15 of the statute do not impose an enforceable duty on the OPA to  
16 ensure public participation in the permit process.

17 Plaintiffs' Tanner Act claim is a question of first  
18 impression. The parties have cited no cases interpreting the  
19 relevant statutes. There appear to be only two reported opinions  
20 that cite §25199 et seq. of the Cal. Health & Safety Code. See  
21 IT Corp. v. Solano Co. Bd. of Supervisors, 1 Cal.4th 81, 94  
22 (1991); Rio Vista Farm Bureau Ctr. v. County of Solano, 5  
23 Cal.App.4th 351, 382 (1992). Neither refers to the particular

---

24  
25 <sup>5</sup> "OPA's duties under the Tanner Act obligate it to insure  
26 that it is regularly and fully informed regarding the course of a  
LAC's progress toward the fulfillment of its duties." (Complaint  
¶ 98, at 31:16-18).

1 provisions at issue in this case.

2 Since the relevant statutory provisions have never been  
3 interpreted by California courts, it is not "obvious according to  
4 settled rules of the state" that Plaintiffs cannot state a claim  
5 against the OPA. The Fifth Circuit has stated that "[i]n  
6 evaluating fraudulent joinder claims, [the court] must initially  
7 resolve all disputed questions of fact and all ambiguities in the  
8 controlling state law in favor of the non-removing party."

9 Dodson v. Spiliada Maritime Corp., 951 F.2d 40, 42 (5th cir.  
10 1992). Remand is required if, viewing the case in this manner,  
11 there is "any possibility of recovery." Id. Here, the parties  
12 dispute the nature of the legal duties imposed upon the OPA by §§  
13 25199.4(f)<sup>6</sup> and 25199.7(h).<sup>7</sup> Resolving the ambiguities in this  
14 unsettled area of state law in favor of Plaintiffs, there is at  
15 least a possibility that Plaintiffs may some obtain relief from  
16 the OPA.

17 Plaintiff's primary claim is that the OPA should have  
18 "called meetings or conferences to resolve questions or mediate  
19 disputes . . ." The OPA attempted to do so. Its efforts were  
20 allegedly thwarted by the County. Accepting these facts as true,  
21

---

22 <sup>6</sup> This section provides the OPA shall "Call meetings or  
23 conferences to resolve questions or mediate disputes arising from  
24 applications for a permit for a hazardous waste facility  
25 project."

26 <sup>7</sup> "If the local assessment committee and the proponent  
cannot resolve any differences through the meetings, the Office  
of Permit Assistance may assist in this resolution pursuant to  
Section 25199.4."

1 it is difficult to see what relief Plaintiff can claim in a  
2 private enforcement action against the OPA. The question is best  
3 left to the California courts to decide and define the duties  
4 imposed by the Tanner Act. For the purposes of this motion to  
5 remand, it is sufficient that Plaintiffs' first claim against  
6 Holanda, in his capacity as the director of the OPA, is not  
7 obviously frivolous under settled rules of state law for it  
8 cannot be determined from the face of the statute that the OPA  
9 has no enforceable duty to intervene in an approval process from  
10 which Plaintiffs were allegedly being intentionally excluded.  
11 Because the Eleventh Amendment bars the court from exercising  
12 jurisdiction over Plaintiffs' first claim against Holanda removal  
13 under §1441(b) was improper. The entire case must be remanded to  
14 state court unless §1441(c) applies.

15 B. Section 1441(c).

16 Defendants also contend removal was proper under 28  
17 U.S.C. §1441(c).<sup>8</sup> They argue that the court has jurisdiction  
18 over the case because Plaintiffs' federal and state civil rights  
19 claims are "separate and independent" from all of the remaining  
20 claims. Plaintiffs respond that none of its claims are separate

---

21 <sup>8</sup> This section provides:

22 Whenever a separate and independent claim or cause  
23 of action within the jurisdiction conferred by  
24 section 1331 of this title is joined with one or  
25 more otherwise non-removable claims or causes of  
26 action, the entire case may be removed and the  
district court may determine all issues therein, or,  
in its discretion, may remand all matters in which  
state law predominates.

28 U.S.C. §1441(c).

1 and distinct because they all stem from a single wrong. Their  
2 claims arise out of a common nucleus of operative facts.  
3 Although each claim is premised upon a different legal theory, in  
4 substance each claim seeks to vindicate a single primary right:  
5 Plaintiffs' asserted right not to be excluded from participation  
6 in the decision to expand the Lokern facility.

7 The leading case that defines "separate and independent"  
8 for the purposes of §1441(c) is American Fire & Casualty v. Finn,  
9 341 U.S. 6 (1951). Finn states "where there is a single wrong to  
10 the plaintiff, for which relief is sought, arising from an  
11 interlocked series of transactions, there is no separate and  
12 independent claim or cause of action under § 1441(c)." Id. at  
13 14. The Ninth Circuit has emphasized that "'separate and  
14 independent' means separate wrongs." Emrich v. Touche Ross &  
15 Co., 846 F.2d 1190, 1197 (9th Cir. 1988). The complaint in  
16 Emrich, contained four counts, including claims under RICO and  
17 the Securities Exchange Act of 1933. The Court stated that "the  
18 RICO claim cannot be characterized as sufficiently distinct from  
19 the 1933 Act claim because each arises from the same set of acts  
20 and the same group of wrongs: the allegedly fraudulent sale of  
21 Sambo securities." Id.

22 In this case, Plaintiffs' ten claims allege: (1) The OPA  
23 violated its duties under the Tanner Act by failing to be aware  
24 of and intervene in disputes concerning public participation  
25 (particularly by Latinos) in the permit process. (2) Kern County  
26 failed to provide the LAC with resources require by law and

1 failed to give the LAC's recommendations due consideration, in  
2 violation of the Tanner Act. (3) The County failed to include and  
3 involve the public in the permit process, as mandated by CEQA and  
4 the Dymally-Alatorre Act, by refusing to translate public  
5 notices, public hearings, and the EIR into Spanish. (4) The final  
6 EIR does not comply with CEQA for various reasons, including the  
7 failure to respond to comments in the form of letters written in  
8 Spanish by Buttonwillow residents. (5) The County's approval of  
9 the expansion of the Lokern facility is inconsistent with  
10 County's Hazardous Waste Management Plan and its General Plan.  
11 (6) Laidlaw violated Title VI of the Civil Rights Act of 1964 and  
12 Title VIII of the Civil Rights Act of 1968 because the expansion  
13 of the Lokern facility was undertaken with discriminatory intent  
14 and it has the effect of discriminating against Latinos. (7) The  
15 County's approval of the expansion of the Lokern facility has the  
16 purpose and effect of discriminating against Latinos, in  
17 violation of Title VI and Title VIII. (8) The County's actions  
18 violate Cal. Gov't Code § 65008, which prohibits actions that  
19 diminish a person's enjoyment of a residence on the basis of  
20 race, color, or ethnicity. (9) The County, and its Board of  
21 Supervisors, acted with the intent and effect of discriminating  
22 against Latinos in violation of the guarantee of equal protection  
23 under the federal and California Constitutions. (10) Plaintiffs  
24 seek declaratory relief that Defendants' actions have violated  
25 the law.

26 Defendants assert that Plaintiffs' federal and state

1 civil rights claims are separate and independent from the rest of  
2 Plaintiffs' claims. The threshold question presented is whether  
3 Plaintiffs' federal civil rights claims must be "separate and  
4 independent" from all other state law claims, including the state  
5 civil rights claims (claim (8) and part of claim (9)).

6 Defendants suggest that the state civil rights claims need not be  
7 separate and independent from the federal civil rights claims  
8 because they are within federal supplemental jurisdiction under §  
9 1367(a). However, § 1441(c) states that "whenever a separate and  
10 independent claim or cause of action within the jurisdiction  
11 conferred by section 1331 of this title is joined with one or  
12 more otherwise non-removable claims or causes of action, the  
13 entire case may be removed." Plaintiffs' civil rights claims are  
14 not within the jurisdiction conferred by §1331 (federal question  
15 jurisdiction); standing on their own, they are "otherwise non-  
16 removable claims." See Padilla v. City of Saginaw, 867 F. Supp.  
17 1309, 1315 (E.D. Mich. 1994) (§1441(c) does not apply when  
18 plaintiff alleges state and federal civil rights claims that  
19 arise out of a common nucleus of operative facts). However, the  
20 state civil rights claims, which allege that Kern County  
21 discriminated against Latinos by approving the expansion of the  
22 Lokern facility, involve the same wrong as that alleged in  
23 Plaintiffs' federal civil rights claims. Since the state civil  
24 rights claims are not separate and independent from the federal  
25 civil rights claims, removal under 1441(c) is improper.

26 Assuming, arguendo, that Plaintiffs' state civil rights

1 claims need not be separate and independent from the federal  
2 claims, Defendants still may not avail themselves of 1441(c) as  
3 the remaining state law claims (claims (1) through (5)) are not  
4 separate and independent from the federal civil rights claims.

5 Defendants argue that the first through fifth claims are  
6 separate and independent from the federal civil rights claims  
7 because they involve different laws, parties, and factual  
8 allegations, and they seek different relief. That the claims  
9 involve different legal theories under different laws is  
10 irrelevant. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1197  
11 (9th Cir. 1988) (claims under RICO and 1933 Securities Exchange  
12 Act are not separate and independent under 1441(c)). The claims  
13 do not involve different parties. The County, which is named in  
14 two of the federal civil rights claims (claims (7) and (9)) is  
15 also a party to all of the state law claims except the  
16 Plaintiffs' first claim.

17 The claims in this case arise out of a common nucleus of  
18 operative facts: the County's approval of the application to  
19 expand the Lokern hazardous waste facility near Buttonwillow.  
20 All of the claims refer to the exclusion of Latinos and Spanish-  
21 speaking individuals from the County's permit process as intended  
22 discrimination against Latinos, who as community local residents  
23 will be adversely impacted by the facility expansion. Defendants  
24 argue that the so-called "land-use" claims are factually distinct  
25 from Plaintiffs' civil rights claims because they do not involve  
26 allegations of disparate treatment on the basis of race or

1 ethnicity. However, both of the CEQA claims include the  
2 allegation that Defendants excluded the Latinos from the permit  
3 process by refusing to make Spanish translations (Complaint ¶¶  
4 111-12, pp. 34-36) and failing to respond to public comments,  
5 written in Spanish, on the Environmental Impact Report (¶116.g,  
6 p. 40). Because the factual allegations in this case involve "an  
7 interlocked series of transactions" Plaintiffs' claims are not  
8 separate and independent. Finn 341 U.S. at 14.

9 Finally, the relief sought for each claim is similar.  
10 Plaintiffs' prayers for relief seek either a writ of mandate or  
11 an injunction setting aside the conditional use permit for the  
12 Lokern expansion, requiring the State and County to comply with  
13 laws applicable to the permit process and prohibiting Laidlaw  
14 from seeking to expand the Lokern facility. Plaintiffs do not  
15 seek damages or any other form of relief unrelated to the purpose  
16 of preventing the expansion of the Lokern facility. If  
17 Plaintiffs succeed on the merits of their civil rights claims,  
18 the remaining claims would be moot. Likewise, much of the relief  
19 requested in the "land-use" claims is duplicative of the relief  
20 sought by the civil rights claims.

21 Although the allegations respecting each claim are  
22 slightly different, Plaintiffs' claims are not separate and  
23 independent because they arise out of the same alleged  
24 wrongdoing. Plaintiffs seek to vindicate a single primary right.  
25 Cf. Slater v. Blackwood, 15 C.3d 791, 795 (1975) (using primary  
26 rights analysis for res judicata purposes). "A 'primary right'

1 is best defined as the 'right to be free from the particular  
2 unlawful conduct.'" Clark v. Yosemite Comm. College Dist., 785  
3 F.2d 781, 784 (9th Cir. 1986). Here, Plaintiffs' claims focus on  
4 a particular course of conduct by the defendants which excluded  
5 Latinos from the permit process for the expansion of the Lokern  
6 facility, which allegedly adversely affects the human environment  
7 and Plaintiffs as residents of the community. The civil rights  
8 claims allege that Plaintiffs were denied their constitutional  
9 right to equal protection because they were excluded on the basis  
10 of their race. The second through fourth claims assert that  
11 Latinos were excluded from the LAC and from meaningful  
12 participation in the permit process. Although Plaintiffs assert  
13 different legal theories in each claim, the claims are not  
14 separate and independent because they arise out of a common  
15 nucleus of operative facts, they focus on a particular wrongdoing  
16 and seek similar remedies to vindicate a single primary right.  
17 Finn 341 U.S. at 14.

18 Furthermore, separating the civil rights claims from the  
19 remaining state law claims would be inefficient because all of  
20 the claims are factually and legally intertwined. For example,  
21 Plaintiffs' equal protection claims depend in part upon the  
22 allegations in the second and third claims that Defendants  
23 excluded Latinos from involvement the permit process. Litigating  
24 Plaintiffs' civil rights claims in federal court and the  
25 remaining claims in state court will cause duplication of effort  
26 and the potential for conflicting or inconsistent results.

1 Defendants claim in their supplemental brief that this  
2 case presents novel questions of federal environmental law under  
3 the Resource Conservation and Recovery Act (RCRA), codified at 42  
4 U.S.C. § 6901 et seq. Whether Defendants' compliance with RCRA  
5 is in issue cannot be determined as Plaintiffs have not stated a  
6 RCRA cause of action. Although Plaintiffs have stated federal  
7 civil rights claims, which involve important federal interests,  
8 for the reasons previously stated these claims are not separate  
9 and independent from Plaintiffs state law claims. Since  
10 Plaintiffs' removable claims are not separate and independent  
11 from the nonremovable claims, removal under 1441(c) is improper.

12 C. Abstention.

13 Plaintiffs also move for Pullman abstention. Railroad  
14 Commission of Texas v. Pullman, 312 U.S. 496 (1940). Because  
15 Plaintiffs' motion for remand is granted, it is unnecessary to  
16 reach the merits of the motion for abstention.

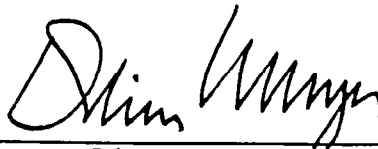
17  
18 III. CONCLUSION

19 For the above-stated reasons, Defendants' removal of this  
20 case under 28 U.S.C. §§ 1441(b) and 1441(c) was improper.  
21 Pursuant to §1447(c), the case is REMANDED to Fresno County  
22 Superior Court.

23  
24 SO ORDERED.

25  
26 DATED: June 30, 1995.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



---

Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
Eastern District of California  
June 30, 1995

gl

\* \* CERTIFICATE OF SERVICE \* \*

1:95-cv-05123

Padres Hacia

v.

Kern

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

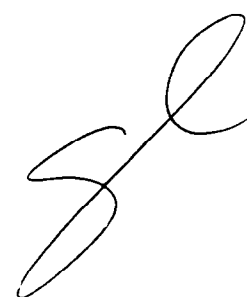
That on June 30, 1995, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Luke W Cole  
Center on Race Poverty and the Environment  
631 Howard Street  
Suite 300  
San Francisco, CA 94105

Stephen D. Schuett  
Office of County Counsel  
1115 Truxtun Avenue  
Fourth Floor  
Bakersfield, CA 93301

Lawrence K. Keethe  
Attorney General's Office of the State of California  
P O Box 944255  
1300 I Street  
Suite 1101  
Sacramento, CA 94244-2550

Larry J Bradfish  
Gray Cary Ware and Freidenrich  
400 Hamilton Avenue  
Palo Alto, CA 94301-1825

A handwritten signature in black ink, appearing to be 'S. Cole', is located in the bottom right corner of the page.