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Climate Change is Either Upon Us or it Isn't. California Cities Want it Both Ways.

If you live in Oakland, brace yourself. In the city's lawsuit with six other California municipalities and counties against petroleum companies, Oakland states that man-made global warming is an ongoing threat that will culminate in 66 inches of sea level rise by century's end, threatening the local economy with as much as $38 billion in property damage.

But if you are an investor looking to buy Oakland's municipal bonds, the outlook is sunnier. Oakland's municipal bond offering tells prospective investors the city cannot predict when "sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the city or the local economy."

San Mateo County is another plaintiff seeking compensation from petroleum companies in advance of storms to come. San Mateo tells us to expect a precise "93 percent chance that the county experiences a devastating three-foot flood before the year 2050, and a 50 percent chance that such a flood occurs before 2030."

But if you're an investor interested in San Mateo's bonds, relax. The county is "unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur," and if they do, whether they will impact the local economy.

San Francisco's lawsuit says that the city faces "an imminent threat of catastrophic storm surge flooding," requiring long-term upgrades of up to $5 billion, while assuring investors that the city is unable to predict if such events will happen at all, or what they would cost, if anything.

From the filings of several jurisdictions, including Santa Cruz city and county, the story is much the same. They've joined together to sue "Big Oil" for projected injuries caused by global warming, while calming investors by assuring them such occurrences might not happen.

With no apparent sense of unease, officials who signed off on the lawsuits are often the same ones who signed off on the statements to investors.

When I served as attorney general of California, one of my duties was to assure the accuracy of representations about state bonds. I took this job seriously because it was my signature that affirmed the truthfulness of the claims being put before investors. To obtain my signature, a bond had to meet the budget guidelines of the California Constitution, and have a plan to be paid off within the specified term.

I also made sure claims did not contradict other claims being made by a state agency. I did this because the language in a bond offering amounts to a financial disclosure.

The factual disparities made by these California cities and counties are as wide as the Golden Gate. These contradictory statements open these jurisdictions to lawsuits from investors who can now

credibly claim diminution of their investment.

Lawsuits against these municipalities could lead to judgments that impact local budgets, raising taxes or cutting services to their citizens. Furthermore, local officials who sign off on these lawsuits and the bond offerings presumably do so under penalty of perjury.

Whatever your beliefs about climate change, you don't have to dismiss the idea of human-induced global warming to see the cities' lawsuit approach as misguided. The intent of these suits is to portray petroleum companies as the new Big Tobacco. I oversaw California's tobacco litigation. I can tell you these lawsuits are nothing like those against tobacco. There exists no viable substitute today that could completely and easily replace the central role played by hydrocarbons.

Worse, the lawsuits are an attempt to mount fishing expeditions for internal documents from scientists who held robust arguments about the possibility of global warming in decades past. The goal, of course, is to selectively take statements out of context that would liken oil companies to tobacco companies.

This is just another example of activists trying to replace the power of the people and their elected representatives with the decision-making of the courts in an area in which judges have no particular expertise.

Whatever their intentions, these cities demonstrate a true legal risk – to their own city budgets and their citizens, rather than to oil companies.

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