

[Fee Award Is Reversed Where Lower Court Failed To Consider Complexities Of Appellate Work](#)

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In [Center for Biological Diversity v. County of San Bernardino](#), 2010 DJDAR 14646 (2010), the [Fourth District Court of Appeal](#) reversed a fee award in a case brought under the [California Environmental Quality Act](#) (CEQA).

Haywarden Development Co. (“Haywarden”) sought to develop approximately 40 acres of land near Lake Arrowhead, California. The County of San Bernardino subsequently certified an [Environmental Impact Report](#) (“EIR”) for the project. A lawsuit challenging the sufficiency of the EIR was filed by the [Center for Biological Diversity](#) (“Center”), and the Center prevailed at the trial court level.

The Center moved for costs and attorney fees under [Code of Civil Procedure Section 1021.5](#) and was awarded limited fees. Haywarden appealed the fee award and requested drastic reductions.

On appeal, the decision was reversed in part and the case was remanded and reassigned to a new trial judge. The Center moved for an additional fee award for attorney fees for the appeal and supplemental award for work performed at trial. The lower court determined it lacked jurisdiction for Center’s request for supplemental fees. The court also disallowed the requested hourly rates of out-of-town counsel, and refused to apply a multiplier to the lodestar amount. The court awarded Center a reduced award and the case was again appealed.

The Court of Appeal reversed the fee award and remanded the case to the trial court a second time.

The Appellate Court noted that fee awards under Section 1021.5, including work performed on regarding CEQA issues, should be “**fully compensatory**” and include “**compensation for all the hours reasonably spent.**”

The Court of Appeal specifically noted that the remand was necessary because the trial court did not take into account the fundamental differences between trial and appellate work. The court noted that the trial judge denied Center its CEQA-related fees even though they ultimately succeeded on the issues. The Appellate Court also disagreed with the significant reduction made by the lower court for the appellate work, on the grounds the trial court did not take into consideration the complexity of an appeal compared to trial work.

The Court of Appeal remanded the issues to the lower court to review the award, with directions to fully compensate Center’s attorneys.