SLAPPing the “Weed Nine”
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I had never heard of a “SLAPP” lawsuit until educated by one of our neighbors in McCloud, the tiny Siskiyou County town where we have our vacation home. SLAPP stands for “Strategic Lawsuit Against Public Participation,” and it’s filed by a plaintiff using the legal system to intimidate members of the public who speak out on an issue or project in an effort to silence them. Although they are generally without legal merit, SLAPP suits can cost defendants large amounts of time and money and are thus intended to deter them from their protest or free expression.

A couple of years ago, a lovely couple from Los Angeles, Cindy Rosmann and Gary Bostwick, purchased the historic McCloud Hotel, near our home. Cindy, who worked in the music industry, had always wanted to be an innkeeper, and is fulfilling her dream.

Gary is a prominent First Amendment attorney, who primarily works with the entertainment industry to protect free speech. Among others, he has represented CBS “Frontline” producer, Pulitzer Prize winner and UC Berkeley investigative journalism professor Lowell Bergman, including when CBS declined to air one of his “Frontline” segments focused on the gambling industry.

It wasn’t long after Gary began spending time in McCloud before he became involved in a local freedom of expression case. Such situations not only exist in rural areas but are perhaps even more common than in urban settings because people in rural areas may be more vulnerable to intimidation.

Weed is a small mill town, population 2,700, just north of Mt. Shasta. Weed’s water comes from a spring that comes to the surface on land owned by Roseburg Forest Products of Springfield, Oregon. In 2016, after a 50-year water rights lease to the City of Weed expired, in a new lease Roseburg raised Weed’s water price from $1 per year, which had been the annual charge for a century, to $97,500 per year and cut back their supply. With a water emergency looming, the City of Weed signed the new lease.

The lease also called for Weed to identify another water source within three years. Roseburg was planning to sell the water, probably to a bottling company such as Crystal Geyser, which would then ship the water out of the region and possibly out of the country.

Weed citizens, backed by the mayor and city council, asked state agencies to clarify the ownership of the water, based on their belief that the water was intended to be a municipal water source and not a private resource to be sold to the highest bidder. They point to state policy in California that prioritizes water first for domestic use, then for fish and wildlife, then for recreation, and finally for industrial use.

Roseburg responded to the citizens’ expression of their views to state agencies by hitting nine of them as individuals, including a 92-year-old former mayor, with a civil lawsuit, which was quickly identified as a possible SLAPP suit.

SLAPP lawsuits are of obvious concern, for the chilling effect they can exert on individuals’ freedom of expression on matters of public interest. Constitutionally protected expression includes such activities as posting a review on the Internet, writing a letter to the editor, circulating a petition, calling or writing a public official, reporting police misconduct, erecting a sign or displaying a banner on your property, making comments to school officials, speaking at a public meeting, filing a public interest lawsuit, and testifying before Congress, the state legislature or a city council.

About half the states in the United States have anti-SLAPP statutes, protecting these rights. In California, the Code of Civil Procedure provides a special anti-SLAPP motion that can be immediately filed by those targeted in SLAPP suits, to bring about dismissal on the grounds of protecting constitutional rights of free speech and freedom to petition one’s government.

Attorneys for the “Weed Nine,” including Gary Bostwick, were able to successfully use that provision. In early 2017, a Siskiyou County Superior Court judge ruled against Roseburg and dismissed the SLAPP suit against the Weed Nine, with a financial judgment against Roseburg.

Roseburg’s response was to appeal the decision and to continue legal action against the City of Weed, both of which are still pending in Siskiyou County. The controversy continues, as citizens demand that the City of Weed conduct an environmental impact report on the current water lease with Roseburg. What happens with water rights in Weed, McCloud and the other small towns around Mt. Shasta has a profound impact throughout California, since the Mt. Shasta watershed provides water as far south as Northern San Diego County.

I am very glad Gary and Cindy came to town, not just for their gracious hospitality at the McCloud Hotel but so that Gary could help to “SLAPP back” to protect one of California’s most important water sources as well as the rights of those who speak out on public issues.