



**COLAB SAN LUIS OBISPO COUNTY**



**WEEK OF APRIL 12-18, 2015**

**TOURISM DISTRICT HEARING RESCHEDULED  
DUE TO NOTICING PROBLEMS**

**BOARD WILL PROTEST CATTLE  
REGULATION**

**PROJECT LABOR AGREEMENT INFO REPORT  
RECEIVED – IN COLD STORAGE  
(FOR NOW)**

**REVISED WATER EXPORT PROHIBITION  
READY FOR ADOPTION  
(TUESDAY AFTERNOON APRIL 14<sup>TH</sup>)**

**APPEALS COURT DINGS APCD DUNES DUST  
RULE**

**Board of Supervisors Meeting of Tuesday, April 7, 2015 (Completed)**

**Item 27 - Hearing to consider a resolution declaring the results of majority protest proceedings, establishing the San Luis Obispo County Tourism Marketing District (TMD) within the County of San Luis Obispo and levy of assessments. If approved, the district would allow lodging businesses to assess themselves to raise funds to promote San Luis Obispo County tourism.**

It turned out there was a noticing problem and the whole process will have to start over with a new hearing set for June. The smaller lodging businesses, such as bed and breakfasts, RV campgrounds, and single home vacation rentals, are adamantly opposed. Several business owners complained that they have repeatedly not received the required notices during various phases of the process. The staff admitted that 150 businesses were left out this time.

**Item 28 - State Water Resources Control Board's (SWRCB) Grazing Regulatory Action Project (GRAP).** The Board determined to send a letter to State Water Quality Control Board recommending that it determine what problems exist before it jumps into promulgating a whole new regulatory program attacking cattle ranching. Gibson is quibbling about the content of the letter and obviously wishes to leave a door open more a new set of regulations. For this reason a draft letter will be prepared and placed on a future agenda. It is likely that a debate will occur at that time. There was considerable public speaker opposition to the proposed State program.

COLAB pointed out that the originally proposed Board action (receive and file) was totally inadequate. We also requested that the Board pass a resolution expressing its strongest opposition and condemning the SWRCB's proposed plan. There is no reason for the SWRCB to get involved in the first place. We also recommended that a caucus be established in the California State Association of Counties (CSAC) to oppose the GRAP. Mecham seemed to think the CSAC rural counties caucus is doing something. It was not clear what.

**Background:** The State Water Quality Control Board (the Water Board) and its local franchise, the Central Coast Regional Water Quality Control Board (CCRWQCB) are launching a major regulatory initiative to control cattle ranching through an elaborate scheme of water regulation. This is the follow-on to the regulations now in place to control irrigated agriculture. The Water Board is pretending that ranchers and others will have a say in how the regulations are developed and administered. **DO NOT BE FOOLED.** This project needs to be nipped in the bud.

**Item 29 - Submittal of an informational report regarding Project Labor Agreements (PLAs).** The Board heard a staff report which presented the pros and cons of the use of project labor agreements. Hill was unhappy because he felt the report was too negative. No doubt the CAO and Public Works Director, the report's authors, will be proverbially tied to the rail and



given 25 lashes each. The Board determined to receive and file the report, sending it to cold storage. The vote was 3/2 with Hill and Gibson dissenting because they want to keep the issue alive.

Representatives of various construction trade unions testified in support of the County's developing a project labor agreement. The SLO County Builders Exchange, other contractor organizations, and individual local contractors were

vigorously opposed. A number of citizen speakers were also opposed. Hill and Gibson tried to salvage the idea by suggesting that the staff be given an assignment to study the matter in depth.

COLAB pointed out that Santa Barbara County had just completed a long process of study and negotiation with the trade unions in an attempt to develop a PLA for its massive new jail and new pre-release facility construction projects. In the end, the trade unions rejected the deal because the County insisted on local hiring preferences and local contractors. If the SLO Board of Supervisors ever were to reconsider the issue, they need not reinvent the wheel. The Santa Barbara County Public Works Director and County Counsel developed very substantial expertise over several years struggling with the issue.

**Background:** At the request of Supervisor Hill, the Board received a presentation on the use of Project Labor Agreements. No action was contemplated. PLA's are contracts between governmental jurisdictions and consortiums of the building trade unions in which the government agency (usually a city, county, special district, or school district) promises to require that all contractors that receive construction contracts from the subject jurisdiction use only labor provided through the participating unions. In effect this forces non-union contractors to become union contractors if they wish to bid on the jurisdictions' construction projects. This often has the effect of increasing costs and reducing the hiring of local workforce tradesmen.

As Hill is running for reelection, he would like to attract big Los Angeles labor support and financing. Thus he floated the idea as an "information" item.

#### **Board of Supervisors Meeting of Tuesday, April 14, 2015 (Scheduled)**

**Item 15 - 2014 Annual Agricultural Statistics for San Luis Obispo County.** This is a presentation of an annual report which contains the statistics on various agricultural commodities produced in the County. It also contains historical data.

The County total value for 2014 was \$903 million, which was 2% below 2013. The decline is attributed to the drought. The full report may be accessed at the web site:

<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/4540/QXR0YWNobWVudCBBIC0gMjAxNCBDbm9wIFN0YXRpc3RpY3MucGRm/12/n/42650.doc>

#### **Matters After 1:30 PM**

**Item Hearing to consider an amendment to the Health and Sanitation Ordinance, Title 8 of the San Luis Obispo County Code relating to regulation of the exportation of groundwater.**

The ordinance operates by requiring anyone who wishes to transfer more than ½ of an acre foot of water between basins within the county or out of the county to apply for a permit. In order to obtain a permit the applicant must prove:

*1. The proposed export will not adversely affect the long-term ability for storage or transmission of groundwater within the groundwater basin from which the groundwater is exported;*

2. *The proposed export will not (together with other extractions) result in chronic lowering of groundwater levels and will not result in well interference with wells owned or relied upon by others or create a cone of depression that extends beyond the applicant's land or otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;*
3. *The proposed export will not result in, expand or significantly exacerbate groundwater quality degradation;*
4. *The proposed export will not result in injury to a water replenishment or recharge, storage, restoration or conveyance project;*
5. *The proposed export will not result in, expand or significantly exacerbate land subsidence;*
6. *The proposed export will not result in, expand, or significantly exacerbate seawater intrusion;*
7. *The proposed export will not result in, expand, or significantly exacerbate depletions of interconnected surface water; and*
8. *The proposed export will not otherwise be detrimental to the environment or to the health, safety and welfare of property owners overlying or in the vicinity of the proposed exportation site.*

*Reapplication for an export permit which has been denied by the director may not be filed with the director until the following water year and must be accompanied with information that demonstrates a significant change in circumstances from those which caused the denial of the previous export permit application.*

**Overall Provisions include:**

- Permits would be good for one year and would have to be renewed.
- Permits would not run with the land.
- If a permit is issued, the County will measure and monitor the water to insure compliance with the permit.
- The ordinance would have no sunset date. The original version had a 5-year sunset date.
- There would be penalties for violation.
- The incorporated cities would not be subject to the ordinance and thus could export water produced within their boundaries to another basin or outside the county. One murky area still remains and involves water produced by city wells that are in the unincorporated area outside the boundary of a city. Once it goes into the city, is it city water that is exempt from of ordinance? The City of Paso is on the record as requesting the County to defer adoption of an anti-export ordinance until it is considered part of an overall basin management plan.

In the original version the County and its flood control district would have been exempt. This exemption has now been removed.

**Recent Background:** Because discussion of this item on March 17<sup>th</sup> provided a potential window into the motives of various players with respect to the proposed Paso Robles Water Management District, everyone now seems to support the ordinance. It would be contradictory to support the proposed Paso Basin Water Management District and at the same time oppose the anti-exportation ordinance.

**Key question included:** Do district proponents support as strong an anti-exportation ordinance as it is legally possible to craft?

Do they support the inclusion of all purveyors and government entities, especially the proposed district itself?

Similarly, discussion of this item may provide a parallel insight into the motives of various elected officials, especially but not limited to the Board of Supervisors themselves. After all, if one has just voted to extend the Paso moratorium on the basin residents, in effect, forever, how could you countenance anyone (a city, county, purveyor, or whomever) to be allowed to export Paso Basin water to Cambria, Lake Cachuma, Montecito, or, eventually, Santa Clarita?

**Deeper Background:** Probably as a result of Supervisor Arnold's repeated requests (and now that she is Board Chair), the proposed ordinance regulating the export of ground water out of the County was placed on the March 17 Board agenda for potential consideration. Readers will remember that on November 25, 2014, after several months of consideration, it was moved off agenda (sent to the woods). During the March 17<sup>th</sup> meeting the Board made adjustments to the original version. The April 14<sup>th</sup> action is to adopt that updated version.

The original concept was aired because some residents of the Paso Basin fear that the proposed Paso Basin Water Management District (as embodied in AB 2453) could become a conduit for the importation, mixing of native groundwater and imported water, storage, extraction, and ultimate sale of water to outside interests. To allay this fear, an export ban was proposed. In fact, as the Board of Supervisors adopted its endorsement and support for a Paso Robles Basin water management district, it made a promise to the public that it would expeditiously adopt a prohibition on the export of groundwater outside of San Luis Obispo County.

The full ordinance can be seen at the link:

<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/4556/QXR0IEEgT3JkaW5hbmNlIFJIZ3VsYXRpbmcgdGhIEV4cG9ydGF0aW9uIG9mIEdyb3VuZhdhdGVyX0EucGRm/12/n/42780.doc>

**Friends of Oceans Dunes, Inc., vs. the San Luis Obispo County Air Pollution Control District (APCD), et al.**

**The Second Appellate District Court** found that the APCD *exceeded its authority in adopting rule 1001 of Regulation X, Fugitive Dust Emission Standards Limitation and Prohibitions (Rule 1001), which requires that the California Department of Parks and Recreation obtain an air*

*emissions permit to operate the Oceano Dunes States Vehicular Recreation Area. The trial court found that Health and Safety Code section 42300 subdivision (a) authorized District to impose a permit system to regulate sand and dust emissions caused by off-road recreational vehicles using the state park.*

The issue hinged on the APCD's devious sleight of hand in which it tried to claim that a State Park is a pollution source equivalent to a diesel engine, factory, or quarry. These are collectively called "contrivances" in the statute, which authorizes air pollution control districts to require permits that set emissions standards.

In a practical and stunning statement, the Court unmasks APCD's willfully extreme and over-reaching attempt to ban dunes recreation.

*Because air pollution control districts are precluded from regulating indirect sources of PM10 emissions, District asserts on appeal that fugitive dust/sand from the SVRA is a direct source emission. We reject this contention. The argument would be plausible if a state park was operating a sand quarry or removing contaminated soil with machinery. The Legislature has provided that those activities (a stationary source emitting air pollutants) are subject to regulatory permits.<sup>4</sup> (See e.g., § 42310.5 [asphalt plants]; §§ 42314.1, 42315 [facilities that burn municipal waste, landfill gas, or digester gas].) A sand dune, however, is an inert mound of sand. If off-road recreational vehicles cause or exacerbate PM10 emissions and District can regulate them, then any local air pollution district could control any recreational activity that combines with any natural phenomenon causing air pollution. This would include boats on a lake, motorcycles in a desert, and snowmobiles in a forest.*

Would the SLO APCD ban boats on Lake Nacimiento? If they had jurisdiction, would they ban them on Lake Tahoe?

## AND

*District argues that the SVRA is a "contrivance" because it has gates, fences, walking paths, access roads, signage, parking lots, and restrooms. But these improvements to the dunes are not the cause of the emissions. They do not directly or indirectly cause emissions and without them, off-road recreational vehicles would still go to the park. We do not believe that a fence or sign designating the sand dunes as an off-road recreational area makes the SVRA a "contrivance" or a direct source of air pollution. If the rule was otherwise, District would have the authority to regulate the operation of any state park simply because the park has as a fence, gate, sign, or parking lot.*

**Rally:** The next regular SLO APCD meeting is scheduled for 9AM, Wednesday, May 27, 2015. There should be a major public demonstration against the members who supported the rule and a demand for sweeping change.

- a. How much money did the APCD spend in legal fees defending the rule?
- b. How much has it spent on consultants developing the rule?
- c. How much has it spent on staff developing the rule, torturing the state Parks Department, and attempting to implement the rule?

Note: The Santa Barbara County APCD piled on and supported the SLO APCD with an Amicus Brief.



**As the Court said, “a sand dune, however, is an inert mound of sand.”**