



**COLAB SAN LUIS OBISPO COUNTY**  
**WEEK OF SEPTEMBER 13-19, 2015**



**COLAB**  
 San Luis Obispo County

**MORRO BAY**  
**MIXER 2015**

**PREPARING FOR 2016:**  
**THE COUNTY IN THE BALANCE**



Wednesday, September 23rd

5:30—7:30 PM

Morro Bay Grange Hall  
 1340 Atascadero Road (Hwy 41)  
 Morro Bay

From Hwy 1—take the Atascadero Rd exit, you will go 2.6 miles on Atascadero Rd, Hall is located on the right hand side.

Appetizers and beverages will be served.

RSVP's appreciated by Friday, September 18th.  
 Email: colabsto@gmail.com or call (805) 548-0340



**Guest Speaker**  
**4th District Supervisor Lynn Compton**

As a mixer highlight, we will enjoy a special briefing by San Luis Obispo County's 4<sup>th</sup> District Supervisor Lynn Compton. Hear Lynn's perspectives about her first 9 months on the infamous 4<sup>th</sup> floor of the County headquarters. Lynn's refreshing and gutsy perspectives, as an agricultural business owner and political outsider working in the ritualistic and bureaucratically dominated County culture, provide an informed and motivating basis for future action. We will enjoy a stimulating and informative conversation while sipping wine and beer and munching appetizers. Bring your friends and associates!

**ALERT**  
**LAFCO ACTION ON PASO WATER**  
**DISTRICT THURSDAY SEPT. 17<sup>TH</sup>**  
**(9:00 AM AT BOARD OF SUPERVISORS MEETING ROOM)**

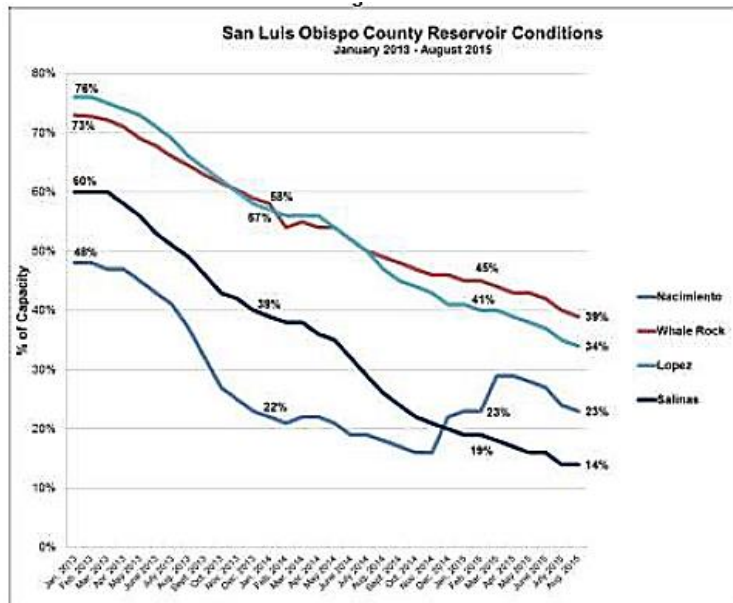
**STAFF REPORT RECOMMENDS APPROVAL**  
**CITIZEN COMMENT AND OBJECTIONS REJECTED**  
**COULD BE DONE DEAL**

**PASO BASIN ADJUDICATION PROCESS**  
**ADVANCES**

**PLANNING COMMISSION CONTINUES BOTH**  
**PRICE CANYON OIL WELL PERMIT**  
**EXTENSION & LAETITIA AG**  
**CLUSTER SUBDIVISION**  
**(MORE DATA AND TESTS REQUESTED)**

**Board of Supervisors Meeting of Tuesday, September 1, 2015 (Completed)**

**Item 21 - Monthly Drought Report.** The Board received an extensive report on the impact of the drought. For the first time in many months, the drought report was on the business agenda rather than the consent agenda. Most of the report consisted of updates to subjects that have been included in the past. These included reservoir status, rainfall information, fire danger, agricultural impacts, economic impacts, action taken by



the County to save water in its own facilities, and state and national conditions. There was a new section this time, which discussed the potential of a positive impact from the *el nino* phenomenon. It turns out that the presence of an *el nino* is not a slam dunk for a rainy winter.

There was little discussion of the report by the Board members and, except for Supervisor Arnold, few questions.

<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/5081/QXR0YWNobWVudCAxIJYgTW9udGhseSBEm91Z2h0IFVwZGF0ZS5wZGY=/12/n/49454.doc>

**Item 22 - Executive Session.** An item related to the Steinbeck/Protect Our Water Rights (POWR) quiet title adjudication litigation status was added after the agenda had been published. This was because the County and other government opponents to citizens asserting their water rights received bad news from the judge in the case. We cannot know what reaction Supervisors had in closed session or what direction they provided to County Counsel, as the discussions are exempt from the Brown Act. Based on the report from POWR below, the discussion must have been interesting if not stressful:

*SEPTEMBER 1st, 2015*

*Judge hands Defendants Setback in Steinbeck Quiet Title Suit.*

*Paso Robles, CA, -On Friday August 28th Judge Kirwan ruling on the Motion for Judgment on the Pleadings (MJOP) before him, handed the defendants, County of San Luis Obispo, Templeton CSD, San Miguel CSD, The City of Paso Robles and Atascadero Mutual Water Company, a major setback in their suit to prescript the water rights of the members of Protect Our Water Rights (POWR) who have filed to Quiet Title the groundwater water rights to their overlying properties in the Paso Robles Groundwater Basin. The defendants have 10 days to amend their answers.*

*The MJOP filed by POWR asked the court to render a pretrial judgment prior to a verdict. POWR asserted that no facts were given by the purveyors in their answers to POWR's Quiet Title request. Plaintiffs are, and the Judge determined, entitled to know the facts that are being claimed against them.*

*"Judge Kirwan affirmed the law" said Cindy Steinbeck, spokesperson for POWR. "The law is clear, Purveyors such as the County and Cities only have a right to extract surplus water from the basin. To gain a prescriptive right (i.e. water rights equal to the overlying properties) the defendants must 'openly and notoriously' illegally continue pumping for a period for five years during a time of overdraft. There has never been an official claim or finding of an overdraft condition in the Paso Robles Groundwater Basin. Without that, there can be no prescription."*

*The defendants also demanded that POWR define the boundaries of the Paso Robles Groundwater basin as well as notice the entire basin, meaning bring all landowners into this Quiet Title Action. This was also struck down by the court. Plaintiffs must prove the ownership of their property and their properties connection to the basin from which defendants extract water.*

*"The law is clear, the burden falls upon the purveyors to define the basin they plan to prescript and give public notice that a prescription period has commenced" said Steinbeck. "None of this has been done, but after Friday's judgement, purveyors must prove those issues. Any attempt by*

*the county or cities to prescript groundwater rights has been and will be vigorously opposed by POWR.”*

*POWR fully expects the defendants to amend their pleadings as they must substantiate the overdraft claim requirement. In a very recent exchange on that subject, in a July 30th, 2015 letter from County Attorney Rita Neal, Ms. Neal responded to a Public Records Act Request concerning whether Supervisor Gibson had verifiable cause to believe as he stated in a Board of Supervisor Meeting that “the Paso Groundwater Basin is in overdraft, as is plainly indicated by the technical information.” Listing the technical hydrological studies Supervisor Gibson had access to, Ms. Neal stated “The County's response to this request shall not be deemed to constitute any position with respect to whether the reference studies discuss, indicate, show or conclude that the basin or has been in a condition of “overdraft” as defined by Bulletin 118.”*

*This is particularly significant because in an agreement between landowners, the City of Paso Robles and County of San Luis Obispo called the PRIOR agreement (2005), the County is obligated to give official advance notice that the basin is in overdraft and a prescription period has commenced. !*

*The goal of POWR is to ensure the long-term sustainability of our groundwater supply and to protect and defend the superior priority of our overlying groundwater rights. Over 500 landowners have joined together to protect our rights and our basin.*

Note that the term “prescription” in water law is somewhat equivalent to “adverse possession” in property law. The County and other defendants are asserting that they had been pumping the basin property owners’ water for years and have thus acquired an equal right. The judge said no.

#### **WHEN WILL THE BOARD COME CLEAN?**

**The Board of Supervisors has considered its opposition to the quiet title effort in closed session only. Given the extensive property owner participation (over 500 so far) shouldn’t the Board members explain why they oppose the effort in public session? After all they are spending public tax dollars to fight a substantial number of their citizen constituents.**

#### **No Board of Supervisors Meeting Scheduled on Tuesday, September 8, 2015**

Tuesday, September 8, 2015 followed the Labor Day Holiday. It is the normal practice of the Board to not schedule meetings on a Tuesday following a holiday.

#### **Board of Supervisors Meeting of Tuesday, September 15, 2015 (Scheduled)**

**Item 4 - Request to approve a FY 2015-16 through FY 2019-20 agreement with San Luis Obispo County Visitors and Conference Bureau, Incorporated, dba Visit San Luis Obispo County (Visit SLO County) to act as the Owners’ Association for the San Luis Obispo County Tourism Marketing District (TMD). Approval of this item is the final step in the**

process for the establishment and commencement of operations for the new TMD, which will receive 1% of the gross hotel/motel room rental revenue for the next five years. The TMD (a not-for-profit) will use the revenue to promote tourism in SLO County. This Board letter states that the TMD revenue is expected to be about \$3 million per year for each of the 5 years covered by the agreement. The County's role is mostly passive, but it has the right to audit the TMD books and to shut it down if it misappropriates funds or fails to perform its mission.

The real and unspoken policy conflict inherent in this item is: does it make sense to promote tourism when the County's overall policy is to constrain development, reduce water usage, and force people out of their cars and on to public transit while limiting housing choices? Obviously tourists in SLO County will mainly visit the various attractions via private automobile. Hotels will use large amounts of water for landscaping, pools, washing linens, and operating restaurants. At the same time, residents are being ordered to reduce water usage, let their landscaping die, and forestall agricultural expansion.

The expansion of the critical tourist industry is a very positive piece of the county's economic future. But the County's largely one-sided demand reduction approach to future growth and water supply is ultimately a business, agriculture, and standard of living killer. The consideration of using surplus water from the Diablo nuclear plant desalination facility is a good first step, but there needs to be a visionary and large scale approach to dealing with future water supply.

**Item 5 - Submittal of a resolution approving FY 2015-16 Final Budget Actions.** This is a routine ministerial action formalizing budget adoption actions that have already been taken and transmitting the adopted budget to the State Controller.

**Item 6 - Submittal of a resolution authorizing the Director of Public Works to execute engineering reimbursement agreements associated with groundwater export permit processing.** This item constitutes a portion of the process of implementing the County's water export permitting process. It authorizes the Public Works Department to enter into agreements with any applicants and requires the applicants to cover the processing costs of the extensive permitting process.

**Background:** The Board announced its support for adopting a water export ban in response to citizen concern about the Paso Basin and rumors that large corporate outside interests were seeking ways to control basin water for ultimate storage and export purposes. It turned out that the law does not provide counties with the absolute authority to entirely ban exports. For this reason the Board adopted a severe permitting process which does everything possible to prohibit exports short of a true ban.

**Item 18 - Submittal of the FY 2014-15 Year-End Financial Status Report.** The County ended the fiscal year well within its budgeted expenditures. Revenues exceed budget, which resulted in greater fund balances than had been forecast. On the revenue side, the improving economy was the key driver. On the expenditure side, vacant positions due to turnover and slow replacement resulted in an overall annualized vacancy rate of 7.54 %, which is equivalent of 195 positions of the County's authorized 2,579 positions being vacant for a full fiscal year. This level of vacancies signals an opportunity for staff reductions overall in the next budget cycle. If the County is operating reasonably well with nearly 200 vacancies, as is indicated by the report,



there is an opportunity to reduce the number of authorized positions by about 100. In the subsequent year the vacancy rate can be re-examined to determine if further reductions are possible without harming services.

A related and missing indicator is lost time due to absenteeism caused by sickness and injuries. With 2,579 employees budgeted in the County, a lost time rate of 5% would mean that on average the services of 129 full time equivalent employees were lost. Did this result in delays? Did it mean that premium overtime pay had to be used to maintain services? Does it mean that additional employees must be hired to take up the slack?

The County CEO and staff have positively attempted to establish and maintain a system of performance measures to help the Board and public understand the relationship of budget allocation and staffing levels to service levels. An addendum to this 4<sup>th</sup> Quarter financial report contains a presentation of the annual numbers for all of the performance measures. Some samples are provided on the next several pages.

We have advocated in the past and continue to advocate that the Board spend several weeks reviewing the proposed annual budget and utilize these measures during its deliberations. The full report can be accessed at the link:

[http://www.slocounty.ca.gov/admin/Resources/FY\\_2014-15\\_Performance\\_Measure\\_Results.htm](http://www.slocounty.ca.gov/admin/Resources/FY_2014-15_Performance_Measure_Results.htm)

**Some sample Planning Department performance measures:**

2. Performance Measure: Percentage of project types processed within established time lines for representative project types.							
	10-11 Actual Results	11-12 Actual Results	12-13 Actual Results	13-14 Actual Results	14-15 Adopted	14-15 Actual Results	15-16 Target
<b>Building Permit applications</b> Goal: Single-family dwelling permits - 20 days to complete plan check.	94%	94%	98%	45%	95%	55%	95%
Goal: Commercial project permits - 30 days to complete plan check.							
<b>Building Inspection</b> Goal: All building inspections requested completed by the next day	95%	95%	99%	76%	95%	76%	95%
	100%	99%	99%	98%	99%	99%	99%

<b>Land Use Permit &amp; Subdivision applications</b> Goal: Exemptions from CEQA - 60 days from acceptance	60%	70%	55%	48%	75%	46%	75%
Goal: Negative Declaration - 180 days from acceptance	71%	76%	71%	71%	75%	63%	75%
<b>Code Enforcement</b> Goal: All complaints reviewed within 10 working days.	--	100%	100%	100%	100%	100%	100%
Goal: Voluntary compliance resolved within 45 days of initial inspection	--	47%	60%	40%	75%	60%	70%
<b>Long Range Planning</b> Goal: Complete annual reports and public review drafts within the timeframes set by their respective work programs	60%	82%	42%	87%	75%	79%	85%

The delays here are costly to applicants and increase the price of homes and other projects. What is the plan to improve these?

3. Performance Measure: Percentage of customers who rate the overall services provided by the Planning and Building Department as "above satisfactory" or higher through continuous client surveys.

10-11 Actual Results	11-12 Actual Results	12-13 Actual Results	13-14 Actual Results	14-15 Adopted	14-15 Actual Results	15-16 Target
95%	97%	95%	82%	95%	82%	90%

4. Performance Measure: Number of newly constructed/purchased affordable housing units for low - and moderate - income families.

10-11 Actual Results	11-12 Actual Results	12-13 Actual Results	13-14 Actual Results	14-15 Adopted	14-15 Actual Results	15-16 Target
80 housing units	39 housing units	44 housing units	13 housing units	135 housing units	151 housing units	135 housing units

This measure illustrates the problem of relative data which hangs in the air. It's nice that 151 housing units were approved or completed (the measure is not specific). But how does 151 compare with the need? Without presenting the need numbers, the measure does not actually tell anyone how the County is doing.

**A key Public Works Department Measure:**

1. Performance Measure: Pavement Condition Index (PCI) for ALL county roads.

10-11 Actual Results	11-12 Actual Results	12-13 Actual Results	13-14 Actual Results	14-15 Adopted	14-15 Actual Results	15-16 Target
60	58	60	61	62	61	63

The County has increased its general fund contribution to the road fund, but it is insufficient to actually make any improvement in the pavement condition. As the accompanying write-up states:

Based on the expected level of annual pavement management funding budget of about \$4.7 million, we can expect to complete surface treatment on about 60 miles and overlay about five miles of road each year using the strategy described in our Pavement Management Report. This level of effort would yield an overall system at a PCI level of 59. For FY 2015-16 pavement management efforts will be directed to the communities of Nipomo, Oceano, San Miguel and several rural collector roads in the North County, with work scheduled at various times throughout the year. This effort reflects a one-time investment of over \$11 million which is expected to result in a PCI of 63. Because funding limits a PCI level of 63 will remain our target for future fiscal years although it remains short of the Board adopted goal of having at least a PCI level of 65.

## **Local Agency Formation Commission Meeting of Thursday**

**September 17, 2015**

**Paso Robles Basin Water District September 17, 2015  
at 9:00 a.m.**

**In the Board of Supervisors Chambers  
1055 Monterey St. San Luis Obispo, CA**

**Item A-1: File# 2-R-15: Formation of the Paso Robles Basin Water District-Financial and Formation Matters (Recommendation: Consideration of the Formation of a Water District, Subject to Elections for Formation, the Board of Directors, and Funding pursuant to Proposition 218).** The LAFCO Executive Director finds that the County's application for creation of the district is complete and workable in every respect. It also finds that the financing plan is also sufficient and approvable. The staff report rejects all objections made by citizens in writing or verbally to the formation of the district. The bottom line is that the LAFCO Executive Director recommends that the LAFCO Board approve the County's application as quoted below.

### *Recommendation*

*The Commission has the discretion to approve, modify or deny the proposed application. It is respectfully recommended that the Commission consider the following recommendation for approval based on the record:*

- 1. Approve the Categorical Exemption as the environmental determination pursuant to the California Environmental Quality Act (CEQA).*
- 2. Conditionally approve the formation of the Paso Robles Basin Water District subject to: a vote of the landowners as described by AB 2453 and 2) a successful proposition 218 process to fund the Water District.*
- 3. Conditionally approve, by resolution, the Formation of the Paso Robles Basin Water District with the attached conditions of approval found in Attachment H and at the end of this recommendation section.*
- 4. That the FUGRO boundary be used to establish the service area for the Water District with any changes approved by the Commission. This would be documented in a condition of approval indicating that the County shall submit a revised boundary map and legal description that reflects the FUGRO boundary.*



5. Adopt a Sphere of Influence (SOI) for the Paso Robles Basin Water District that is coterminous to the Service Area known as the FUGRO Boundary and found in Attachment H.

**Opposition Ignored:** The LAFCO staff report is particularly dismissive and critical of the import of the 892 protest letters that were presented during the August 20, 2015 hearing in Paso Robles. It states:

*Protests Submitted. A number of form letters labeled “San Luis Obispo LAFCO AB 2453 Water District Formation Protest” were submitted at the August 20, 2015 hearing.*

*About 100 of the protests appear to be from outside the area. The protest letter makes a number of assertions. The following discussion responds to these statements:*

*The CKH Act and AB 2453 gives LAFCO as the authority to review and approve (modify or deny) the formation of the District and determine the powers and boundaries of the District. AB 2453 allows the Board of Supervisors to submit a Resolution of Application for the formation of the District as it could for the formation of a County Service Area or a Community Services District.*

*Other jurisdictions (CSDs and Cities) were not included in the District because they manage their water resources and those communities would have to comply with the new state groundwater law by being part of a GSA. The residents of those Communities will be funding any effort to comply with SGMA.*

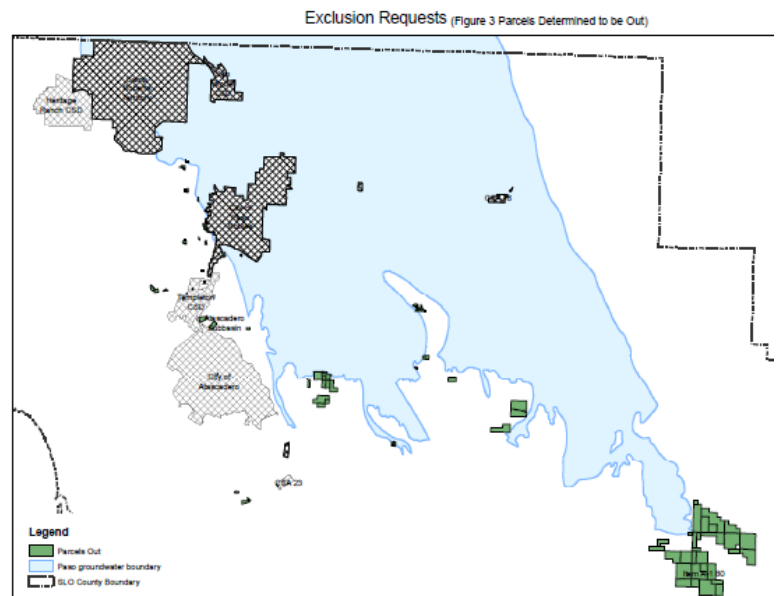
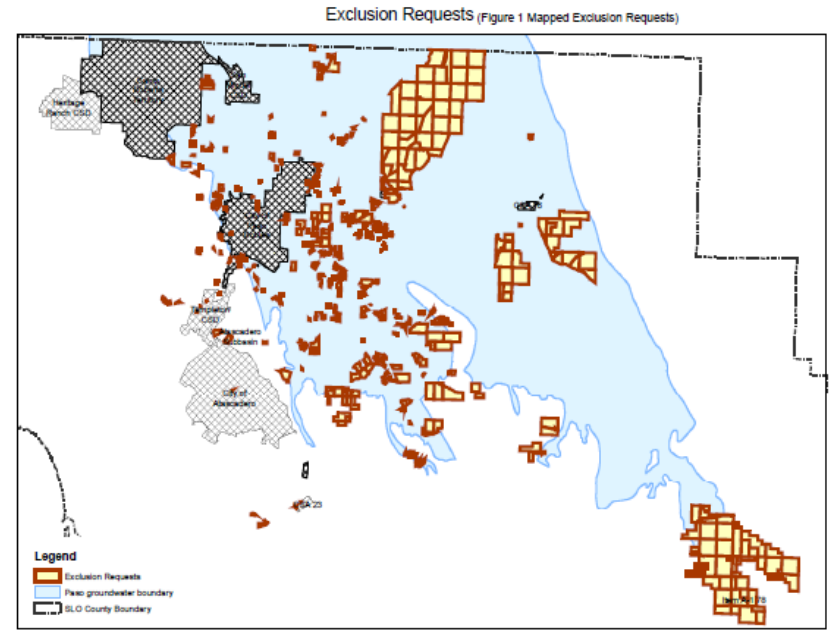
*The application is supported by numerous studies and analyses and is complete. A Plan for Services has been submitted to LAFCO and it includes a five year budget and the services that the District will perform. Future projects to be completed by the District will be considered by the District’s new Board of Directors. New projects would have to go through the same process all capital projects must go through: project identification and prioritization, description and planning, permits and CEQA, establish a zone of benefit San Luis Obispo LAFCO September 17, 2015 for funding, complete a Prop 218 or grant process for funding, and hire a contractor to complete the project. These decisions are at the discretion of the new Board of Directors and should not be made during the formation process because LAFCO should not presume to know what projects are best for the District to implement and it would be speculative for LAFCO to assume certain projects will be completed.*

*The Proposition 218 process for funding the AB 2453 is being completed legally and appropriately by the County. It is not an “illegal” or “stealth” tax as alleged. The funding formula and NBS study are included as part of this staff report and have been approved by the Board of Supervisors. As currently proposed the special tax would be voted on by the registered voters within the proposed district boundary in compliance with proposition 218.*

**Exclusion requests:** There is a fairly lengthy section dealing with the requests by property owners for exclusion. Essentially, those owners whose property is within the FUGRO boundary map are being refused exclusion. Those whose properties are outside are being allowed out. The staff reports indicate in this regard:

*Exclusion Requests. A total of 548 parcels were submitted for exclusion: a total of 57,147 acres. As the requests were submitted, LAFCO Staff digitally mapped each parcel or parcels into a GIS layer (Figure 1 in Attachment D). This data was submitted to the consulting firm of Cleath-Harris Geologists, Inc. for review. Cleath-Harris reviewed each request for consistency with the FUGRO Boundary as defined in the 2002 study.*

*The purpose is to have a qualified geologist determine if a parcel is in or out of the FUGRO boundary. Of the 548 requests submitted, 409 (36,936 acres) were found to be within the FUGRO Boundary<sup>1</sup>. These are recommended to remain within the proposed District Boundary (Figure 2 in Attachment D). Of the 548 submitted 86 parcels (10,790 acres) were found to be located outside of the FUGRO boundary<sup>2</sup> and are recommended to remain outside the District boundary (Figure 3 in Attachment D). A total of 53 (9,422 acres) exclusion requests were split by the FUGRO Boundary and the consultants reviewed each closely to assist in determine if these parcels should be recommended in or out of the district boundary. A total of 36 (8,100 acres) parcels were recommended to remain in the district and 17 (1,322 acres) parcels were recommended to be out.*



Except for one large ranch which is outside the FUGRO boundary, not many escaped.

**Background - For our readers' convenience the material for the August 20<sup>th</sup> hearing is repeated below:** Per prior Board direction, the staff has prepared an application to the Local Agency Formation Commission (LAFCO) for the creation of the AB 2453 Paso Basin Water Management District. The LAFCO Board consists of 2 members of the Board of Supervisors, 2 elected representatives of the cities in the County, 2 board members of special districts in the County, and a citizen representative selected by the other members. They are collectively called the commissioners. LAFCO's job is to review the application and determine if it meets various requirements of the State's Cortese-Knox Act, which regulates local government formation matters. The LAFCO may approve the application as submitted, modify it and approve it, or

reject it. LAFCO may also add conditions to any approval. If LAFCO approves the district formation, it must be submitted to a vote of the property owners living within the proposed boundary. Fifty percent plus 1 of the voters who actually vote must approve the final LAFCO structure for it to become activated. Our discussion here is organized into 4 sections; including A) What Is the Benefit of Creating the District? B) Process Issue Problems, C) Financial Issues, and D) Powers and Functions of the District.

## **A. What Is the Benefit of Creating the District?**

### **1. Local Control?**

Proponents and Supervisors Gibson, Hill, and Mecham list “local control” as the overarching public benefit and primary justification for the creation of the new government entity. A number of questions arise concerning the actual operational meaning of local control in this situation:

**a. How independent will the district really be given various limitations place on it legislatively?** The staff report states:

*AB 2453 authorizes the Water District, if formed, to exercise a broad range of powers, subject to review and approval by LAFCO in accordance with Cortese-Knox and obtaining consent from the County, Flood Control District, or other local agency(s) before engaging in any activities normally and historically undertaken by those agencies.*

What if a future Board of Supervisors does not give consent or imposes conditions? Where is the guarantee of local control here?

**b. What About Land Use Authority?** The County will, of course, retain land use authority over the area included in the proposed district. Currently that area is under a land use and water moratorium. Simultaneously the Board of Supervisors is about to adopt General Plan and land use ordinance amendments which would render that moratorium permanent. Even if those provisions sunset after the completion and approval of a groundwater sustainability plan in some future year (perhaps 2022), what independence and local control does the board of the water management district actually have in these matters? What’s to stop a future board from re-imposing the moratorium? What’s to stop a future Board of Supervisors from imposing even more severe restrictions, such as a 2:1 water offset requirement or subjecting homeowners to moratorium restrictions when they apply for minor improvements such as an extra bathroom?

**c. Local Control by Whom and to What Ends?** The fact that the new district is designed to have a board of directors elected from various classes of ownership of people living in or near the district is given as proof of local control in contradistinction to control by the Board of Supervisors. Much effort was expended by proponents to demonstrate that no one faction by ownership class (amount of acreage owned) could get control of the district board. This discussion was a distraction. The real issues include: 1) what is the likelihood that some combination of 5 directors will include maintenance of the moratorium as a key element of the district’s future groundwater sustainability plan (GSP)? 2) Since all the powers included in AB 2453 are recommended to be operationalized in the LAFCO approval (and most of those powers are regulatory in nature), what is the likelihood that some combination of 5 directors will adopt

ordinances to implement them?<sup>1</sup> 3) Since the approval of future fees, assessments, and taxes are based on Prop 218 land ownership vote, the 2 representatives of 30-40 largest landowners will control the future budgets once the proposed district has adopted a SGMA compliant groundwater sustainability plan (GSP).

## **2. Ending the Moratorium?**

What is the proponents' general long-range plan for ending the moratorium and opening up development of existing residential parcels and small ranchette type parcels? In order to have conceived of the district, the proponents must have considered this major issue. For that matter and for those Supervisors who support district formation, what is their general proposal for the district to eliminate the moratorium? What would be the general time frame for implementing their proposal? The Board of Supervisors has included a provision in its proposed new land use regulations that the moratorium would end when the new district adopts its GSP.

But, what if it is impossible to ever end the moratorium in terms of complying with SB 1168? Or what if the Board of Supervisors or the district proponents have no intention of ever lifting the moratorium? If the moratorium is to be permanent (which appears more likely to be the case), why is the district even necessary? If future Ag expansion and residential expansion are essentially over, what would be the purpose of the district? After all, with no new development, the County could easily eliminate the currently asserted 2,500 acre-feet per year overdraft and would be immediately compliant with SB 1168 (SGMA).

## **3. Does the District Benefit Residential and Small Ranchette Owners?**

Most of the owners in the unincorporated area of the basin live in single-family homes on small lots or ranchettes. According to the County they account for 3% of the water drawn from the basin. Should these properties be exempt from district regulations and assessments since this classification is not a substantial contributor to any existing or impending overdraft? What about exempting properties of 40 acres or under? The recently adopted Planning Commission recommendation for the so-called Water Conservation Plan exempts properties that use 5 acre-feet or less per year. Why would they even be included in the proposed district under these circumstances?

### **B. Process Issue Problems:**

#### **1. The Moratorium:**

The County adoption of the so-called Paso Basin urgency ordinance water and development moratorium contaminated the entire process and confused the issue. Prior to its precipitous adoption of the moratorium, the Board had been talking about ways in which to assist residents suffering from the drought-fueled problem of some wells going dry (the number has never been shown to be statistically significant). In August 2013, the Board abandoned this course and imposed a 2-year plus 2-month ban on drilling new wells (including agricultural expansion and new homes). At that time the moratorium was termed a "time out" to ascertain the seriousness of the problem and both short- and long-term remedies.

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<sup>1</sup> One power has been requested not to be activated. This is a provision which would allow 4 members of the proposed district board of 9 to adopt emergency ordinances by 4 votes. It was included by mistake when the language of the AB 2453 enabling legislation was in large part copied from a large district in Ventura County.

Significantly, the proponents of the new water district PRAAGS went on record as supporting the moratorium.

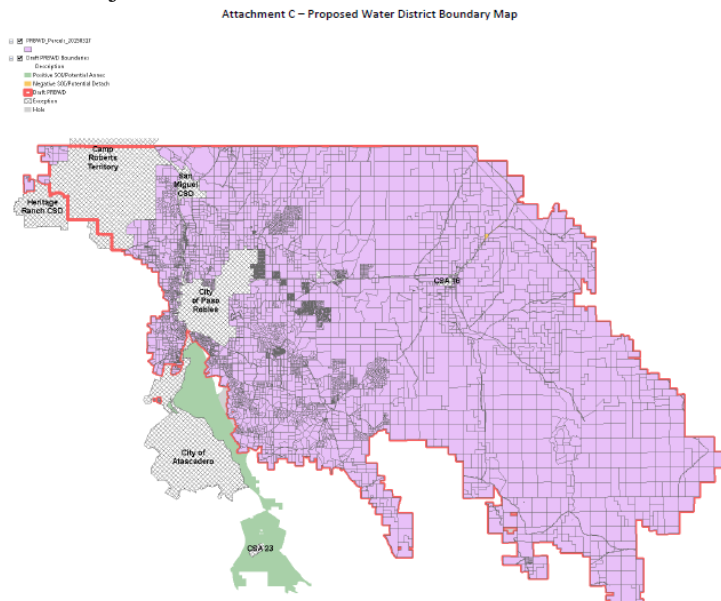
## 2. The Moratorium Is Essentially Permanent:

At this point, the Board of Supervisors water issues majority (Gibson, Hill, and Mecham) are proposing that the 2-year/2-month moratorium be extended until the new district is in place and has received approval from State Water Resources Water Control Board (DWR) for an SB 1168-compliant, basin-wide groundwater sustainability plan (GSP). The problem is that the Plan must be developed by a groundwater sustainability agency (GSA) which has authority over the entire basin or by a group of agencies which develop a comprehensive GSP, perhaps through a joint powers agreement. Since the City of Paso Robles, the City of Atascadero, the Templeton Community Service District, the San Miguel Community Service District, and potentially, certain community water systems refuse to subject themselves to the proposed district, the process could become very time consuming. The Board letter confirms the complexity and potential time delay here:

*More specifically, the SWRCB may designate a high or medium-priority basin as a probationary basin unless one of the following has occurred on or before June 30, 2017: (a) a local agency has elected to be a GSA that intends to develop a GSP for the entire basin; (b) a collection of local agencies has formed a GSA or prepared agreements to develop one or more GSPs that will collectively serve as a GSP for the entire basin; (c) a local agency has submitted an alternative that has been approved or is pending approval by DWR.5 In addition, the SWRCB may designate a high- or medium-priority basin as a probationary basin unless one of the following has occurred on or before January 31, 2022: (a) a GSA has adopted a GSP for the entire basin; (b) a collection of local agencies has adopted GSPs that collectively serve the entire basin; (c) DWR has approved an alternative.6*

The Atascadero Mutual Water Company is reportedly already preparing its own groundwater sustainability plan independent of everyone else.

The boundary map shows all the entities that will not be included in the district, will not be subject to the moratorium, and will be happily pumping ground water while most of the basin residents are subject to the moratorium.



## 3. The Plan is Unfair:

As noted, large sections of the basin are not included in the proposed district. Will the entities governing these “excused” areas agree to a moratorium in the future as part of a truly basin-wide sustainability plan? The areas in purple are within the



proposed district. The others plan to be excluded.

#### 4. County As Applicant Is Huge Conflict:

As we have pointed out in the past, the midnight legislative addition of the provision in AB 1453, which allowed the County to front for the proponents as applicant for the district, is a nasty conflict in several ways. First of all, Gibson and Mecham are both LAFCO Commissioners. They will be reviewing and approving their own plan. Where is the integrity in such a process? They constitute 30% of the vote on the matter itself as well as controlling the LAFCO Executive Director's salary and other conditions of employment. That Director has prepared the LAFCO analysis and recommendation. If you know that two of your bosses have just approved the very request on which you are making recommendations, how independent are you likely to be? Similarly, the County is advancing \$350,000 to finance the application and related actions. Would the Board of Supervisors do this for an application by the people of Templeton or Nipomo to become cities?

**a. Actual Conflict of Interest:** As a result of COLAB and others raising this issue in the past, the LAFCO is hiding behind a legal provision included in State Statute which exempts elected officials from a jurisdiction with a matter pending before LAFCO from normal and prudent conflict of interest provisions.

*LAFCO Commissioner Participation. LAFCO includes seven Commissioners: two City Council members, two Special District members, two County Supervisors and one Public Member. The question often comes up: "Can an elected official who voted on a project/application as a City Councilperson, District Board of Directors, or County Supervisor still vote on the application as a LAFCO Commissioner?" The State Law governing LAFCOs specifically allows for this situation. Commissioners who vote on an application or project as part of another governing body are allowed to consider that application acting as a LAFCO Commissioner. State Law speaks directly to this question:*

*GC 56325.1 While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.*

*Commissioners are expected to use their "independent judgement" in considering any application that is submitted. This action is consistent with past proposals that have been submitted to LAFCO by jurisdictions whose elected officials served on LAFCO, and were legally authorized to act on applications before LAFCO. Accordingly, County Supervisors who voted on submitting this application, as well as city council and special district representatives potentially affected by the proposal, are allowed to consider this application as a LAFCO Commissioner.*

**b. Law vs. Ethics:** LAFCO Commissioners and Supervisors Mecham and Gibson have been staunch and forceful proponents of the district. They have voted to appropriate \$350,000 to fund the application. They have directed the preparation of the application. The application is an

absolute creature of their creation and public policy advocacy. How can they in any rational universe meet the standard highlighted in yellow above? They would have to betray the very public policy which they have not only endorsed by their repeated votes but for which they have appropriated \$350,000 of tax payer money. If they think there are reasons not to approve the district, how could they have knowingly appropriated the money? Would it not be a deliberate act of malfeasance in public office to countermand their position under such circumstances? In other words, you appropriated \$350,000 of tax payer money, and now say you knowingly knew that you would vote against the outcome for which the money was expended.

Staffers have suggested that having the County function as applicant has precedent. They cite the formation of a lighting district some years ago. The problem is that the formation of the proposed Paso Basin Water Management District is not a small and limited technical matter. Given its listed powers, it will have profound impacts on thousands of citizens and property owners over a vast 400,000 acre area. There is substantial controversy and divided opinion. The fact that a 3-Board member majority is ramrodding the issue and has dedicated a senior staffer to proselytize for district formation (in violation of campaigning laws for tax measures) does not inspire confidence.

## **5. No Proponent Petition:**

By allowing the County to be the applicant before LAFCO, the district proponents were able to avoid the normal legal democratic process of circulating a petition and obtaining sufficient signatures to demonstrate that there is enough support for a new district to justify the time and expense of preparing and processing an application. By the time the voters ultimately decide, the County will have spent \$350,000. Instead, 3 members of the Board of Supervisors preempted the public and made the determination for them. As noted above, 2 of the 3 same Board of Supervisors members (Gibson and Mecham) will be “independently” reviewing the application as members of LAFCO.

## **6. Polling:**

Since the initial vote to determine if the district is to be operationalized is a vote of all the property owners, why not stop and conduct a poll to determine if there is substantial support prior to expending more money on processing the application and conducting a complex election? The 5 County Supervisors as members of SLOCOG have voted to authorize several polls related to the potential of a ½ cent sales tax for roads and transportation. Given the severe community division of the district issue, why not conduct a quick poll?

These process conflicts may doom the proposed district in the minds of the basin’s general voters, even if analysis shows some revised version of the district to be a valuable tool for management of the basin. The blatant disrespect for those with questions or those who proposed alternatives, such as Supervisor Arnold, and over 500 quiet title adjudication signatories and other citizens have left and continue to leave a nasty taste. Could this be a foretaste of the tone and operational character of the new district?

## **C. Financial Issues:**

### **1. Funding Mechanism and Costs Not Sufficiently Developed:**

During the January 27, 2015 Board Meeting, a portion of the staff report on the LAFCO application process stated:

*When staff returns to your Board with the completed LAFCO application, a detailed budget and cost estimate (e.g. per parcel or per well user) will be known and discussed.*

The staff has now returned with an updated financial consultant report. As noted in Board Item 22 above, that financial report only deals with the preparation of a groundwater sustainability plan. There are no projections for the true future costs of the District in its full operational mode.

The Board has submitted an application to LAFCO which does not contain a complete financial plan. Accordingly, the Board approved an application which will defer the decisions to LAFCO, which effectively eliminates 3 of the 5 Board members from the decision. "Perfect!"

*The work effort to fully refine the allocation model of a potential levy will take place during the Proposition 218 proceedings and be consistent with legal requirements*

In effect the Board flew blind.

## **2. Budget:**

A \$1 million per year budget (for the next 5 years) for 2 staffers and various consultants is presented. The budget provides no services other than the preparation of a groundwater sustainability plan and coordination with abutting entities plan. In other words, the district will tax the basin property owners \$5 million for a service which the County could already provide. The staff has provided a separate budget that indicates that it would cost the County the same \$5 million to perform the same work. It seems impossible, given all the data, major reports, and analyses that have been prepared over recent years, as well as plans already in effect, that a new \$5 million on top of everything else is required.

The budget as presented is a line item budget, and thus there is no way to tell what the actual tasks and products that cost \$5 million over 5 years actually cover on a programmatic basis. Most astonishingly, the only things which the \$5 million provides are the preparation of the GSP and district operational overhead. The write-up is clear:

*Services related to SGMA compliance, such as the development of a GSP, can be provided by the District immediately upon formation. The proposed budget, which will have had a successful Proposition 218 proceeding, only provides for enough funding to operate the District and fund the GSP. Any improvements, programs or projects deemed necessary by the GSP in order to sustainably manage the Paso Basin will need their own funding revenue source, which will be subject to the requirements of Proposition 218.*

Future improvements to collect, move, recharge, store, or otherwise improve the water situation will be additional costs. The application makes no attempt to estimate what these might be at different levels and what the assessments would be. It appears that the district will provide no substantive services until after 2020 or 2022.

*Any such improvements related to groundwater sustainability are not anticipated to be imposed until after the development of the GSP. Under the SGMA, the final GSP must be submitted to DWR by either 2020 or 2022. The date that will be required for the Paso Basin has yet to be determined. Therefore, any such improvements will most likely not be undertaken until at least 2020, and as discussed above, these improvements, programs or projects will be unknown until the GSP is developed.*

As County application project manager and advocate John Diodati blithely told the San Luis Obispo Tribune:

*“the decision right now is who should manage the basin, not how to manage the basin,”*

### **3. Regulatory Program Costs:**

It is clear from the powers and functions included in AB 2453 that one of the main roles of the district will be to promulgate, inspect, and enforce ordinances and regulations which it develops. There is no attempt to estimate these costs and their impact on the property assessments.

This whole presentation avoids the real financial costs and is designed to seduce the public into approving the District by not disclosing the real future financial impact.

### **D. Powers and Functions of the District:**

As we have in pointed out in the past, the powers allocated to the district are formidable. The problem is that the Board of Supervisors has never held an item-by-item discussion of them and made it accountable for accepting the formidable regulations implicit in the AB 2453 enabling legislation. The application went forward to LAFCO without this vital step. As the Board letter states:

*The LAFCO application requests activation of all available powers consistent with the limitations already contained within AB 2453.*

*The District will initially participate in a GSA for the Paso Basin or enter into an agreement(s) to fund and develop one or more GSPs for the Paso Basin. The GSP(s) will be used as the planning document for groundwater management in the Paso Basin. Any improvements, programs or projects (water conservation, water supply projects, etc.) recommended in the GSP adopted by the District will be considered by the District board for implementation. It is uncertain what these improvements, programs or projects may be at this time. The initial service provided by the District can be generalized as compliance with the Sustainable Groundwater Management Act (SGMA).*

Again, other than running its overhead and preparing a “planning document for groundwater management in the Paso Basin,” there will be no other services for 5 years.

### **Not Full Disclosure**

The County's new Phase-II financial consultant report states:

*Annual escalation: NBS proposes no annual escalation in the above rates. The purpose of the Parcel Tax is to fund the \$950,000 necessary for initial work efforts to manage the Basin, such as coordinating and developing the Groundwater Sustainability Plan. Additional efforts or subsequent cost escalation is most appropriately addressed in the approval of new rates, fees, taxes or charges. The above Proposed Parcel Tax Rate is the maximum amount that may be charged to any parcel in any Fiscal Year.*

The true future costs are being hidden under the guise that they cannot be predicted until there is an adopted Groundwater Sustainability Plan. This is rubbish. The staff and/or consultant could construct some likely scenarios for what the district's annual operating costs might be, given the specific range of powers included in its enabling legislation. As one staffer, smirking, told us when we raised the issue: "You can't predict the future." OK, then don't vote for it.

### LAFCO Board

MISSION STATEMENT		
The Local Agency Formation Commission is committed to serving the residents of San Luis Obispo County and the State of California by discouraging urban sprawl and encouraging the orderly formation and development of local agencies based on local conditions and circumstances.		
COMMISSIONERS		ALTERNATES
Tom Murray, Chair, Public	Muril Clift, Special District	David Brooks, Public
Frank Mecham, Vice-Chair, County	Bruce Gibson, County	Robert Enns, Special District
Roberta Fonzi, City	Ed Waage, City	Adam Hill, County
Marshall Ochylski, Special District		Jamie L. Irons, City
Meeting Location		Contact Information
Adelaide Room Paso Robles Event Center Paso Robles, CA		David Church, Executive Officer Phone: (805) 781-5795 Fax: (805) 788-2072 <a href="http://www.slolafco.com">www.slolafco.com</a>

### Planning Commission Meeting of Thursday, September 10, 2015 (Completed)

**Item 4 - Hearing to consider a request by FREEPORT-MCMORAN OIL & GAS for a Conditional Use Permit (CUP) to amend the previous CUP to extend the amount of time allowed to drill the previously approved Phase IV oil wells (D010386D). This request would extend the current limit for an additional 3 years to install these previous approved wells (approximately 31 wells not yet installed). The project is located at 1821 Price Canyon Road (San Luis Obispo) on the east and west sides of Price Canyon Road, approximately 2.7 miles north of the City of Pismo Beach, in the South County planning area (San Luis Bay Inland sub area South). The Commission voted 3-1-0 (Topping, Irving, and Campbell yes, Harrison no, and Meyer absent) to continue the hearing until October. They might have approved the extension except that the motion of approval contained wording that said that they (the Commissioners) had studied the old EIR by which the project had originally been approved years ago. Several believed it would be prudent to read that old EIR before voting.**



This item is essentially a request by an oil driller to extend an existing ten-year permit which expired on September 9<sup>th</sup> for 3 years to complete drilling of previously approved wells which have not yet been started. The staff seems to be in favor, as it has prepared findings for approval which reference the old EIR as follows:

*FINDINGS - EXHIBIT A*

*DRC2015-00002 (Freeport-McMoRan)*

*Environmental Determination*

*A. The Environmental Coordinator found that the previously certified Final Environmental Impact Report (FEIR) is adequate for the purposes of compliance with CEQA because no substantial changes are proposed in the project which will require major revision of the previously certified FEIR, no substantial changes occur with respect to the circumstance under which the project is undertaken which will require major revision of the previously certified FEIR, and no new information of substantial importance has been identified which was not known at the time that the previous FEIR was certified. Furthermore, the project will continue to operate under the Phase IV approval, with all conditions in full effect, which includes the mitigation measures from the FEIR.*

*Conditional Use Permit*

*B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.*

*C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 22 of the County Code.*

*D. With the exception of the one condition being amended, all remaining conditions of approval from D010386D will remain in full effect, which will also be applicable to the previously approved wells yet to be installed.*

*E. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the proposed development, as conditioned, does not generate activity that present a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.*

*F. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because it has been in operation at this location for over 100 years and the exterior boundary approved per previous land use permits will not increase due to this project.*

*G. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project*

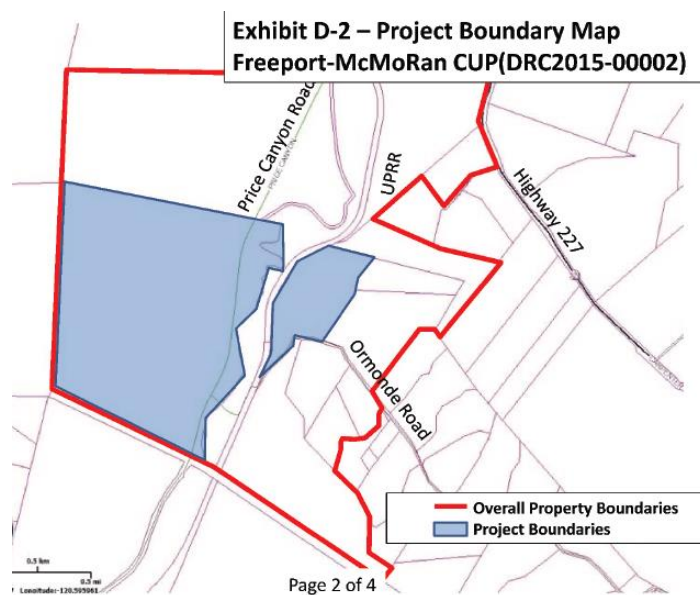
*because the project is located on Price Canyon Road, a collector road constructed to a level able to handle any additional traffic associated with the project.*

*EX - Combining Designation*

*H. The proposed use will not adversely affect the continuing operating or expansion of the energy or extraction use because it represents an expansion of the extraction use.*

The Sierra Club has filed a letter opposing the renewal without the completion of a new environmental impact report (EIR). Sierra Club states that conditions have changed since the original permit was issued. They may be planning to use the drought as an objection to using water for steam generation as part of an EIR objection. They would also be likely to invoke greenhouse gas issues.

A map of the project area is displayed below.



**Item 5 - Continued hearing to consider a request by JANNECK, LIMITED (LAETITIA AGRICULTURAL CLUSTER) for a Tentative Tract Map and Conditional Use Permit to allow an agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots. The proposed project includes 101 1-acre residential lots plus one existing single-family residence, a ranch headquarters (includes a homeowner’s association facility, recreation center, and community center), 25 acres of internal access roads, and a wastewater treatment plant.**

The ranch headquarters and wastewater treatment plant are proposed on the open space parcels. After a very detailed 5 hour discussion the Commission voted to continue the deliberations to October 29, 2015. The members have a number of questions. These involve water supply, traffic, access, and density calculations. The Commission will also review the EIR in detail. New well tests were also requested because these have not been done since 2015.

**An Interesting Chart Courtesy of the Central Coast Regional Water Quality Control Board:**

The chart compares the percent reduction in water use by jurisdiction from June 2013 to June 2015.

June 2015 Water Conservation Report by Supplier (by hydro region, then R-GPCD)

Supplier Name	Hydrologic Region	Cumulative Savings (June 2015)*		Monthly Savings (June 2015)		
		Conservation Standard	Cumulative Percent Saved (as compared to June 2013)	Monthly Percent Saved (as compared to June 2013)	Estimated Monthly R-GPCD	Total Population Served
Golden State Water Company Orcutt	Central Coast	32%	38.2%	38.2%	145.4	31,872
Nipomo Community Services District	Central Coast	28%	32.5%	32.5%	133.9	12,512
Atascadero Mutual Water Company	Central Coast	28%	34.1%	34.1%	119.2	31,308
Paso Robles City of	Central Coast	28%	29.5%	29.5%	118.8	30,450
Alco Water Service	Central Coast	24%	25.2%	25.2%	110.3	29,179
Arroyo Grande City of	Central Coast	28%	32.6%	32.6%	104.2	17,121
Pismo Beach City of	Central Coast	24%	24.5%	24.5%	99.5	7,861
Hollister City of	Central Coast	20%	28.2%	28.2%	94.4	20,409
Morgan Hill City of	Central Coast	28%	34.6%	34.6%	92.6	41,779
Sunnyslope County Water District	Central Coast	28%	34.7%	34.7%	91.7	19,189
Gilroy City of	Central Coast	24%	33.4%	33.4%	88.8	53,095
Santa Maria City of	Central Coast	16%	18.2%	18.2%	82.6	102,087
Carpinteria Valley Water District	Central Coast	20%	31.8%	31.8%	78.0	14,616
Watsonville City of	Central Coast	20%	18.0%	18.0%	77.1	65,739
Greenfield, City of	Central Coast	16%	28.1%	28.1%	76.8	17,898
San Lorenzo Valley Water District	Central Coast	12%	22.0%	22.0%	72.9	19,000
Scotts Valley Water District	Central Coast	16%	31.0%	31.0%	72.7	10,509
California Water Service Company Salinas District	Central Coast	16%	29.2%	29.2%	67.6	121,063
California-American Water Company Monterey District	Central Coast	8%	19.7%	19.7%	66.1	100,623
Morro Bay City of	Central Coast	12%	12.0%	12.0%	66.1	10,234
Santa Barbara City of	Central Coast	12%	40.7%	40.7%	65.8	93,091
San Luis Obispo City of	Central Coast	12%	20.0%	20.0%	60.6	45,802
Lompoc City of	Central Coast	12%	32.9%	32.9%	59.0	41,541
Sequel Creek Water District	Central Coast	8%	34.8%	34.8%	57.0	39,054
Marina Coast Water District	Central Coast	12%	36.2%	36.2%	51.3	32,375
Goleta Water District	Central Coast	12%	30.9%	30.9%	50.8	86,946
California Water Service Company King City	Central Coast	12%	24.9%	24.9%	48.8	14,818
Santa Cruz City of	Central Coast	8%	32.3%	32.3%	42.7	95,224
Cambria Community Services District	Central Coast	8%	44.8%	44.8%	37.1	6,032

Wonder why the Water Board is wandering into this issue? They are supposed to be concerned with water quality and prevention of pollutants, not water supply.