COLAB
San Luis Obispo County

The Coalition of Labor Agriculture and Business

WEEKLY UPDATE
AUGUST 18-24, 2024

THIS WEEK
SEE PAGE 4

BOARD OF SUPERVISORS

COURT DOG HANDLER GETS SPECIAL PAY
EMBLEMATIC OF CIVIL SERVICE SYSTEM/UNION COST PRESSURES
PLUM DAY TIME ASSIGNMENT - YOU GET MORE PERKS, A COUNTY CAR & A FREE DOG

CIVIL SERVICE COMMISSION ANNUAL REPORT
COUNTY EXPERIENCING LOW JOB APPLICATION RATE

BOB JONES TRAIL IN THE LURCH

SALE OF COUNTY SURPLUS WATER TO KERN WATER DISTRICT

SUPERVISOR QUESTIONS AND REQUESTS

LAST WEEK
SEE PAGE 11

BOARD OF SUPERVISORS

IS PUBLIC COMMENT DEAD?

PUBLIC COMMENT RULES TIGHTENED

GIBSON & PAULDING USE ONE RARE INCIDENT AS EXCUSE

OTHER AGENCIES ALSO PROPOSING RESTRICTIONS

COINCIDENCE OR CONSPIRACY?

3CE ENERGY OPS BOARD MEETING

REGULATIONS & SUPPLY REQUIREMENTS ADD COSTS

RESTRUCTURING OF GOVERNING BOARDS
TOO MANY MEMBERS & ISSUES, TOO COMPLICATED FOR THE AVERAGE LOCAL MEMBERS, & HOME WORK TOO HEAVY

SLOCOG

VEHICLE MILES TRAVELED (VMT)

SLO LOCAL AGENCY FORMATION COMMISSION

VOTES FOR EXPANDED APPLICANT INDEMNIFICATION REQUIREMENTS

EMERGENT ISSUES

SEE PAGE 23

CRUMBLING CALIFORNIA: EVEN DENNY'S CLOSES IN SAN FRANCISCO

Last remaining Denny's in San Francisco closes over vandalism, theft, and dine-and-dashers

FLOATING OFFSHORE WIND - A FINANCIAL CATASTROPHE

Offshore wind is a terrible idea, but the California Energy Commission pushes forward

THE DAILY CHART: TEXAS EATING CALIFORNIA'S LUNCH

COLAB IN DEPTH
SEE PAGE 30

THE SUPREME COURT VS. THE ADMINISTRATIVE STATE

THIS PAST TERM MAY BE THE MOST CONSEQUENTIAL OF THE CENTURY

BY ADAM J. WHITE

WE ARE WASTING $2 TRILLION A YEAR CHASING 'GREEN' FANTASIES

BY BJORN LOMBORG

THIS WEEK'S HIGHLIGHTS
ALL MEETINGS ARE AT 9:00 AM UNLESS OTHERWISE NOTED

Board of Supervisors Meeting of Tuesday, August 20, 2024 (Scheduled)

Item 15 - Submittal of a resolution approving a) an amendment to the San Luis Obispo County Employees' Association (SLOCEA) 2022 – 2025 memoranda of understanding (MOU) for the Courthouse Dog Program (CDP); and b) a side letter agreement with the District Attorney Investigators Association (DAIA) to the 2022 - 2025 MOU with the County for the CDP. This one is not a big policy deal but is illustrative of how costs of government get built in incrementally over the years.

On October 6, 2020, the Board of Supervisors authorized the San Luis Obispo County District Attorney's Office Victim/Witness Center to implement a Courthouse Dog Program (CDP)1. The CDP is overseen by the Christopher G. Money Victim Witness Assistance Center and is primarily intended to provide support to individuals by being present during various stages of an investigation and through the court process. The courthouse dog's presence provides comfort and aid to victims and witnesses of crime, some of whom may have developmental delays or disabilities, during the investigations and/or prosecutions of crimes, or other related traumatic events involving these persons. The courthouse dog also provides assistance to individuals during other activities following a crime such as hospital or doctor visits, forensic interviews, meetings or interviews with detectives or attorneys, court proceedings, follow-up visits with law enforcement and any other interactions between those in the legal system and the victim or witness as appropriate.

• The handler shall be provided with a County vehicle for transporting the courthouse dog to and from work or work-related events, or shall receive compensation and mileage reimbursement pursuant to the County's Travel Policy for use of a personal vehicle.

• The handler shall be provided with a County vehicle for transporting the courthouse dog to and from work or work-related events, or shall receive compensation and mileage reimbursement pursuant to the County's Travel Policy for use of a personal vehicle.

• Any costs associated with the care of the courthouse dog will be paid by the County or reimbursed to the handler.

Item 18 - It is recommended that the Board receive and file the Civil Service Commission Annual Report for calendar year 2023. The County experiences a low level of employee grievances.

GRIEVANCES, APPEALS AND LITIGATION

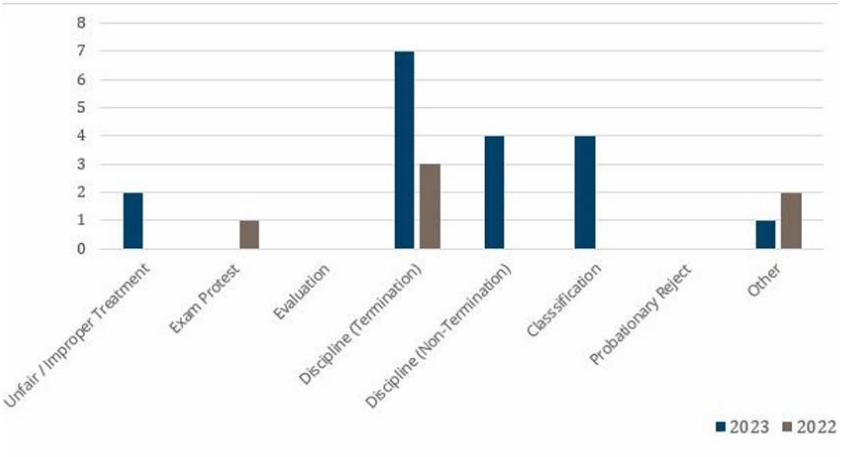
The Commission's rules outline the procedure for resolving employment disputes prior to requesting a hearing.

GRIEVANCES AND APPEALS FILED BY DEPARTMENT

DEPARTMENT	2023	2022	2021	2020
ADMINISTRATIVE OFFICE				
AIRPORTS	1			
AGRICULTURAL COMMISSIONER				
ASSESSOR				
AUDITOR-CONTROLLER/TREAS TAX			2	
CENTRAL SERVICES			1	
CHILD SUPPORT SERVICES				1
CLERK-RECORDER				
COUNTY COUNSEL				3
DISTRICT ATTORNEY	2			
HEALTH AGENCY	4	2	2	2
HUMAN RESOURCES				
INFORMATION TECHNOLOGY				
LIBRARY	1	1		
PARKS AND RECREATION			1	
PLANNING AND BUILDING	1	1		1
PROBATION	1			
PUBLIC WORKS	3		2	2
SHERIFF-CORONER	5	2	3	1
SOCIAL SERVICES				1
VETERANS SERVICES				
TOTAL	**18**	**6**	**11**	**11**

GRIEVANCES, APPEALS AND LITIGATION

GRIEVANCES AND APPEALS FILED BY TYPE



Attracting applicants for County jobs is becoming more difficult.

Item 21 - Submittal of a resolution 1) approving and authorizing the Director of Public Works to execute a letter agreement with the Westside Districts for the temporary transfer of 2024 State Water Project (SWP) water supplies; 2) authorizing the Director of Public Works to execute a corresponding agreement(s) with the California Department of Water Resources (DWR); and 3) finding the transfer exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301. Due to the recent wet years, the County has surplus water allocation stored in the State Water Project at the San Luis Reservoir. The amount that each contractor can store is based on the total capacity of the reservoir relative to their contracted amount. When that limit is reached, the State sells the water to another contractor or sends the water to the Pacific. Now, the County has an opportunity to sell its surplus to other contractors who need more than their contracted allotment. In this case the County is proposing to sell some of its surplus to the West Side Water District in Kern County.

The District is a district of 6 smaller water districts, which are the retailors in their respective areas.

Table 1. State Water Lost to Spill/Storage Limits at San Luis Reservoir

Year	Annual Allocation %	Stored Water Lost to Spill (AF)	Water Lost Due to Storage Limits (AF)	Total Water Lost to Spill or Storage Limits (AF)
2007	60	12,500	None	12,500
2010	50	No Spill	2,201	2,201
2011	80	6,009	4,160	10,169
2012	65	No Spill	3,139	3,139
2016	60	No Spill	2,051	2,051
2017	85	15,267	6,487	21,754
2018	35	No Spill	1,734	1,734
2019	85	18,639	3,719	22,358
2023	100	8,064	10,221	18,285
TOTAL		**60,479**	**33,712**	**94,191**

FINANCIAL CONSIDERATIONS

The proposed temporary transfer provides the District an opportunity for significant cost recovery and would have no impact on the District's ability to make all payments, including payments due under the District's Water Supply Contract with DWR.

Under the Westside Districts Agreement, up to 8,500 AF (at $450/AF) of the District's surplus 2024 "Table A" water would be made available to the Westside Districts, and the District would potentially recover up to $3.7 million, credited to:

(1) the District's State Water Tax Fund (estimated credit = up to $2.6-3.1 million), and
(2) the District's SWP Subcontractors (estimated credit = up to $0.6-1.1 million), based on their unused share of 2024 Table A water under the 2024 allocation.

The option to make up to 5,000 AF of additional stored water available could result in up to $1.75 million in additional cost recovery for the District.

Revenue generated from the transfer would actually reduce costs borne by the Countywide taxpayers by providing increased revenue for the District that could be used to help offset other DWR cost obligations (e.g., Delta Conveyance Project planning/design costs).

RESULTS

Is Stewart Resnick's Wonderful Company a customer or majority member of any of these districts?

MATTERS AFTER 1:30

Item 35 - Hearing to consider adoption of a Resolution of Necessity for the acquisition of real property interests required from Ray B. Bunnell for the Bob Jones Pathway "Gap Closure" Project, located between Avila Beach and the City of San Luis Obispo, by 4/5 vote. (Public Works)

1. Open and conduct a hearing on the adoption of the attached Resolution of Necessity, receive comments from staff, take testimony from the property owners or their authorized representative, and consider all the evidence;

2. Adopt the attached Resolution of Necessity (Project No. 320096; Federal Project No. HPLU-5949(188)) authorizing the Chairperson of the Board of Supervisors to execute all documents necessary, upon consultation with County Counsel, for a) settlement of the right of way transaction and conveyance related to these real property interests and/or b) filing, processing and completion of an eminent domain proceeding for the acquisition of the described real property interests, by 4/5 vote; and

3. Authorize the Director of Public Works, or designee, to execute any remaining escrow and payment-related documents or instructions necessary to close the transaction associated with any settlement of these real property interests.

Between a Rock and a Hard Place

1. The County has received an $18 million grant from the State to complete the Bob Jones Bike Trail from the Octagon Barn off South Higuera Street to Avila Beach. The project is widely supported by the bike community, casual recreationists, and as a way for commuters to get out of their cars. The latter provision is an important credit for the County related to future transportation grants for demonstrating alternate transportation modes and whatever CO_2 reduction credits can be claimed over the years.

2. The County has successfully obtained the necessary right of way from all owners except one who has stated he will not sell for any reason or any amount.

3. Supervisors Peschong and Arnold have stated repeatedly that they will not vote for condemnation, as they are opposed to real property condemnation by government as a matter of principle. Condemnation requires a 4/5 vote.

4. The County approached the State to see it would allow an alternate route (essentially in the frontage road next to highway 101 and the holdout's property). The State has now rejected that alternative as being unsafe.

5. Should the County not be able to complete the project on schedule (it is now up against the deadline for starting work), it will lose the $18 million and have to pay back $2.3million of the grant, which it has already expended.

6. The entire Board supports the project. Thus the condemnation issue is the blocker.

7. Would the Board majority seek compromise by providing Arnold's and Peschong's constituents with tangible benefits (at no costs in this case)? This is a common method to resolve what otherwise are unsolvable public policy conflicts. Both sides have to step up and eat some part of something they don't like.

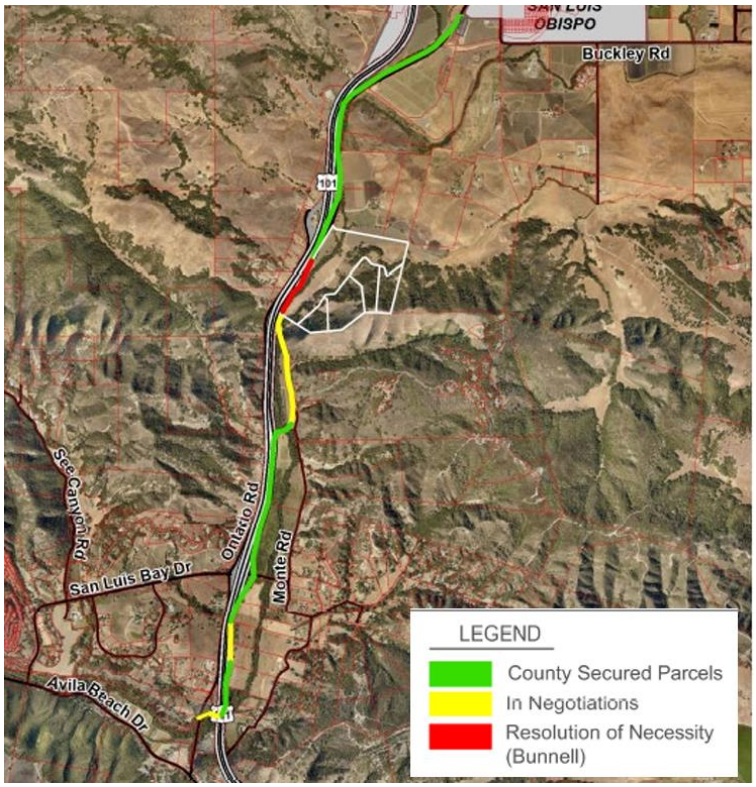
a. Restoration of Arnold and Peschong to the Paso Basin Cooperative Committee.

b. Restoration of the Planting Ordinance to provide water to the Paso Basin moratorium victims.

c. Unequivocal support for Proposition 13, including no reductions in vote thresholds.

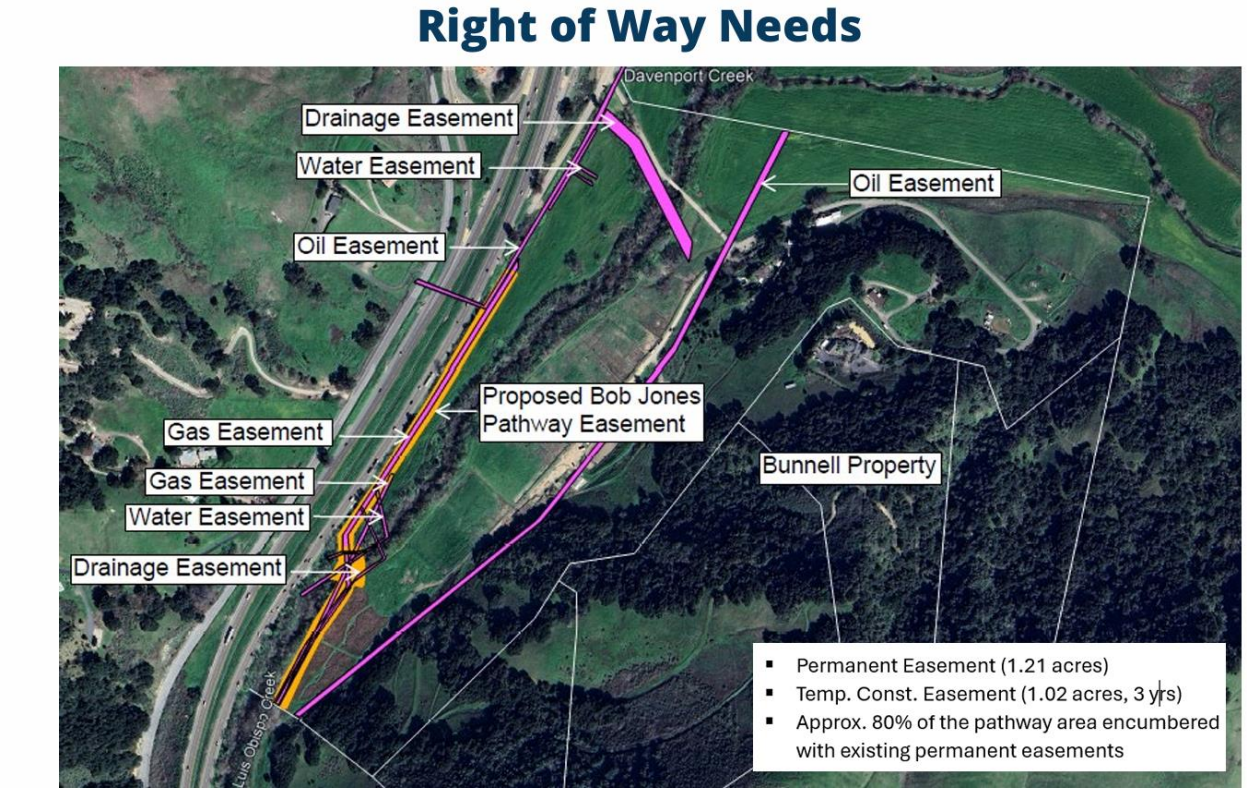
Large public benefits to a substantial portion of the County would occur to offset the negative implications of condemnation in this case.

Overview Map



Detail of area

Figure 1: Project Location



It should be noted that COLAB holds no special torch for large public expenditures on bike trails, especially under the false premise that they are good for commuting and CO_2 reduction. This is all part of the larger plan to force people out of their cars.

Are you really going to wear this stuff after you peddled up from Avila Beach? Even if you took a shower, the cool down will take 30 minutes. The Judge, your boss, your customer, and your team ain't waiting. What about dropping the kids at school? What about grocery shopping on the way home?

Item 38 - Any Supervisor may ask a question for clarification, make an announcement, or report briefly on his or her activities. In addition, Supervisors may request staff to report back to the Board at a subsequent meeting concerning any matter or may request that staff place a matter of business on a future agenda. Any request to place a matter of business for consideration on a future agenda requires the majority vote of the Board.

Planning Commission Meeting of Thursday, August 22, 2024 (Scheduled)

In General: There are no major policy items on this agenda. There are requests for time extensions of prior approvals that have not started development. There are also requests for cell towers, including one as a faux water tank.

LAST WEEK'S HIGHLIGHTS

Board of Supervisors Meeting of Tuesday, August 13, 2024 (Completed)

Item 29 - It is recommended that the Board consider and give direction regarding amending its Rules of Procedure pertaining to the use of County equipment during public comment agenda items and add clarifying language regarding disruptive behavior and unruly conduct. The Board majority (on a 3/2 vote - Arnold and Peschong dissenting), adopted the new rules that prohibit public use of the overhead projector display data during public comment. The new rules also require that public speakers:

1. Direct comments to the Board as a whole through the chair rather than calling out problems caused by a specific supervisor.

2. Forbids slanderous remarks. It is not clear how the Board would decide on the spot that a remark is slanderous. Some might be obvious, but others could be true.

3. The net impact is to forbid anything that Supervisor Gibson doesn't like.

Some Issues:

Suppose the public speaker points out that a particular Supervisor has received campaign contributions from an entity with business pending before the Board (prior to the current statute which prohibits such contributions) or that he or she will have business pending before the Board

What if the speaker suspects the Supervisors of behavior that should be considered slanderous if not true and conditions his or her remark as suspicion?

What if a particular Supervisor is voting for bad policies on a regional or statewide board? Are citizens forbidden from criticizing him or her?

Are employees who are accused of misdeeds or failure allowed to have a name clearing public hearing during which they might criticize a Supervisor?

When a Supervisor criticizes or attacks a public speaker from the dais, why is that speaker not allowed to respond?

Background: At the July 16, 2024 Board meeting, during consideration of an item designating July as Gay Pride Month, speakers both supported and opposed the item. One speaker presented a video graphically showing lewd behavior during the San Francisco Gay Pride Festival.

The speaker opposed the Gay Pride designation on the grounds that the effort has gone beyond protecting gay rights and has become an excuse to promulgate not only gayness but other varieties of sexual behavior that are deemed by many as perverted or unacceptable in public society. These include promoting man boy love, orgies, urination on people in public, promoting gender change, teaching masturbation techniques to school children, promoting various versions of polyamory, and other fetishes which rob children of their innocence and youth. The speaker stated that a north county school district was promoting such behaviors as part of its sex education program. She further stated that such behaviors are included in the text used for some classes.

Supervisors Gibson and Paulding strongly objected to the presentation. They directed County Counsel to examine the Board Meeting Rules of procedure and provide recommendations to forbid such displays in the future. The other Supervisors concurred with the assignment.

Accordingly, County Counsel returned with some alternatives that she hopes do not violate First Amendment and the California Open Meeting Act. Her cautious response is summarized in the alternatives below.

1. Do nothing and rely on staff to make a determination as to whether speech is unprotected and therefore, stopped. As noted above, performing an ad hoc First Amendment analysis is difficult during a public meeting. This would require the meeting and speech to be stopped by the Chair or the Clerk of the Board and then an analysis performed. This also could contribute to disruptions during the meeting. It could lead to claims of violation of First Amendment free speech rights if there were differences of opinion between staff and the public commenter.

2. Prohibit the use of County equipment. This would be a valid restriction on public comment that is content and viewpoint neutral, would make the meetings more efficient and would limit disruptions and unruly conduct.

3. Require individuals to submit any materials they wish to use during public comment on County equipment in advance for review and approval. Any review under this process would be limited to a determination as to whether speech was unprotected (i.e. hate speech or obscene). While the rule would limit review to only unprotected speech, it could lead to claims of violation of First Amendment free speech rights if there were differences of opinion between staff and the public commenter. This would also add additional work for staff as individuals would be required to submit the material in advance of the hearing.

4. Other considerations: If the Board adopts a rule prohibiting individuals from using County equipment, the Board may want to consider an exception for hearing formal appeals and allow both the applicant and appellant to use County equipment during their presentations, as applicable. The reason is because appeals Page 3 of 4 implicates due process rights and any presentations will need to be related to the appeal item itself. Another consideration, separate from unprotected speech, is cybersecurity and a uniform requirement for any USB drive or other device that is plugged into the County's equipment be submitted to the Clerk of the Board 24 hours prior to a Board meeting so that it can be checked for any viruses or other malware. This requirement is commonly used by public agencies in California; however, we have found that compliance with this requirement is inconsistent.

The do nothing recommendation was best, as this was a rare and probably one-off issue. The Board has tolerated other disruptive demonstrations in the past and has not tightened up its rules. For example, the leftist demonstration protesting Andrew Holland's death in the jail with a symbolic dead body did not result in any amping up of the meeting rules.

Are some Board members actually more worried about being criticized for their policies and behavior? Is this just an excuse to limit speakers on legitimate subjects? Actually, the Board has no authority over the curricula of a school district and could have already suspended the comment and video, as the Rules already provide that speaker comments must relate to matters under the authority of the Board of Supervisors. For example, what if pro-Palestinian radicals come to a Board meeting and demand the annihilation of Israel? This has already happened in a number of jurisdictions. The Board has no authority over foreign policy. Supervisor Gibson, himself, has often said that the Board has no authority over the relicensing of Diablo or the Coastal Commission, in efforts to shut the public up.

Remember that legally, Board members of elected public bodies and officials may not forbid or interfere with speech with which they disagree during public comment.

Several new provisions are added to the Rules included:

5. Public comment remarks should be directed to the Chairperson and the Board as a whole and not to any individual supervisor or attendee. No person will be permitted to make slanderous, obscene, or threatening remarks against any individual.

NOTE: Did the Declaration of Independence make slanderous remarks against King George the III? Be careful, one person's slander maybe another's brilliant expose. Are those who fiercely criticized former Supervisor Adam Hill slanderous?

6. Personal attacks that are not related to County business, threatening language, slanderous remarks, obscene language and materials and other unduly unruly disruptive behavior that prevents the Board from carrying out its duties, will not be tolerated.

The Andrew Holland demonstration was disruptive and attacked Sheriff Parkinson.

They say they want efficient meetings but will spend an hour every week on public recognitions: National Creek Week, Bike to Work Week, Month of the Child, Duck and Hold Day (earthquake safety), Recycling Week, Gay Pride Day, Earth Day, Adopt a Kid Week, Adopt a Pet Week, Etc. There are a variety of annual recognitions for various departments that operate the County programs – that is for doing their jobs. So far, we are still missing Ground Squirrel Adorability Week.

COINCIDENCE OR CONSPIRACY: Why are the jurisdictions fighting public comment all in the last couple of weeks? Did everyone go to the joint city managers /mayors meeting and come back inspired? See the article below:

Arroyo Grande council limits non-agenda public comment to one minute

August 16, 2024

Arroyo Grande City Council

By JOSH FRIEDMAN
The Arroyo Grande City Council has decided to limit public comment on items that do not appear on meeting agendas to one minute. [New Times]

During its meeting on Tuesday, the Arroyo Grande council discussed the possibility of moving public comment on non-agenda items to the end of its meetings. Eventually, the council chose to keep the public comment slot at the beginning of meetings and to reduce the time allotted to each speaker from three minutes to one minute.

Councilman Jim Guthrie suggested limiting non-agenda public comment to one minute per person in order to make meetings progress more efficiently.

Arroyo Grande City Manager Matthew Downing said other cities, including Atascadero and Grover Beach, have adopted policies that set aside time for public comment on items not on the agenda after the council completes its consent agenda. Grover Beach moved its non-agenda public comment to the end of council meetings. Likewise, the Lucia Mar School District has, for a couple of years, been taking public comment at the end of its board of trustees meetings, Downing said.

Grover Beach City Manager Matthew Bronson said the Grover Beach council adopted its public comment shift during its July 22 meeting.

Arroyo Grande residents who attended Tuesday's meeting were unhappy with the limit placed on non-agenda public comment. Multiple members of the public spoke out against the change, but the council still voted unanimously to reduce the time limit from three minutes to one minute per person.

This article first appeared in the Cal Coast News of August 16, 2024.

Item 31 - Any Supervisor may ask a question for clarification, make an announcement, or report briefly on his or her activities. In addition, Supervisors may request staff to report back to the Board at a subsequent meeting concerning any matter or may request that staff place a matter of business on a future agenda. Any request to place a matter of business for consideration on a future agenda requires the majority vote of the Board.

Central Coast Community Energy Authority (3CE) Operations Board Meeting of Wednesday, August 14, 2024 (Completed 10:30 AM)

Item 4 - Regulatory Update. The 3CE operates in a complex regulatory milieu. Each item on the list below contains complex and even some mind bending items that will ultimately affect the success and cost to 3CE.

DISCUSSION/ANALYSIS:

Please find attached 3CE's Regulatory Update, providing the latest information on the following:

- Resource Adequacy (RA)
- Provider of Last Resort (POLR) and Emergency Transition Planning
- Demand Flexibility
- Integrated Resource Planning (IRP)
- Bioenergy Market Adjustment Tariff (BioMAT)
- Renewables Portfolio Standard (RPS)
- Interconnections
- Diablo Canyon Power Plant Extension
- Load Management Standards (LMS) and Real-Time Pricing
- Power Source Disclosure (PSD) and Power Content Label (PCL)
- Energy Resources Recovery Account (ERRA) Compliance
- Energy Resources Recovery Account (ERRA) Forecast
- SCE General Rate Case

For example: What do you think of *Provider of Last Resort (POLR) and Emergency Transition Planning?* Does the SLO County Board of Supervisors think that 3CE should become a provider of last resort?

Issue

The Provider of Last Resort (POLR) is the backstop entity that provides electric service to customers of a load serving entity if that LSE fails suddenly. This role has historically been held by the investor-owned utilities (IOUs, namely Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric), but this proceeding will establish a process to allow CCAs and other non-IOU LSEs to become POLR in their service areas. This proceeding is also considering rules designed to prevent LSE failures that have various implications for 3CE finances and operations. This includes changes to the fund CCAs must post as insurance called the Financial Security Requirement (FSR).

Status

Since the issuance of the CPUC's April 18 Decision, 3CE staff has actively engaged with CalCCA to shape language around financial monitoring requirements and new CCA registration guidelines. 3CE has jointly submitted two Advice Letters with guidance on these topics via CalCCA to the CPUC. 3CE's advocacy in this process has centered on ensuring that any new requirements retain flexibility within CCA contracts, preserve CCA autonomy, and align with existing regulations.

Next Steps

A schedule for the next phase of the proceeding, which will address the process for non-IOU entities to become a Designated POLR, has not yet been issued.

Issue - Diablo Canyon Power Plant Extension – R.23-01-007

SB 846 required the CPUC to consider the potential expansion of operations at the Diablo Canyon Power Plant (DCPP) for an additional five years beyond its retirement dates to improve system reliability while additional renewable energy and zero-carbon resources come online. DCPP is owned and operated by PG&E and was licensed by the Nuclear Regulatory Commission (NRC) to operate until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2). In 2023, the CPUC opened a new proceeding related to the potential extension of DCPP. 7 Phase 1 of the proceeding concluded with a Decision that authorized extended operations of DCPP and allocated the costs and benefits to LSEs.

Does 3CE support the continuation of Diablo?

Please see the Item immediately below for some of the problems that 3CE is experiencing with Board members in dealing with this complexity.

Item 12 - Recommend that the Policy Board consider and adopt the Ad Hoc Committee's recommendations regarding improvements to governance related matters, including board composition, engagement, and communication. The Board voted 11/4 to reduce the number of positions on each of its 2 governing boards (the Operations Board and the Policy Board from 19 to 11). As we have forecast over the years, this structure with 38 board members overall has proven to be unwieldy, with size being a major issue. Some of the problems pointed out by staff include:

1. Lack of certainty

- Impacts of turnover
- Consistency problems

2. Absence of Public Accountability

- Low institutional knowledge
- Difficulty in obtaining quorums

3. Clunky

4. Lack of understanding of the technical complexity

5. Work load - preparation for meetings, reading large amounts of material, studying complex policy proposals, etc.

We predicted this problem for years. Neither the city nor county board members nor the local city county executives have the time nor (in most cases) the education and training to manage an electric utility. Worse yet, many of the elected officials may have no education or experience that qualifies them to understand, let alone formulate highly complex financial, technological, and industrial policy. Politics can be a huge shortcut in life.

Some may disagree. Years ago, Ted Tedesco was City Manager of San Jose. He was being interviewed by the legendary aviation pioneer, American Airlines founder, and Board Chair C.R. Smith, for CEO of the Airline.

Smith: *What do you know about the complexities of buying a Boeing 707?*

Tedesco: *Have you ever bought a fire truck?*

Tedesco was hired and served successfully for many years and then retired to Montecito.

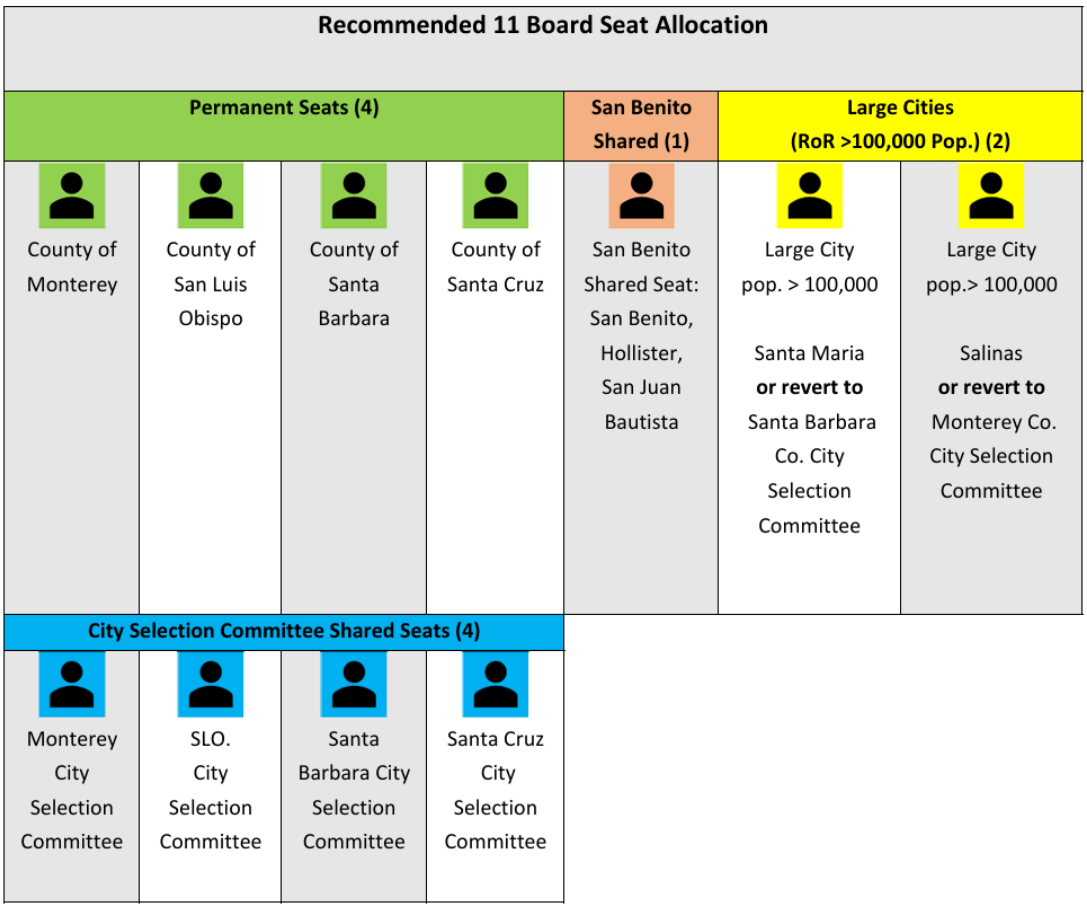
SLO County, the City of SLO, and the City of Morro bay voted "no." They believe the recommendation by staff to change the formula was brought forward too quickly and needs more vetting.

Background: The 3CE is a joint powers authority composed of Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, San Benito County, and all of the cities in each County except for King City. The larger jurisdictions each have one representative, while the smaller ones share a representative on a rotating basis. There are actually 2 governing boards, the Policy Board and the Operations Board. The Policy Board consists of County Supervisors while the Operations Board is made up of City Managers and County Administrative Officers. The Policy Board meets quarterly and exercises overall authority. The Operations Board meets monthly and examines matters in more detail. It can approve some items, while major items must go to the Policy Board. Each Board currently has 19 members.

It has been determined that this is unwieldy and should be reduced to 11 members each. The proposed allocation or representatives is summarized in the graphic below.

These Directors will govern an agency that has now reached an overall budgeted operation of nearly $400 million annually. In addition to brokering electricity to the members, the agency is handing out tens of millions of dollars of consulting contracts, electric vehicles, funds for home electrification, and other patronage. The respective County District Attorneys should carefully examine the campaign contributions to the elected official directors to make sure they are not violating campaign contribution laws that forbid them from receiving contributions from people and entities for which they approved contracts.

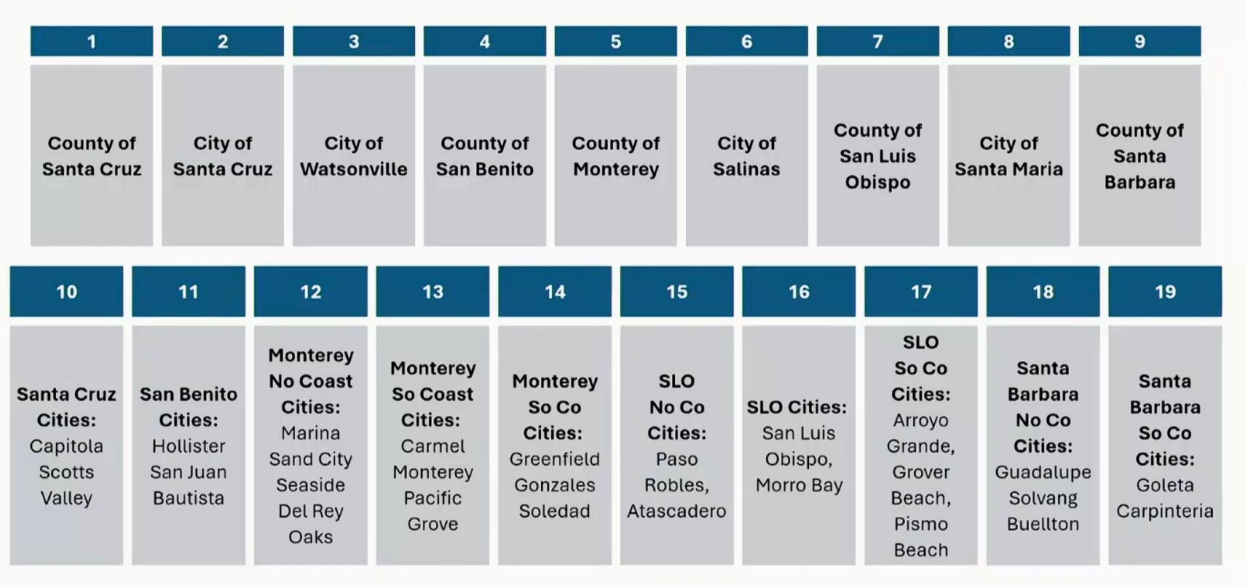
Attachment 2: Illustration of Board Seat Allocation



These directors are derivative Board members, in that they are elected to city councils and boards of supervisors, not to the Authority Board. They have their own jurisdictions to govern and also serve on other joint powers authorities, such as the COGs, APCDs, and LAFCOs. Their time allocation to govern the very complex 3CE energy business is extremely limited. This places the highly technical 3CE staff in a very powerful position. Unlike the situation in the private stockholder owned companies, there is no way for the citizens to revolt and vote in a new Board

or CEO, as they are scattered across all the cities and counties. The citizen customers have very little say and cannot sell their stock, as there is none.

The Current Structure



Presumably, Supervisor Dawn Ortiz-Legg will agendize the important matter to receive direction from her Board. Or, perhaps not, as Supervisor Gibson says on CSAC matters, I vote my conscience.

SAN LUIS OBISBO County Council of Governments (SLOCOG) Meeting of Wednesday, August 14, 2024 (Completed)

Item F-1 - Vehicle Miles Traveled (VMT) Mitigation Program Draft Study. The Board received its consultant study on how the County could best navigate the State VTMs requirements. Essentially, new development applications, as far as transportation goes, will be analyzed and regulated on the basis of how many new miles of auto and truck use they will generate per household or sq. feet of commercial/industrial space. The system replaces the old one, which was based on the amount of traffic congestion that would be generated by a new development. This version is much more insidious in that in is more precise. It is tied to greenhouse gas reduction, which in turn is an effort to reduce global warming.

In 2022, SLOCOG and APCD were awarded a Caltrans Sustainable Transportation Planning Grant to study the feasibility of a regional VMT Mitigation Program related to transportation impacts under the California Environmental Quality Act (CEQA). The SLOCOG Board approved the contract with Kimley-Horn in October 2023. This staff report provides a brief overview of the consultant's findings in the VMT Mitigation Draft Study.

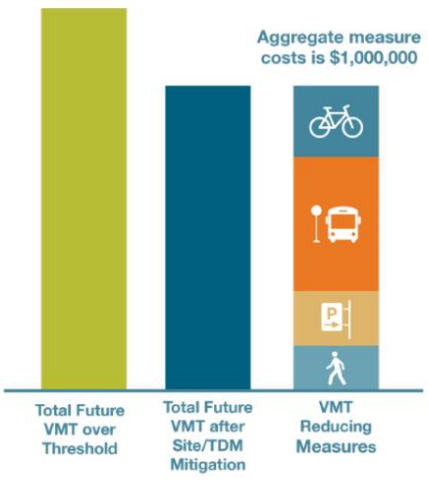
If your project exceeds the thresholds, you can buy your way out with mitigations. A general summary of these is listed in the table below.

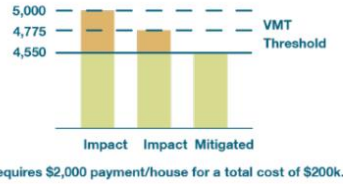
Exhibit 3 – VMT Mitigation Measures

VMT Mitigation Measures		Examples
	Pedestrian	Adding sidewalks or filling in sidewalk gaps
	Bike	New lane miles of bike lanes; filling in gaps in bike infrastructure, or bike share
	Transit	New transit lines, extension of existing service, or adding new service types such as BRT
	Road Diet	Reducing capacity and providing non-auto infrastructure such as protected bike lanes or bus pull outs
	ITS/ TSM	Providing parking wayfinding, optimizing signal systems, providing trip planning services
	Mobility Hub	Provide infrastructure to link multiple types of transportation modes
	Affordable Housing	Providing affordable housing in dense areas, transit-oriented development, or other affordable housing supportive needs
	Vanpool/Carpool	Implement regionwide vanpool and carpool programs or expand existing programs
	Park-and-Ride	Construct park-and-ride lots to increase trip occupancy

Exhibit 8 presents a simplified sample mitigation calculation.

Exhibit 8 – VMT Impact Fee Example





Requires $2,000 payment/house for a total cost of $200k.

VMT Impact Fee Schedule

Land Use Type	Amount	Units	Fee/Unit	Total
Residential	250	Houses	$2,000	$500,000
Industrial	2,500,000	S.F.	$0.10	$250,000
Office	1,000,000	S.F.	$0.13	$125,000
Regional Commercial	250,000	S.F.	$0.20	$125,000
			Total	$1,000,000

One especially egregious provision of the law is that SLOCOG, or even a new joint powers authority, could be set up to broker mitigation credits and dollars between and among developers, jurisdictions, and sections of the County.

Again, all this will accomplish is to reduce the number of homes and businesses proposed and will make them more costly.

Local Agency Formation Commission of Thursday, August 15, 2024 (Completed)

Item B - 5-1 – Review the proposed legislation and by motion provide direction to the Executive Officer if warranted. The Commission determined to support maintenance of the current language. They were fixated on the nuances in the new language rather than the overall impact.

The Commission approved supporting SB 1209, with modifications that would revise how LAFCOs require indemnification to cover lawsuits resulting from their determinations. This is yet another cheesy attempt by an agency to pass the costs of its decisions to the poor taxpayers or applicants and avoid accountability for their actions.

Background: This has been a long practice in California, where counties and cities require applicants for development permits to indemnify them if they are sued for granting approval of a permit application or other land use entitlement.

Think of it: The applicant goes through years of analysis, CEQA, must hire engineers, lawyers, biologists, geologists and other specialists to prepare and explain their applications. These jurisdictions then subject the permit applications to a review by their staff experts and consultants. If the permit is ultimately approved, the applicant must then indemnify the approving agency. Then interveners can sue the approving jurisdiction and often shake down the applicant for settlement money.

LAFCO now wants to set up the same process. So, if someone sues because they don't agree with a valid approved annexation, the taxpayers of the applicant jurisdiction must pay all the litigation costs.

A portion of the existing law states in part:
56383.5 (a) The commission may require, as a condition for processing a change of organization or reorganization, a sphere amendment or a sphere update, or any other action or determination requested from the commission, that the applicant agrees to defend, indemnify, and hold harmless the commission, its agents, officers, and employees from any claim, action, or proceeding against the commission, its agents, officers, or employees arising from or relating to the action or determination by the commission. to attack, set aside, void, or annul an approval by the commission.

SB 1209 – As Amended

ext as amended on June 11, 2024; red text strikes original language, & blue text is ew language.

56383.5 *(a)* The commission may require, as a condition for processing a change of organization or reorganization, a sphere amendment or a sphere update, or any other action or determination requested from the commission, that the applicant agrees to defend, indemnify, and hold harmless the commission, its agents, officers, and employees from any claim, action, or proceeding against the commission, its agents, officers, or employees ~~arising from or relating to the action or determination by the commission.~~ *to attack, set aside, void, or annul an approval by the commission.*

(b) (1) An agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall require the commission to promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the commission and shall require the commission to cooperate fully in the defense.

(2) An applicant who is a party to an agreement to defend, indemnify, and hold harmless entered into pursuant to subdivision (a) shall not be responsible to defend, indemnify, or hold harmless if the commission fails to notify the applicant or cooperate fully in the defense pursuant to paragraph (1).

EMERGENT ISSUES

Item 1 - Crumbling California: Even Denny's Closes in San Francisco

Last remaining Denny's in San Francisco closes over vandalism, theft, and dine-and-dashers

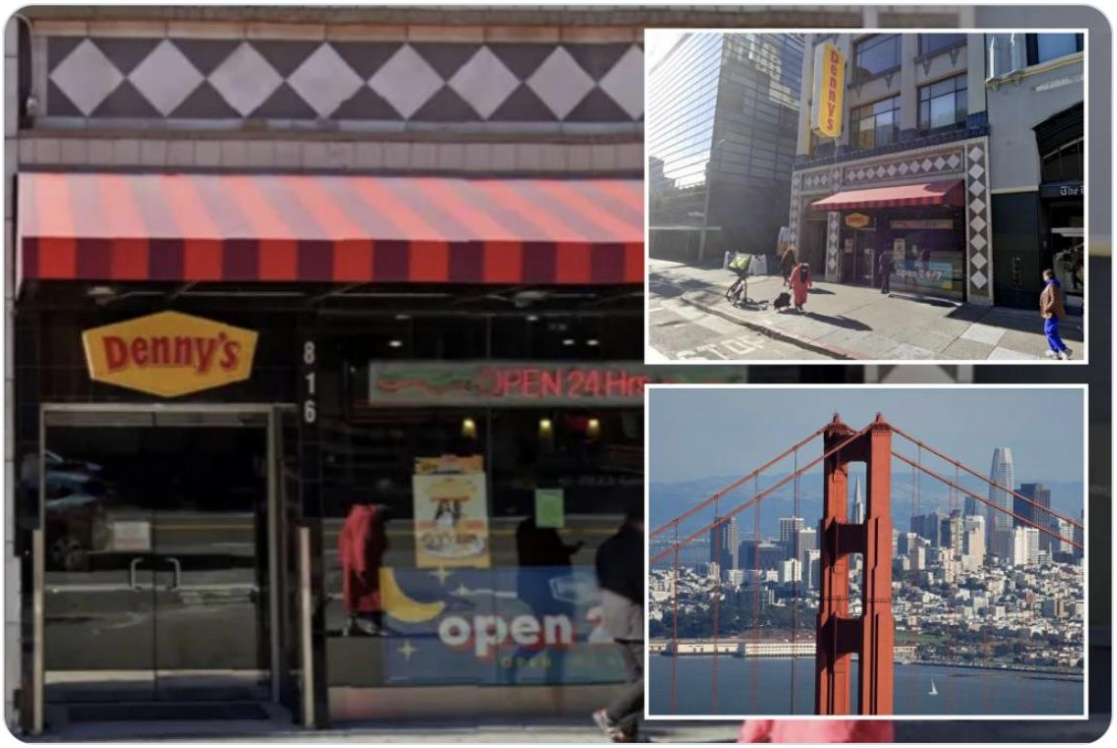
By Katy Grimes, August 14, 2024 8:00 am
The last Denny's restaurant in San Francisco has closed its doors. "The cost of doing business is tremendous. There's vandalism, and people come and eat and walk away, and there's no one to stop them."

Only California Democrats could turn one of the world's most beautiful and thriving cities into a dystopian hellscape in two decades.

Earlier this year, another Denny's diner located across the Bay in Oakland closed down after 54 years due to a surge in crime in the area, the New York Post reported.
This is Gavin Newsom's San Francisco. This is Kamala Harris's San Francisco. The entire state of California is experiencing what Denny's is – vandalism, theft, dine-and-dash.

New York Post
@nypost

Last remaining Denny's in San Francisco closes over plague of dine-and-dashers trib.al/UDza5Zb



11:08 AM · Aug 13, 2024 · **59.3K** Views

I wax a little nostalgic for the San Francisco of the 1990's.

"Between 1992 and 1999 the U.S. economy grew by 4 percent each year. Violent crime decreased by 41 percent, as did HIV/AIDS deaths. Oh, and you could buy a house in San Francisco for an average of $420,000. Today the median home price is just shy of $1.25 million," SF Gate reported in 2019.

Today, the median home price in San Jose just South of San Francisco hit $2 million. In June 2024, San Francisco County home prices were up 1.1% compared to last year, selling for a median price of $1.4M, Redfin reports.

It's not the 1990's anymore. And San Francisco is such a third world hellscape in too many locations, even Denny's closed down.

You know it's bad when even Denny's – home of the $2.99 Grand Slam breakfast (now $17.99 in some locations) – is forced to close down.

Just remember that it is Harris/Newsom and Democrat policies which gave all of California and San Francisco escalating crime, out-of-control retail theft, sex trafficking, homeless drug addicts living on the streets, and smash-and-grab theft rings. Residents in San Francisco leave their cars empty of personal items, and unlocked with the windows down just so they are not vandalized. But this makes a nice overnight bed for homeless vagrants.

And as California Attorney General, Kamala Harris gave the state:
Proposition 47, reduced a host of serious felonies to misdemeanors, including drug crimes, date rape, and all thefts under $950, even for repeat offenders who steal every day. Prop. 47 also decriminalized drug possession from a felony to a misdemeanor, removed law enforcement's ability to make an arrest in most circumstances, as well as removing judges' ability to order drug rehabilitation programs rather than incarceration.

Proposition 57, shamelessly titled "the Public Safety and Rehabilitation Act," now allows "nonviolent felons" to qualify for early release, and parole boards can now only consider an inmate's most recent charge, and not their entire history because of this proposition. Notably, both Prop. 47, titled "The Safe Neighborhoods and Schools Act," and 57 were given their ballot titles and summaries by then-Attorney General Kamala Harris, as the Globe has reported for many years.

Crimes now considered "nonviolent" by Kamala Harris under Proposition 57 in California include:

- human trafficking of a child
- rape of an unconscious person or by intoxication
- drive by shooting at inhabited dwelling or vehicle
- assault with a firearm or deadly weapon
- assault on a police officer
- serial arson
- exploding a bomb to injure people
- solicitation to commit murder
- assault from a caregiver to a child under eight years old that could result in a coma or death
- felony domestic violence.

This list is San Francisco. Is it any wonder Denny's closed?

Katy Grimes, the Editor in Chief of the California Globe, is a long-time Investigative Journalist covering the California State Capitol, and the co-author of California's War Against Donald Trump: Who Wins? Who

Item 2 - Ringside: Floating Offshore Wind – A Financial Catastrophe

Offshore wind is a terrible idea, but the California Energy Commission pushes forward

By Edward Ring, August 15, 2024 2

When it comes to looming financial and environmental catastrophes, nothing can compare to floating offshore wind. It is energy policy at its worst.

In an analysis earlier this year (WC #36), using cost estimates published by a European energy consulting firm, I estimated the total project cost for floating offshore wind off the California coast at, best case, $13.6 million per megawatt of baseload-equivalent capacity. "Capacity" is an often misunderstood word. The "nameplate capacity" of a wind turbine might be 10 megawatts, but that amount of electricity is only going to be generated when the wind is blowing and the system isn't down for maintenance. With intermittent sources of electricity generating technologies such as wind turbines, the "yield" is what matters, and that is unlikely to ever exceed 40 percent, even offshore.

Taking into account intermittency, the U.S. Energy Information Administration estimates a construction cost of $10 million per megawatt. But that estimate is for the less expensive "fixed bottom offshore wind with monopile foundations," and not for floating platforms. As economist Jonathan Lesser, author of "The False Promises of Offshore Wind," shared with me via email last week, "the technology for the cabling needed to secure the turbines to the floor and the cables to carry the electricity are in their infancy. I conclude that the EIA estimate for floating turbines is, in my view, pure fantasy." Which is to say, *more* than $10 million per megawatt. Another expert I was fortunate enough to reach is Gordon Hughes, a professor of economics at the University of Edinburgh. For the last several years he has been analyzing the performance of offshore wind in the North Sea and throughout the world. Here's what he wrote to me in a recent email:

"I don't believe the figures given by EIA – they have no basis in actual costs and performance, they are little more than optimistic guesses generated by lobbyists. No-one knows how to build floating wind turbines with a tip height of 220 or 250 meters. The rotational forces in high winds are huge and the only way to stabilize them are to build huge concrete/steel platforms. I have no idea where they would be built on the West Coast and I doubt that towing them across the Pacific from East Asia is viable. Could they transit the Panama Canal? The point is all talk of floating wind farms off California or Oregon seems to me to be ungrounded speculation. You could build ones with a tip height of 150 meters but that would significantly reduce both the nominal capacity and capacity factor for such turbines."

At that height, still nearly 500 feet, nameplate capacity is only 2.5 megawatts per turbine. We would have to float 10,000 of these monstrosities in order to achieve the currently planned 25 gigawatt capacity off our coast.

As acknowledged in a Cal Matters report from July 2024, "The offshore wind industry must be created almost from scratch: a new manufacturing base for the still-evolving technology; a robust and reliable supply chain; transportation networks on land and sea; specially configured ports to make, assemble and maintain the gargantuan seagoing platforms; finding and training a highly specialized workforce; building a large transmission network where none exists and beefing up those that operate now."

Compare that to the EIA's estimates to construct other types of electricity generating plants. A natural gas fueled electricity generating plant with 95 percent carbon capture will only cost $2.4 million per megawatt. Advanced nuclear: $7.8 million per megawatt. Small modular nuclear: $8.9 million per megawatt. Geothermal: $3.9 million per megawatt.

Imagine the scene if this abominable scheme ever comes to full fruition. To produce 25 gigawatts of capacity would require at least 2,500 wind turbines floating approximately 20 miles offshore. To have a capacity per turbine of 10 megawatts, each of them would be approximately 1,000 feet high, and each of them would have at least three tethering cables hooked to the sea floor over 4,000 feet underwater. Each of them would also need an underwater high voltage cable that would somehow connect to the onshore grid.

Offshore wind is a terrible idea. There are plenty of alternatives, including the only slightly less unpalatable option of onshore wind. But the California Energy Commission pushes forward. The rhetorical bludgeon used to silence critics and empower the special interests poised to make a killing is predictable enough. From Cal Matters, here's a quote from one of the CEC's five commissioners. "'I feel the urgency to move forward swiftly,' said energy commissioner Patty Monahan. 'The climate crisis is upon us. Offshore wind is a real opportunity for us to move forward with clean energy.'"

Clean energy does not have to require hundreds of billions in taxpayer subsidies and utility rate increases. Clean energy should not rely on technology that isn't ready and components that can't be sourced. And clean energy shouldn't destroy the environment. Invoking the "urgency" of climate change without addressing the issues of cost, technology, materials, and environmental impact, is a vapid and irresponsible but all too common tactic.

Let's assume that we industrialize some of the most pristine stretches of the California coast and foul our offshore waters with between 2,500 and 10,000 floating wind turbines. We will have 25 gigawatts of new capacity, yielding 10 gigawatts of steady power once sufficient land-based storage assets are available. That equates to 87,600 gigawatt-hours. Even at $10 million per megawatt, which is a best case estimate, the total project cost will be $100 billion. To generate the same amount of power capacity by constructing new, advanced combined cycle natural gas generating plants with sequestration of CO2 emissions would cost $25 billion. That's *four times* less expensive.

Next week we will review the environmental impact of floating offshore wind.

Edward Ring is the director of water and energy policy for the California Policy Center, which he co-founded in 2013 and served as its first president. The California Policy Center is an educational non-profit focused on public policies that aim to improve California's democracy and economy. He is also a senior fellow of the Center for American Greatness. Ring is the author of two books: "Fixing California - Abundance, Pragmatism, Optimism" (2021), and "The Abundance Choice - Our Fight for More Water in California" (2022).

COLAB NOTE: COLAB of San Luis Obispo has not taken a position on the offshore wind proposal for the central coast. We are, among other steps, awaiting the results of SLO County's study that is currently underway. We have also requested that proponents, the California Public Utilities Commission, and the California Independent System Operator provide analysis based estimates of the cost of a kilowatt hour of electricity delivered to the grid. The impact of that cost on electric rates then needs to be calculated. You would think that 3CE Energy would conduct an independent analysis of this cost as well, since it is the surrogate electric energy provider for 97% of the people in San Benito, Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara Counties.

Item 3 - The Daily Chart: Texas eating California's lunch

AUGUST 15, 2024 BY **STEVEN HAYWARD** IN THE DAILY CHART

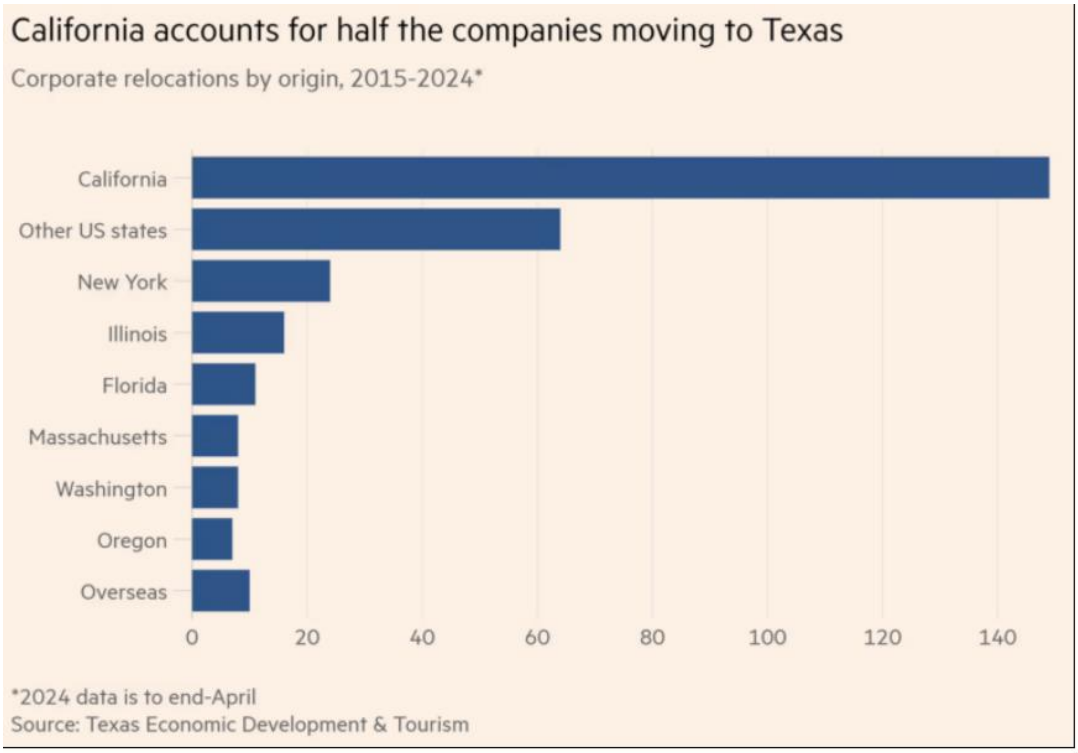
THE DAILY CHART: TEXAS EATING CALIFORNIA'S LUNCH

The news last week that Chevron, which has been based in California since the late 19th century, is moving its headquarters to Texas ought to have set off alarm bells about California's hostile business climate. I suspect Chevron's departure will leave a meaningful hole in California's already deteriorating tax revenue.

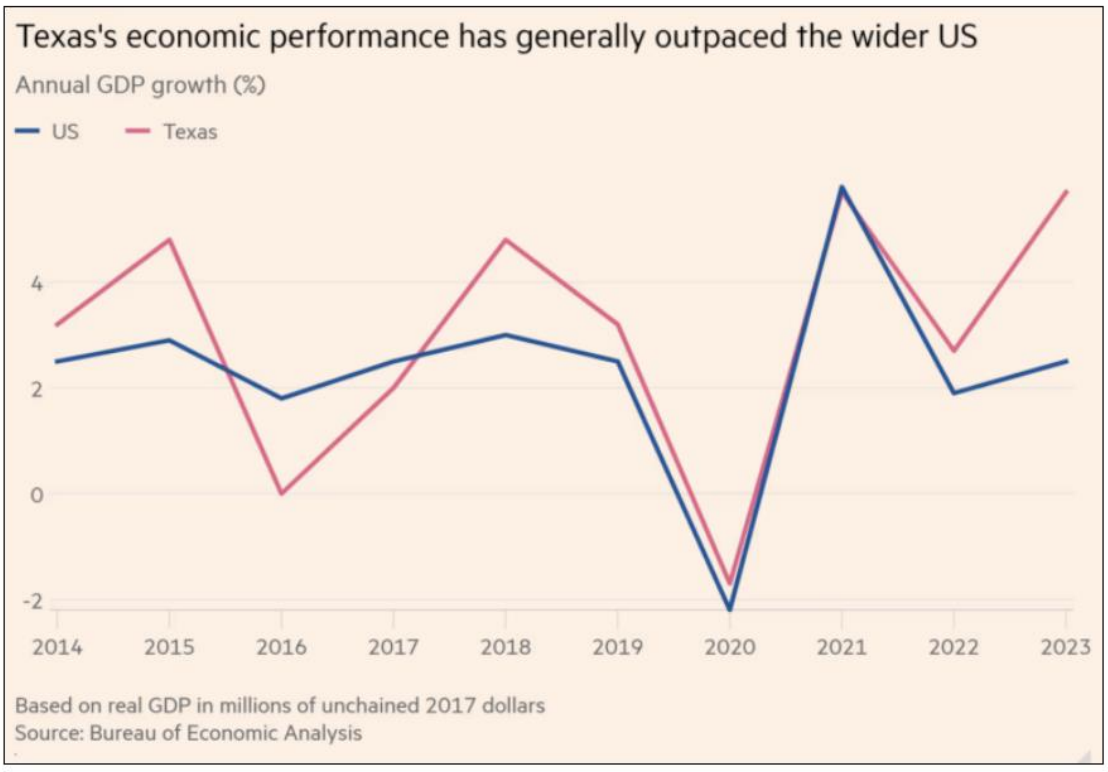
The *Financial Times* notes that nearly half of the corporations moving to Texas are coming from California—more than the other 49 states combined:

A roll call of California-based corporate giants have followed suit [by moving to Texas], *attracted by the Lone Star State's hands-off approach to tax and regulation, including Charles Schwab, Oracle, HP, Tesla, CBRE, and Dropbox. Of the roughly 300 corporate arrivals between 2015 and April this year, more than half have been from California. . .*

Last week social media platform X and space explorer SpaceX became the latest defectors. Elon Musk, chief executive of both groups, said California laws on gender identity were "the last straw".



And the results:



COLAB IN DEPTH

IN FIGHTING THE TROUBLESOME LOCAL DAY-TO-DAY ASSAULTS ON OUR FREEDOM AND PROPERTY, IT IS ALSO IMPORTANT TO KEEP IN MIND THE LARGER UNDERLYING IDEOLOGICAL, POLITICAL, AND ECONOMIC CAUSES

THE SUPREME COURT VS. THE ADMINISTRATIVE STATE

THIS PAST TERM MAY BE THE MOST CONSEQUENTIAL OF THE CENTURY

BY ADAM J. WHITE

Forty years ago, the Supreme Court ruled that judges should defer to regulators when they offer reasonable interpretations of ambiguously worded laws. As a matter of legal doctrine, the case in question—*Chevron v. Natural Resources Defense Council*—was important from the start. But for a long time, the importance of what came to be known as *Chevron* deference" was limited to the world of regulatory litigators, agencies, judges, and administrative-law professors. In the larger scheme of things, it was a fairly mundane subset of a very mundane subject.

Then, about a decade ago, everything changed. President Obama's second term unleashed a wave of unprecedented regulatory fiats that depended on "*Chevron* deference" for their implementation. Obama's "Clean Power Plan" would transform the nation's energy industry. An "Open Internet Order" would drastically regulate Internet service providers to make them more "neutral." A "Clean Water Rule" would dramatically extend federal regulatory power over farms and other privately owned lands by deeming even dry lands "wetlands." And the programs called DACA and DAPA would unilaterally transform immigration policy. President Obama, facing a hostile Republican House majority, could not pass legislation for any of it. But, he told the American people in 2014, "I've got a pen, and I've got a phone." That pen and that phone relied on *Chevron* deference to get things done.

The Obama administration's final years put the American political and judicial systems on notice that federal agencies had reached unprecedented levels of power, ambition, and gravity.

An old term rose anew to describe them collectively. The term was the "administrative state." Its governing doctrine and the source of its power was *Chevron* deference, which was deployed to give agencies the power to write and implement what amounted to legislation without the actual legislative branch having the slightest say in the matter.

Conservative judges, foremost Justice Clarence Thomas, began to publish legal opinions rethinking administrative law from the ground up, endorsing the outright abandonment of *Chevron* deference. Conservative intellectuals like George Will embraced and amplified this new mood of judicial assertion. Even Justice Antonin Scalia, who since the 1980s had been *Chevron*'s most eloquent theorist and defender, began to signal second thoughts.

The change was not simply partisan. It was an evolution in conservative legal thinking, and it began among judges and lawyers only in the early 2000s. The evolution was more a reflection of an increasingly confident conservative judicial worldview that sought to build on the ideas of textualism and originalism—ideas that urged judges to read laws for themselves to determine their meaning rather than deferring to unelected bureaucrats. Their passion for this effort was driven by increasingly implausible interpretations of old statutes by these agencies under the aggressively novel Obama administration, which sought to transform entire industries through new regulatory programs that their bureaucrats dreamed up.

The entire intellectual exercise challenging the viability of *Chevron* deference—the effort to answer the question of how much agencies can and should do when the laws they are bound to enforce do not provide adequate guidance—might have developed much more slowly, in law-review articles and scattered judicial opinions. The Obama administration's final years, with their antinomian fervor, forced the question into full public view. Ideas have consequences, but not just the intended ones. Obama literally said that "we can't wait" for legislators to act. That assertion of power not assigned by the Constitution to any executive branch official has now met a fiery end, in a Supreme Court decision handed down in June called *Loper Bright v. Raimondo*.

"*Chevron* is overruled," Chief Justice John Roberts wrote for the Court. "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."

The decision is transformative, and for more reasons than the merely ideological. In cases over the past decade, its coming was signaled primarily by Chief Justice John Roberts, who has struggled to balance conservative jurisprudence with what might be called real-world pragmatism, notably in his highly problematic rulings on Obamacare. But even after casting the deciding vote to accept the dubious constitutionality of Obamacare—which was, in Roberts's defense, passed by Congress and signed into law—he quickly started signaling his discomfort with the broader administrative activism Obama was embracing.

———————

In a 2013 opinion dissenting from the Court's decision to defer in a certain case to a Federal Communications Commission regulatory scheme, Roberts issued one of his most pointed jeremiads. "The administrative state 'wields vast power and touches almost every aspect of

daily life,'" he wrote. "The Framers could hardly have envisioned today's 'vast and varied federal bureaucracy' and the authority administrative agencies now hold over our economic, social, and political activities. … '[T]he administrative state with its reams of regulations would leave them rubbing their eyes.'"

Roberts urged his colleagues not to defer to an agency's view of the agency's own jurisdiction. But he was unsuccessful in this case and had to settle for making the argument in a dissent. Two years later, he brought similar themes (in less colorful prose) to a majority opinion. That case, *King v. Burwell*, affirmed the Obama administration's interpretation of Affordable Care Act and federal subsidies for insurance purchased on federal exchanges. It was a highly dubious reading of the law's text, and the controversy over it overshadowed the chief justice's crucial move at the outset of his majority opinion. In it, he held that *Chevron* deference could not apply in cases where the interpretation at issue involves "a question of deep 'economic and political significance' that is central to this statutory scheme."

In oral arguments on the case a few months earlier, the Obama administration's solicitor general had urged the Court to give *Chevron* deference to the agency's interpretation. It was then that Roberts offered an unassailable objection. "If you're right about *Chevron*," he said, wouldn't that indicate "that a subsequent administration could change that interpretation?" In other words, if everyone is to defer to an agency's view, and individuals and businesses and governments all change their approaches to satisfy that view—what happens a year or two or three later when a new president is elected and his bureaucrats have the opposite view?

This went at a crucial and intellectually self-negating feature of *Chevron* deference. If a statute is ambiguous and thus susceptible to multiple different interpretations, according to *Chevron* deference, a judge should defer to the agency's reasonable interpretation…and then, two years later, defer again to the agency's subsequent reinterpretations, as long as they too are reasonable.

With the *King v. Burwell* case, the problem seemed especially acute to Roberts. If the Court were to use *Chevron* deference to affirm the Obama administration's interpretation of Obamacare's subsidy provision—and then use *Chevron* de-ference to affirm the next administration's possibly opposite interpretation—the entire situation would be chaos. Millions of people would have been making financial and life decisions based on the original interpretation. Federal and state governments would have been making rules based on it. Insurance policies would have been written using it. And then what? They all go poof?

The concern would appear subtly in other decisions written by the chief justice during the Trump administration when it came to about-faces at the agency level. Two cases from the Trump years stand out. First, the Court rejected the Trump Homeland Security Department's attempt to repeal the DACA immigration policy Obama had put in place. Second, the Court

turned back the Trump Commerce Department's attempt to add a citizenship question to the 2020 census. Neither decision involved *Chevron* deference, and neither explicitly barred the door to an agency later attempting the same policy change. But each of those decisions were designed to place speed bumps in the road path to slow the pace of change in modern administration.

The issue, therefore, is not merely *Chevron* deference but the constant instability created by the rise in power and authority of the administrative state. Its capacity for wild regulatory swings from one administration to the next is an increasingly obvious and onerous problem for Americans.

For decades, business leaders have complained about the overall burden of regulation. But more recently, business leaders have become increasingly vocal about the more specific problem of regulatory *change*. Bank of America CEO Brian Moynihan voiced this concern, just weeks after *Loper Bright* was decided, on Bloomberg TV's *Wall Street Week*. "In the end of the day, we are for good, clear, fair regulation," he told host David Westin. "Give us a set of rules, let us go after it. If you keep changing the rules back and forth based on political movements, based on swings, based on personalities…that just goes on."

Or take another recent statement from prominent business leaders. When venture capitalists Marc Andreessen and Ben Horowitz announced their support for Donald Trump, they framed their argument in terms of the regulatory climate surrounding cryptocurrency. They did not criticize an overabundance of rules; they criticized the lack of clear laws and, relatedly, the ability of current regulators to leverage that regulatory uncertainty to chill new investments and technologies. "So we then went to Congress to say, *well maybe we can pass a law that clarifies, you know, when something's a security when it's a commodity*," Horowitz said, "and the administration in the form of the SEC and the FDIC…have just fought us every step of the way and using very nefarious means."

His argument is plain. "First they refuse to issue any guidance," he continued, and then "they've gone after the companies in lack of law—no law and no guidance."[1]

These criticisms demonstrate that the problem with the modern regulatory environment is not simply too many *regulations*, but also too much regulatory *uncertainty*. This goes to the very roots of our constitutional order. Both Alexander Hamilton and James Madison emphasized the need for steady administration of the laws; the *Federalist* is replete with references to it. "What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment," Madison asked in *Federalist* 62, "when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government?"

And from the start, these Founders knew that changes in presidential administrations would tend to exacerbate the problem. "To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert," Hamilton warned in *Federalist* 72, and wild changes from one administration to the next would produce "a disgraceful and ruinous mutability in the administration of the government."

Hamilton and Madison prized "steady administration," and in his opinion in *Loper Bright*, so does Chief Justice Roberts. At the very outset of his analysis, he quotes Hamilton's *Federalist* 78: "To ensure the 'steady, upright and impartial administration of the laws,' the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches."

That is the key import of *Loper Bright*. It does not aim to prevent agencies from announcing sweeping, unprecedented new regulatory programs on the basis of vague statutes; the Court's "Major Questions Doctrine" already accomplishes that.

Rather, it is designed to prevent agencies from constantly changing from one interpretation to another, or leveraging regulatory uncertainty under vague statutes. The theory behind *Loper Bright* is that over time, as more and more statutes are definitively interpreted by the courts, agencies will lose the ability to whipsaw from one policy to another, or to threaten novel interpretations under old statutes.

Loper Bright's critics have argued that the decision will actually *increase* regulatory uncertainty. Old regulatory policies that once survived judicial review thanks to *Chevron* deference will someday be struck down in new cases, they warn. Or new regulatory policies will spur disagreements among courts, creating a messy legal patchwork from one federal circuit to another.

The concerns have a grain of truth. *Chevron*'s heavy thumb on the agencies' side of the judicial scale reduced the odds that courts would strike down new regulations. But the critics miss the bigger point. They ignore the much greater stability that *Loper Bright* will facilitate. If an agency's new regulation spurs disagreement among the lower courts over how to best interpret a statute, the Supreme Court will settle the question by interpreting the statute definitively. And once the courts have settled on an interpretation, it won't be subject to agency reversal every four or eight years upon a new administration's arrival.

Other critics claim that *Loper Bright*'s reasoning conflicts with the Court's other year-end blockbuster on presidential immunity, which found that the president can be held immune from legal sanction arising from some "official acts." *Loper Bright* disempowers presidents in a bad way, critics claim, while *Trump v. United States* empowers them in a bad way.

Once again, the critics miss the point. The two cases, both penned by Roberts, reflect the same constitutional insight: the need for energetic, steady administration, and the dangers that arise in a world when each new presidential administration turns its aim at the work of its predecessor.

In *Trump v. U.S.*, the Court affirmed a limited form of presidential immunity for the sake of energetic execution of the laws. Roberts warned that if the Court were to rule differently, "a President inclined to take one course of action based on the public interest may instead opt for another, apprehensive that criminal penalties may befall him upon his departure from office." He continued: "The Framers' design of the Presidency did not envision such counterproductive burdens on the 'vigor' and 'energy' of the Executive," he added, quoting *Federalist* 70's argument for "energy in the executive" for the sake of "steady administration of the laws."

To the extent that *Loper Bright* disempowers the president, it is a reduction of his power to *make* laws, not to execute them. That is fully within the Constitution's separation of legislative and executive powers, and the former's check on the latter. *Loper Bright* makes the president less of a unilateral legislator. Future presidents will enjoy less discretion to interpret laws, but this will leave them with more energy to *execute* the laws that legislatures have written and courts have interpreted.

The Court's other major regulatory case this year, *SEC v. Jarkesy*, can be understood in similar terms. Many agencies have long enjoyed discretion to choose the initial forum for litigating cases: They can either file a lawsuit in a federal trial court or undertake the initial "adjudication" before an in-house agency tribunal.

Agency adjudications, and agency officials who decide them (who are often assigned the contestable title of "administrative law judges," though they are not appointed by the president with Senate confirmation, and they do not have judicial life tenure), have raised constitutional concerns among many of the same judges and legal scholars who criticized *Chevron* deference.

In 2022, the U.S. Court of Appeals for the Fifth Circuit issued a stunning decision in the case of *SEC v. Jarkesy*, declaring the Securities and Exchange Commission's in-house adjudication framework triply unconstitutional. It said first that the agency's adjudicators were unconstitutionally appointed. Second, it found that Congress's grant of discretion to the SEC to direct cases either to courts or to the SEC's own tribunal was an unconstitutional "delegation" of legislative power. Finally, it said the agency's failure to use juries in the in-house tribunal violated the Constitution's right to trial by jury.[2]

A day before deciding *Loper Bright*, the Court decided *Jarkesy*. In an opinion written once again by Chief Justice Roberts, the Court agreed with the Fifth Circuit on the trial-by-jury point. "When a matter 'from its nature, is the subject of a suit at the common law,' Congress may not 'withdraw [it] from judicial cognizance,'" Roberts wrote. "A defendant facing a fraud suit has the right to be tried by a jury of his peers before a neutral adjudicator." The agency cannot simply turn off the constitutional right to trial by jury, like a light switch. To allow otherwise, he emphasized, "would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch. That is the very opposite of the separation of powers that the Constitution demands."

Thus *Jarkesy*, like *Loper Bright*, is an attempt to re-separate the Constitution's powers. It is not a silver bullet to end the administrative state. The SEC and similar agencies can still bring enforcements case in—get the smelling salts ready—actual federal courts. To the extent that *Jarkesy* reduces an agency's power, it is simply bringing the agency back to its proper constitutional role *bringing* cases, not *judging* them.

Critics bent on denouncing the Roberts Court's decisions in *Jarkesy* and *Loper Bright* tended to be less worried about cases that drew similar lines in the agencies' favor. Those were heard and decided as well in this past term.

In *FDA v. Alliance for Hippocratic Medicine*, the Court rejected litigation to second-guess the FDA's past approvals of mifepristone, the abortion pill. The Court, in an opinion written this time by Justice Brett Kavanaugh, held that the plaintiffs lacked "standing" to challenge the FDA's decisions in court. The Constitution's Article III empowers courts to hear certain kinds of "cases" and "controversies," and the Court has long construed those limits as requiring plaintiffs to have "standing"—that is, to have an actual injury that was caused by the defendants and redressable by the court.

The plaintiffs here fell short of that, the justices concluded. If federal courts were allowed to adjudicate such cases against the agency, they would intrude on the executive and legislative branches' own constitutional responsibilities. "Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe that the government is acting contrary to the Constitution or other federal law," the Court wrote. "Vindicating 'the public interest' (including the public interest in Government observance of the Constitution and laws) is the function of Congress and the Chief Executive.'"

The Court issued a similar decision in yet another case, *Murthy v. Missouri*. The plaintiffs sought to litigate allegations that the Biden administration had unconstitutionally used social-media companies to limit online speech. The justices did not reach the merits of the claims, because they found that the plaintiffs lacked standing. And "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it[.]" Such disputes, absent a plaintiff with constitutional standing to file a case, are properly left to Congress, the administration, and the court of public opinion.

Yes, ideas have consequences. The Supreme Court's latest term proved the point twice over. Vindicating the founding generation's constitutional vision, and vindicating modern thinkers' ideas of how to restore the Constitution today, will have profound effects on the administrative state. To be sure, even these great decisions will have further consequences we cannot necessarily envision, for as all conservatives know, the law of unintended consequences is one of the few immutable realities of our imperfect world. But the decision's immediate consequences are clear, crucial, and excellent. *Loper Bright* exemplifies the Founders' ideal of good, constitutional government.

---

1 Perhaps no agency better exemplifies this problem today than the Federal Trade Commission under the leadership of Chairwoman Lina Khan, as I detailed in these pages in "The Power Broke Her," March 2024.

2 I described the Fifth Circuit's decision in these pages. See "Reining in the Bureaucrats," July/Aug. 2022.

Adam J. White is a senior fellow at the American Enterprise Institute and executive director of the Antonin Scalia Law School's C. Boyden Gray Center for the Study of the Administrative State. This article first appeared in the August 12, 2024 preview of the September edition of Commentary.

WE ARE WASTING $2 TRILLION A YEAR CHASING 'GREEN' FANTASIES

BY BJORN LOMBORG

Despite much hype, the much-vaunted green energy transition away from fossil fuels isn't happening.

Achieving a meaningful shift with current policies turns out to be unaffordable. We need to drastically change policy direction.

Globally, we are already spending almost $2 trillion annually to try to force an energy transition. Over the past decade, solar and wind energy use have increased to their highest-ever levels.

3

Wind turbines at Nikkawahama Beach in Kamisu city of Ibaraki prefecture, Japan, on Aug. 9, 2024.AFP via Getty Images

But it hasn't reduced fossil fuels — on the contrary, we have added even *more* fossil fuels over the same time. Countless studies show that when societies add more ren

Rewable energy, most of it never replaces coal, gas or oil. It simply adds to energy consumption. Recent research shows that for every six units of new green energy, less than one unit displaces any fossil fuel. Analysis in the United States shows that renewable energy subsidies simply lead to more overall energy being used.

In other words, policies meant to boost green energy are leading to more emissions.

None of this should come as a surprise to any student of history. During the transition from wood to coal during the 1800s, overall wood use actually increased even while coal took over a greater percentage of energy needs. The same thing happened when we shifted from coal to oil: By 1970, oil, coal, gas and wood *all* delivered more energy than ever.

Humans have an unquenchable thirst for affordable energy, which is required for every aspect of modern life. In the past half-century, the energy we get from oil and coal has again doubled, hydro power has tripled, and gas has quadrupled — and we have experienced an explosion in the use of nuclear, solar and wind. The whole world — and the average person — has never had more energy available.

3

Steam rising from a coal-fired power plant in Neurath, Germany.AP

The grand plan underpinning today's green energy transition mostly insists that pushing heavily subsidized renewables everywhere will magically make fossil fuels go away.

But a recent study concluded that talk of a transition is "misleading." During every previous addition of a new energy source, the researchers found, it has been "entirely unprecedented for these additions to cause a sustained decline in the use of established energy sources."

What causes us to change our relative use of energy?

Get opinions and commentary from our columnists

.

One study investigated 14 shifts that have taken place over the past five centuries, like when farmers went from plowing fields with animals to fossil fuel-powered tractors. The main driver has always been that the new energy service is either better or cheaper.

Solar and wind fail on both counts. They are not better, because unlike fossil fuels that can produce electricity whenever we need it, they can only produce energy according to the vagaries of daylight and weather.

3

Sub-belt photovoltaic power station installed in the G5011 Wuhu-Hefei Expressway test tunnel in Chaohu, China.Costfoto/NurPhoto/Shutterstock

This means they are not cheaper, either. At best they are only cheaper when the sun is shining or the wind is blowing at just the right speed. The rest of the time, they are mostly useless and infinitely costly.

When we factor in the cost of just four hours of storage, wind and solar energy solutions become uncompetitive compared to fossil fuels. Achieving a real, sustainable transition to solar or

wind would require orders of magnitude more storage, making these options incredibly unaffordable.

Moreover, solar and wind only address a small part of a vast challenge. They are almost entirely deployed in the electricity sector, which makes up just one-fifth of all global energy use.

We still struggle to find green solutions for most transport, and we haven't even begun with the vast energy needs of heating, manufacturing or agriculture. We are all but ignoring the hardest and most crucial sectors like steel, cement, plastics and fertilizer.

Little wonder, then, that, for all the talk of the world undergoing an energy transition, even the Biden administration finds that while renewable energy sources will dramatically increase globally up to 2050, oil, gas and coal will all keep increasing, too.

On this trajectory, we will never achieve an energy transition away from fossil fuels. This would require vastly more subsidies for solar and wind, as well as for batteries and hydrogen, and for us all to accept less efficient technologies for important needs like steel and fertilizer.

But on top of that, a true transition would also require politicians to impose massive taxes on fossil fuels to make them less desirable. McKinsey estimates the direct price tag to achieve a real transition at more than $5 trillion annually. This splurge would slow economic growth, making the real cost five times higher. Annual costs for people living in rich countries could be higher than $13,000 per person per year.

Voters won't agree to that pain.

The only realistic way to achieve a transition is to vastly improve green energy alternatives. This means more investment in green energy research and development. Innovation is needed in wind and solar, but also in storage, nuclear energy and many other possible solutions. Bringing alternative energy costs below the price of fossil fuels is the only way that green solutions can be implemented globally, and not just by the elite in a few climate-concerned, wealthy countries.

When politicians tell you the green transition is here and we need to get on board, they are really just asking voters to support them throwing more good money after bad. We need to be much smarter.

Bjorn Lomborg is president of the Copenhagen Consensus. This article first appeared in the Hoover Daily Update of August 12, 2024.I

ANNOUNCEMENTS

ANDY CALDWELL SHOW NOW LOCAL IN SLO COUTY

Now you can listen to THE ANDY CALDWELL SHOW
in *Santa Barbara, Santa Maria & San Luis Obispo Counties!*
We are pleased to announce that The Andy Caldwell Show is now broadcasting out of San Luis Obispo County on FM 98.5 in addition to AM

K-NEWS 98.5 The Power of Information

1290/96.9 Santa Barbara and AM 1240/99.5 Santa Maria
The show now covers the broadcast area from Ventura to Templeton -

THE only show of its kind on the Central Coast covering local, state, national and international issues! 3:00-5:00 PM WEEKDAYS
You can also listen to The Andy Caldwell Show LIVE on the Tune In Radio App and previously aired shows at: 3:00-5:00 PM WEEKDAYS

COUNTY UPDATES OCCUR MONDAYS AT 4:30 PM
MIKE BROWN IS THE REGULAR MONDAY GUEST AT 4:30!

SUPPORT COLAB

MIKE BROWN ADVOCATES
BEFORE THE BOS

\

VICTOR DAVIS HANSON ADDRESSES A COLAB FORUM

DAN WALTERS EXPLAINS SACTO MACHINATIONS AT A COLAB FORUM

AUTHOR & NATIONALLY SYNDICATED COMMENTATOR/RADIO HOST BEN SHAPIRO
APPEARED AT A COLAB ANNUAL DINNER

NATIONAL RADIO AND TV COMMENTATOR HIGH HEWITT AT COLAB DINNER

MIKE BROWN RALLIED THE FORCES OUTDOORS DURING COVID LOCKDOWN

JOIN OR CONTRIBUTE TO COLAB ON THE NEXT PAGE

Join COLAB or contribute by control clicking at: [COLAB San Luis Obispo County (colabslo.org)](colabslo.org) or use the form below:

Coalition of Labor, Agriculture and Business
San Luis Obispo County
"Your Property – Your Taxes – Our Future"
PO Box 13601 – San Luis Obispo, CA 93406 / Phone: 805.548-0340
Email: colabslo@gmail.com / Website: colabslo.org

MEMBERSHIP APPLICATION

MEMBERSHIP OPTIONS:

General Member: $100 – $249 ❑ $ _____ **Voting Member: $250 - $5,000 ❑ $ _____**

Sustaining Member: $5,000 +❑ $ _____

(Sustaining Membership includes a table of 10 at the Annual Fundraiser Dinner)

General members will receive all COLAB updates and newsletters. Voting privileges are limited to Voting Members and Sustainable Members with one vote per membership.

MEMBER INFORMATION:

Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

How Did You Hear About COLAB?

Radio ❑ Internet ❑ Public Hearing ❑ Friend ❑

COLAB Member(s) /Sponsor(s): _____

NON MEMBER DONATION/CONTRIBUTION OPTION:

For those who choose not to join as a member but would like to support COLAB via a contribution/donation.
I would like to contribute $ _____ to COLAB and my check or credit card information is enclosed/provided.

Donations/Contributions do not require membership though it is encouraged in order to provide updates and information.
Memberships and donation will be kept confidential if that is your preference.
Confidential Donation/Contribution/Membership ❑

PAYMENT METHOD:

Check ❑ Visa ❑ MasterCard ❑ Discover ❑ Amex NOT accepted.

Cardholder Name: _____ Signature: _____

Card Number:_____Exp Date: ___/___ Billing Zip Code: _____ CVV:____

TODAY'S DATE: _____