

COLAB SAN LUIS OBISPO COUNTY

WEEK OF DECEMBER 30, 2012 - JANUARY 5, 2013

**SUPERVISOR HILL DISCOVERED TO HAVE LAUNCHED
YET ANOTHER BULLYING ATTACK AND THREATS**

SISKIYOU FARM BUREAU WINS IMPORTANT WATER CASE

**Board of Supervisors, Planning Commission, APCD, and SLOCOG Are in Recess until
Week of January 7, 2013.**

**Ceremonial Board Meeting: Monday January 7, 2013 to swear in reelected and newly
elected Supervisors.**

First Regular Board Meeting: Tuesday January 8, 2013.

We will report details as they become available.

In The Meantime – While you were testing the eggnog

Hill Fires Off Again: It turns out that ace reporter Karen Velie of the *CalCoastNews* discovered that Supervisor Adam Hill used email to negatively characterize State officials who disagree with his policy of barring/restricting All-Terrain Vehicles (ATV's) on the basis of Dunes Dust. Check out the article below published by Karen Velie of the *CalCoastNews* on Wednesday December 26, 2012:

San Luis Obispo County Supervisor Accused of Threatening State

December 26, 2012

By KAREN VELIE

San Luis Obispo County Supervisor Adam Hill's "scathing emails" have now caught the attention of California Attorney General Kamala D. Harris.

After reviewing what she called a scathing and threatening email, Harris produced a motion asking the court to include Hill's correspondence in the court record as part of an action her office filed against the county air district in which Hill is on the board.

Generally, attorneys tell clients involved in lawsuits not to correspond with litigants.

In mid-October, Harris filed the more than 1,800-page claim against San Luis Obispo County Air Pollution Control District (APCD) over its contentious Oceano Dunes dust rule, focusing on the alleged scientific flaws in the APCD's study.

Earlier this year, both Friends of the Dunes and Kevin Rice filed lawsuits charging the APCD with failing to follow California laws when it passed a rule requiring state parks to reduce particulate matter blowing from the Oceano Dunes State Vehicular Recreation Area, or face fines of \$1,000 per day.

In his Nov. 16 email, Hill threatens to fence off part of the Ocean Dunes State Vehicular Recreation Area, a state-run park. Hill goes on to say officials with state parks have treated San Luis Obispo County with "contempt," have acted "dishonestly," and that they are "better suited to work for the Koch brothers or ExxonMobil."

Hill's aggressive email undermined an APCD Board action that he participated in. Just days after the Attorney General filed its action against the APCD, its board voted to go around state parks and seek help from the Governor's Cabinet in implementing its dust rule.

On Nov. 14, the board agreed to have the group's chair, John Hamon, send a letter detailing its concerns.

Nevertheless, just two days later, Hill sent his alleged threatening email to APCD head Larry Allen with copies going to state parks, Secretary for Natural Resource John Laird, Senator Bill Monning, the governor's chief of staff and a several local elected officials. Hamon, however, failed to send the agreed-on letter.

Hill's contentious email to the state is one of several he has sent to those who question his or his girlfriend's actions or views.

On Dec. 18, Hill lashed out at local business owner Bill Thoma for posing questions about a proposed homeless facility and seeking more detailed information from the facility's planners. Hill's girlfriend, Dee Torres, heads a local non-profit homeless services division, the group behind the proposed homeless center.

A few days later, Hill apologized for his attack on Thoma, promising to be more civil in the future in his dealings with the public.

Earlier this year, Hill began bullying CalCoastNews' advertisers. Along with his requests that local advertisers not work with CCN, he falsely claimed the FBI was investigating CCN reporters for fraud, something federal officials have rebutted.

Hill's campaign against CCN began after he heard its reporters were looking into allegations of financial misdeeds committed against homeless persons by local homeless services employees.

At this time, it is unknown what impacts Hill's erratic communications will have on the lawsuit against the local APCD or the implementation of the dust rule.

All three lawsuits requesting that the dust rule be overturned are scheduled to be heard in San Luis Obispo County Superior Court on Jan. 24.

The *CalCoastNews* also obtained a copy of Hill's bombastic E-mail and published it. Note the threat by Hill to fence off a portion of the Dunes Park (the portion owned by the County). Is Hill going to, unilaterally and without a public hearing and public vote of the Board of Supervisors, bully some County bureaucrat into installing a fence?

Are all those who disagree with Hill on particular subjects "scientific deniers?"

In castigating the State Park's recreational vehicle division chief, by saying he should work for Exxon-Mobil instead of the State, is Hill suggesting that Exxon-Mobil itself is some sort of evil force which deserves to be punished or destroyed?

Adam Hill's email:

From: ahill@co.slo.ca.us [mailto:ahill@co.slo.ca.us]

Sent: Friday, November 16, 2012 9:50 AM

To: lallen@co.slo.ca.us

Cc: Jenkins, Phil; Robertson, Aaron; Beland, Janelle; Larry Allen (lallen_apcd@co.slo.ca.us); hmiller@co.slo.ca.us; bgibson@co.slo.ca.us; Jan Marx; Raymond A.Biering; rneal@co.slo.ca.us

Subject: Re: Regarding letter dated Oct. 23, 2012

I would like to make some salient points, and I have also included Secretary Laird, Senator-elect Monning, and the Governor's Chief of Staff in this email (they are Bcc'ed as I only have their personal email addresses):

1. The current position of the OHV division of State Parks, which now includes suing our county's Air District, is embarrassing and wholly undermines the Brown administration's work on air pollution and other important environmental issues. It is my contention that OHV Chief [REDACTED] has treated SLO County with contempt, and has spoken and acted in utterly misleading and dishonest ways.

2. This position will have the effect of forcing SLO County's hand. All along we have tried to balance the interests of the OHV recreation area with the health concerns of our

residents. We believed we could mitigate the dust and keep the recreation area open. But now we will likely be advised by our counsel that State Parks' actions have left us entirely vulnerable to a slew of legitimate lawsuits from our citizens. This will inevitably necessitate SLO County having to fence off and patrol the Le Grande tract, thereby significantly reducing the recreation area.

3. The embrace of scientific denialism by State parks is incredibly disconcerting in that it only worsens already bad relations between state agencies and local governments and because it is redolent of the worst kind of special interest politics. Perhaps [REDACTED] would be better suited working for the Koch Brothers or ExxonMobil.

In closing, I am hoping that we can arrange a meeting as soon as possible before this escalates further.

Please circulate this to General Jackson as well.

Sincerely,

ADAM HILL

When Will The Board of Supervisors Take Action? Hill has bullied private citizens, news reporters, public officials, and perhaps others who are too afraid to come forward. He has attempted to bully COLAB and its Executive Director, Andy Caldwell, by calling him racist.

He is a walking violation of the County's so-called "Organizational Values Statement," which has been thoroughly trashed by Gibson's behavior, his own behavior, and the failure of the Board as a whole to disavow and publicly censure their "colleagues'" actions.



Siskiyou County Farm Bureau wins water rights case: The Siskiyou County Farm Bureau reports that it has won an important case in the County Superior Court against the State of California Department of Fish and Game (DFG). The DFG was requiring farmers and ranchers to obtain a DFG permit before they could irrigate their crops. The Court found

that the DFG did not have the legal authority to enforce such an order and required that the agency stop. This case could have broad implications throughout the State. If DFG appeals, a broad coalition (beyond the farm bureaus which supported the Siskiyou Bureau) will need to be formed to help resist. The Siskiyou County Farm Bureau news release is quoted below:

Press Release from Siskiyou County Farm Bureau

Dec. 26, 2012

In an important decision that protects private water rights while maintaining environmental protections, a Siskiyou County Superior Court judge ruled that a state agency had overstepped its authority in trying to regulate farmers' water use.

The ruling by Judge Karen L. Dixon determined that the California Department of Fish and Game had exceeded its authority by requiring farmers and ranchers to obtain a permit from DFG before they irrigate their crops. The Siskiyou County Farm Bureau filed suit against DFG last year, on behalf of members who farm along the Scott and Shasta rivers.

"This ruling establishes an important, statewide precedent," Siskiyou County Farm Bureau President Jeff Fowle said. "There is no doubt that if DFG had been able to expand its authority here, it would have tried to regulate water rights elsewhere in the state. This decision reaffirms that water rights are administered by the courts and State Water Resources Control Board. Now, we can turn our attention to finding collaborative ways to improve conditions for fish while maintaining the sustainability of our farms and ranches."

The case centered on Section 1602 of the Fish and Game Code, which requires individuals to notify DFG and potentially obtain a Lake and Streambed Alteration Agreement before conducting certain activities that alter a streambed. Permits have been required under the section for gravel mining, construction of push-up dams and other projects that physically alter streambeds—but DFG began notifying landowners along the Scott and Shasta that they would need to obtain permits simply to open an existing headgate or activate an existing pump in order to irrigate their crops.

In its lawsuit, the county Farm Bureau said the requirement would have been a "fundamental change" in the application of the code that would have jeopardized both water rights and property rights for farmers and ranchers.

“We understand that DFG wants to protect salmon in the rivers, but it has many other ways to do that already,” said Rex Houghton, the immediate past president of the county Farm Bureau. “Farmers will continue to work collaboratively with the agency to improve conditions for fish. The outcome does not change the notification requirement for activity that physically alters a streambed, but it is important to establish that DFG can’t require a permit for farmers simply to exercise their water rights.”

Because of the statewide implications of the case, the Siskiyou County Farm Bureau received support for the lawsuit from the California Farm Bureau Federation and county Farm Bureaus throughout the state. Attorney Darrin Mercier of Yreka argued the case on behalf of the county Farm Bureau.

The Siskiyou County Farm Bureau is a voluntary membership organization that works to protect and promote agricultural interests throughout Siskiyou County and to protect and improve the availability of food and fiber through responsible stewardship of natural resources.

The decision Is Not the End of the Story: A reading of the decision reveals that the Court says, in part, that the real jurisdiction is under the State Water Quality Control Board and that the statute does not prioritize use of water to protect wildlife over agriculture, municipal, and other uses. The Court invites the legislature to take the up the issue. This is bad news. We will certainly see bills this month attempting to address this question and to prioritize protection of fish over agriculture.

The court finds that the Legislature did not intend to include the use of water diverted pursuant to a water right for an agricultural purpose within the scope of the statute. Such inclusion would have an economic impact on the water rights holder that is disproportional to others within the scope of the statute. The economic impact would reasonably be severe to the point that it would jeopardize the continued existence of the small agricultural water rights holder. Further, requiring the water holder to wait until he received a signed agreement from DFG would create great uncertainty in the holder's ability to exercise that right in a manner consistent with the immediate needs of his crop and livestock. In addition, including the act of diverting water consistent with a water right would allow the DFG to regulate a water right by imposing terms for the use of the water that are inconsistent with the water grant, pre-empting the exclusive authority of the SWRCB to regulate and adjudicate water rights. Surely the Legislature did not intend such outcomes. The effect on the agricultural industry in California could be devastating and, in tum, the resultant loss to the state economy would be disastrous.

In conclusion, the court finds as follows:

1. That there is a latent ambiguity within Fish and Game Code §1602 in that the plain meaning of the statute makes it is susceptible to two reasonable interpretations, the first favoring inclusion of the diversion of water pursuant to a water right and the second favoring exclusion of the diversion of water pursuant to a water right.

2. That the ambiguity can be resolved by reviewing the legislative schemes for the granting of water rights and for conservation and preservation of the state's natural resources and the statutes Legislative history.

3. That the Legislature did not intend to include the act of diverting water pursuant to a water right to be within the regulatory scope of § 1602.

The Judgment of the court is as follows:

1. Plaintiff s prayer for relief is granted. The court finds that Fish and Game Code § 1602 does not require notification of the act of extracting water pursuant to a valid water right where there is no alteration to the bed, bank, or stream.

2. The Defendant Department of Fish and Game is enjoined from bringing enforcement action against agricultural water diverters for failing to notify the department of the diverter's intention to exercise his water right absent alteration to the bed, bank, or stream.

3. Plaintiffs are entitled to recover costs.

