



## COLAB SAN LUIS OBISPO COUNTY



**WEEK OF SEPTEMBER 14-20, 2014**

### **LAST WEEK**

**PLANNING COMMISSION REJECTS GIBSON'S 2:1  
WATER OFFSET POLICY FOR PASO BASIN AND  
OTHER PARTS OF COUNTY**

**BOARD SETS PRELIMINARY REQUIREMENTS FOR  
WATER EXPORT PROHIBITION ORDINANCE**

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### **THIS WEEK - LIGHT AGENDA**

**END OF FISCAL YEAR FINANCIAL RESULTS**

**COUNTY OBAMA CARE/MEDI-CAL REPORT  
MUDDLE**

#### **Board of Supervisors Meeting of Tuesday, September 9, 2014 (Completed)**

Consent Calendar: The Board approved a 25-item consent calendar in 15 minutes. We heard some that Board members were clucking happily later about how fast they got out of the meeting. It included among other things:

**Item 3 - Drought Report.** Supervisor Arnold pulled the item to suggest that it was too important to be on the consent calendar and to check on the status of several projects which were engendered by the drought. The rest of the Board was not interested. The CAO mentioned that a major and comprehensive discussion of the water situation will be scheduled in October.

**Item 17 - Approval of the Environmental Vitality Corporation's Annual Contract to Conduct San Luis Obispo County's Economic Development Program, \$142,225.** There was no discussion of the item. COLAB had raised questions about the substance of the economic development program as well as the EVC's relationship with the Community Environmental Council (CEC) of Santa Barbara regarding a solar panel installation program which it promotes.

We stated that the contract contains the sum and substance of the County's economic development program, which is pretty meager. On the second and more problematic level, we questioned what appears to be the possible use of EVC revenues to fund radical anti-oil industry extremists in Santa Barbara County.

The EVC complained about last week's COLAB write up in this regard. Essentially the EVC indicated that it does not provide revenues to CEC but receives revenues from them to endorse certain select vendors who install solar panels in SLO County. Actually, CEC receives a fee from the firms that the EVC endorses based on the kilowatt-hours of electricity produced. The CEC then shares a portion of the fee with the EVC. EVC reported that it received \$26,000 from the program last year. Based on the revenue sharing formula disclosed in the EVC/CEC solar programs firm selection document, we estimate that the CEC received around \$88,000 last year. The CEC is a major supporter, endorser, and advocate for Santa Barbara County ballot Measure P, which if approved this November would begin the destruction of the onshore oil industry in Santa Barbara County.

The Board did not discuss the item.

**Item 25 - Approval of Authorization to Expend Up to \$ 425,000 on the Naci Pipeline Leaks and to Waive Bidding.** The item was not discussed.

**Item 33 - Options for an Ordinance Regulating the Exportation of Groundwater Outside San Luis Obispo County.** The Board received a report on various options. The staff was then directed to prepare an ordinance. It is estimated that it will take about 2 months including time to involve the Water Resources Advisory Committee (WRAC) and the Agricultural Land Use Advisory Committee. Thus it is likely to come back for action in January.

Key provisions endorsed by the Board include:

- Water could not be transferred from one basin to another or outside the County without a permit. (It turns out that there are 22 water basins within the county).
- Permits would be discretionary (that is, subject to a public process rather than over the counter).
- The County would exempt itself so that it can move water between and among basins to deal with drought problems.

- Permits would be good for one year and would have to be renewed.
- Permits would not run with the land.
- If a permit is issued, the County would measure and monitor the water to insure compliance with the permit.
- The ordinance would sunset at the end of 5 years.
- There would be penalties for violation.
- The incorporated cities would not be subject to the ordinance and could thus export water produced within their boundaries to another basin or outside the county. One murky area involves water produced by city wells that are outside the boundary of a city in the unincorporated area. Once it goes into the city, is it city water which is exempt from of ordinance?

In general the Board hopes that the permit process is difficult enough to forestall the submittal of any applications and/or to cause their denial if they occur.

An interesting theoretical question arose. What if there is a climatic wet cycle and there is too much water, causing flooding?

**Other Related Commentary:**

Supervisor Hill stated that he had mixed feelings about such an ordinance. How can people who have been opposing increased regulation be in support of such an ordinance?

Gibson stated that the Board should not be in a rush but should proceed carefully. He said that he did not see a threat ... “we don’t have the water (to export) or the conveyance structure to move it.”

Strange: He wasn’t worried about haste and care in adopting the Paso Basin moratorium.

**Background:** Back last year as the Board of Supervisors adopted its endorsement and support for a Paso Robles Basin water management district, it made a promise to the public that it would expeditiously adopt a prohibition on the export of groundwater from outside San Luis Obispo County.

**Guess What!** County Counsel has concluded that counties do not have the absolute power to prohibit the exportation of groundwater. They can only regulate it through a permitting process which would be subject to appeals and ultimately a court determination beyond the control of the Board of Supervisors.

**Legal Authority to Regulate-** According to the County Counsel:

*Staff's research has determined that the field of groundwater use is within the municipal police power and that state law does not wholly preclude county regulation of groundwater.i Thus, the County may enact a local ordinance regulating groundwater subject to the constitutional constraints applicable to all legislation provided that the ordinance does not conflict with the general law.ii More than twenty (20) counties (see Exhibit B) have adopted ordinances regulating the exportation of groundwater; however, there is no appellate case law addressing whether the specific provisions of any of these ordinances conflict with the general law.*

An obvious and unanswered question is: **What part of this does state law preclude?**

*In recognition of the language of Article X, Section 2 of the California Constitution ("the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they may be capable") and the common law principle allowing for the export of groundwater from a basin once the basin's reasonable overlying needs are met, none of the existing ordinances contain a flat prohibition on the exportation of groundwater but rather require a potential exporter to acquire a permit before exporting groundwater.iii The permits range from staff-issued administrative permits to conditional use permits issued by the Planning Commission.*

This does not comport with the level of protection promised by the Supervisors.

**More Background:** The Board of Supervisors promised that it would pass an ordinance outlawing export of groundwater outside the county in an effort to assure residents that a future Paso Basin groundwater management district would not be able to enter into so-called exchanges with other entities. Exchanges involve selling and buying both real wet water and entitlements (paper water). In its simplest form, water district X might have surplus water and sell it and physically move it to district Y. A number of residents fear that a future district board could become captured by individuals and representatives of national corporations and owners who are actually in the business of controlling and then selling water and water credits rather than farming. To allay these fears, the Board promised that it would outlaw such practices.

### **General Public Comment For Matters Not on the Agenda.**

**Mothers For Peace - Close Diablo:** A small delegation from the anti- nuclear group, Mothers for Peace, showed up and advocated that the Board as a body send a letter to the Nuclear Regulatory Commission (NRC) demanding that they obtain a copy of a document called the Sewall Report on the Impact of Tsunami Vulnerability. They also demanded that the Board ask the NRC to fully explore and explicate the issues raised by former NRC staffer Michel Peck, who made national news when he stated that the Diablo plant is seismically under-protected. It turns out that Gibson and Hill had already sent a letter to the NRC on their own asking about the tsunami issue.

**And Relatedly (as well as analytically) - Pacific Gas and Electric (PG&E) Announced Release of its Seismic Study:** PG&E's release states in part:

*Pacific Gas & Electric Company (PG&E) has completed its advanced seismic studies to further document the seismic characteristics of the fault zones in the region surrounding the Diablo Canyon Power Plant (DCPP) in San Luis Obispo County. These studies have given PG&E, as well as scientists and regulators, an unprecedented view into the Earth's crust that significantly and fundamentally increases understanding of the seismic characteristics near the DCPP. PG&E has submitted the report to the U.S. Nuclear Regulatory Commission (NRC) and to the California Public Utilities Commission's (CPUC) Independent Peer Review Panel (IPRP) for review.*

*Using advanced high- and low-energy two-dimensional (2D) and three-dimensional (3D) seismic-reflection mapping as well as other geologic and geophysical studies, the report demonstrates that DCPP remains seismically safe and able to withstand the largest potential earthquakes in the region.*

The Executive Summary can be accessed at the link:

<http://www.pge.com/en/safety/systemworks/dcpp/seismicsafety/report.page>

**Anti-Fracking Mothers - Get Rid of Oil:** Another group asked the Board to develop an anti-fracking ordinance. Such ordinances, when proposed in our area, are actually camouflage for outlawing a variety of advanced extraction techniques which are in common use. There is no fracking in San Luis Obispo County. The idea is to drive the oil industry out.

It will be interesting to see if anything shows up on the agenda with respect to these issues. Perhaps they will come after the November supervisorial election. Perhaps not.

## Board of Supervisors Meeting of Tuesday, September 16, 2014 (Scheduled)

### Item 10 - Fiscal Year 2013-14 Year End Financial Status Report.



This is one of the most important reports prepared by the County. It presents a variety of important data including:

The financial results of the full fiscal year (Revenues and Expenditures).

A review of which departments ended over or under budget (and the reasons why any departments are over).

An analysis of any fund balance (surplus) which has accumulated.

A list of completed building maintenance projects.

A list of completed capital improvement projects.

A table comparing the total number of employees added or reduced during the year (they added 66).

The employee vacancy rate (7.6%).

A link to a report on the County's organizational performance measures.

Overall they ended the year in the black and generated increased general fund balance. The board letter states in part: *The Auditor-Controller's Office reported that the actual year-end fund balance available (FBA) for the General Fund was \$30.1 million. This was \$8.2 million higher than the \$28.7 million included in the FY 2014-15 budget.*

Huh? \$28.7 million + \$8.2 million = \$ 30.1 million?

The report reflects a recovering economy in that sales taxes and building permit revenue, and airline boardings are all up.

**Performance Reporting:** We are glad to see the direct link was added. A problem is that as of this writing the link isn't working. Attempts to use it result the message below:

A log of this error has been created.

We have created an error report in the system's event log to help us improve our system. We will treat this report as confidential and anonymous.

More importantly the Board should take time to receive a presentation and discuss the performance measures in open session.

The full report can be seen at the link:

<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/3771/RlkgMjAxMy0xNCBZZWFyLUVuZCBGaW5hbmNpYWwgU3RhdHVzIFJlcG9ydC5wZGY=/12/n/33378.doc>

**Item 11 - Effect of the Affordable Care Act (ACA Obama Care) on San Luis Obispo County.** This report would appear to be an expansion of the report which the Social Services

Director gave on the same subject as item 8 on the August 19 Board meeting. That report indicated that the number of Medi-Cal patients expanded by almost 13,176 as a result of the ACA.

This report is from the Behavioral Health (mental health) Director and states, "It is estimated that between 12,000 and 19,000 previously uninsured San Luis Obispo County residents are now eligible to be enrolled in Medi-Cal."

The report then wanders into a discussion of how the ACA-expanded Medi-Cal has picked up the patients who would otherwise have been covered in the historically existing County Medical services Program. It then discusses the number of patients in various sub-component mental health programs provided by CenCal.

In the end, the report is a hodgepodge and confusing. Someone should coordinate a comprehensive report using tables that shows the number of patients and which programs covered them prior to January 1, 2014, when the ACA went into effect.

It should then break down the current numbers – those in Med-Cal and those covered by the exchange – and then break down the numbers by service provider category - CenCal, County Medical Services Program and so forth.

Perhaps there will be a power point that helps. The problem is that the County refuses to include power points as attachments to agenda items. The Board should rebel.

Finally the report should explain whether things are better or worse now.

### **Planning Commission Meeting of Thursday, September 11, 2014 (Completed)**

**Item 1 - Proposed Revisions to the Resource Management System (RMS).** The Planning Commission conducted a 5.5 hour review of the proposed RMS amendments. Commissioners had many thoughtful and incisive questions. Many pertained to large strategic issues facing the county related to water, traffic, the county's overall land use strategy, property rights, and the lack of funding to carry out many planning strategies. In the end and with numerous wording refinements the Commission recommended that a document containing its revisions be forwarded to the Board of Supervisors.

The Commission confirmed that it favored a 1:1 water offset requirement for permits in water basins which the Board has certified as being in Level III severity ( near or at overdraft.)

COLAB recommended that the Commission have the staff return with examples of how certification of level III conditions for highway interchanges, air quality, and water would actually impact development and agriculture. This would inform the commission about the potential impacts, provide an empirical view, and thus assist their decision making. Several

commissioners seemed attracted to this idea, but staffers resisted vigorously. In the end the idea was dropped.

**Background:** The RMS is a regulatory mechanism disguised as government service diagnostic and measurement tool. It basically sets up a negative self-fulfilling policy scam that postulates that the County and its subcomponent cities and special districts will never be able to provide adequate resources to support market based growth that would occur naturally if government did not interfere. The ideologically driven document then provides an excuse for the Board of Supervisors and other agencies to evermore severely curtail any economic or physical growth to forestall the potential problems, lest the County descend into some physical state of dystopian urban squalor. For RMS purposes, the critical categories are defined as inadequate water supply, inadequate sanitary sewer capacity, inadequate classroom space in the k-12 public schools, traffic jams at various freeway interchanges and other roads, inadequate air quality, and insufficient parkland.

The Commission, without editorializing or commenting seemed to actually agree with COLAB's take on the some of the verbiage in the proposed RMS revisions and directed staff to remove false statements such as the one quoted in the paragraph below.

**The Policy Trap:** The staff report contains a number of definitions and explanations about the purpose of the RMS. Note that the text below states, "The RMS assures that services and resources are available to support new development..." Actually it does nothing of the kind. It simply describes under what conditions service and resources must be available to allow new development. One of the County's great strategic failures is that it has no comprehensive plan, schedule, financing, or project management system to actually "assure that services and resources are available."