



**COLAB SAN LUIS OBISPO COUNTY**



**WEEK OF AUGUST 16-22, 2015**

**THURSDAY, AUGUST 20, 2015:  
LAFCO HEARING ON PASO WATER  
MANAGEMENT AUTHORITY  
5:30 PM AT THE PASO ROBLES EVENTS CENTER –  
FAIR GROUNDS**

**PASO WATER DISTRICT TAX PROPOSED  
(AND THEY WANT TO TAX YOU EVEN IF THE WATER DISTRICT  
PROPOSAL FAILS)**

**LAETITIA AG CLUSTER CONTINUED TO  
SEPTEMBER 10, 2015**

**PLANNING COMMISSION RECOMMENDS  
PASO WATER AND DEVELOPMENT  
MORATORIUM EXTENSION-OTHER  
RESTRICTIONS**

**SAVE TUES. AUGUST 25<sup>TH</sup> FOR BOS  
CONSIDERATION**

**Board of Supervisors Meeting of Tuesday, August 11, 2015 (Completed)**

**Item 18 - Willow Road Oak Tree Boondoggle Cost Climbs to Over \$1 Million.** The Board went right ahead and increased the project to over \$1 million to plant oak trees. Staff said it was OK because Cal Trans made us do it.

**Background:** Anyone who drives by can see that the site is already thick with Oaks. Why was there a need for such “mitigation” in the first place? The entire project was supposed to cost \$8.9 million, of which about \$500,000 were allotted to plant and water 3,400 acorns. In March 2013, the budget for oaks was increased to about \$750,000. The number has now been increased to \$1.015 million. It is absolutely outrageous that \$1 million (11%) of a road project would be for an unneeded environmental mitigation. Why wouldn't the Board appeal to Cal Trans and attempt to get the mistake corrected? The rare SLO County golden acorn is displayed to the right.



We heard folks are collecting acorns for presentation to the Board of Supervisors.

**Item 24 - New Airport Terminal – Opportunity, Risk, and the Future Economy.** The Board of Supervisors voted unanimously to accept a Federal Aviation Administration (FAA) grant to help build a new passenger terminal building at the San Luis Obispo Airport. It also approved a \$35 million overall project budget and a construction contract to build the new terminal for \$25 million. The business community was extremely supportive.

**Board of Supervisors Meeting of Tuesday, August 18, 2015 (Scheduled)**

**Item 22 - Discussion and approval of the Proposition 218 Funding Mechanism for the Paso Robles Basin. Districts 1 and 5.** The Board letter states the requested actions to be taken by the Board as:

***RECOMMENDED ACTION***

***It is recommended that the Board, acting as the Board of Supervisors for the San Luis Obispo County Flood Control and Water Conservation District (Flood Control District):***

- 1. Review and approve the NBS report on the Proposition 218 funding mechanism for the Paso Robles Basin; and***
- 2. Direct staff to return to your Board after Local Agency Formation Commission (LAFCO) proceedings as the Flood Control District with the final parcel tax funding formula in order to***

*initiate the approval process for Sustainable Groundwater Management Act (SGMA) compliance; and*

### **3. Receive an update on the LAFCO proceedings**

The County's Water District LAFCO application finance consultant, NBS, has returned with an updated report and set of recommendations for Board of Supervisors consideration and possible approval. The Board must adopt something in order to complete its application to LAFCO. Key considerations are as follows:

**1. It's A New Tax:** NBS has determined that the only legal mechanism to fund the proposed district as currently constituted is a special tax which will require approval by 2/3rds of those voters within the district voting. The consultant report states in this regard:

*As discussed in the Initial Report, Proposition 13 (added Article XIII A to the California Constitution), Proposition 218 (added Articles XIII C and XIII D to the California Constitution) and Proposition 26 (amended Article XIII C of the California Constitution) together create a classification system for revenue generating measures promulgated by local government entities. Of particular significance, Proposition 26 broadens the definition of "tax" to include "any levy, charge, or exaction of any kind imposed by the state or a local government, with specified exceptions." **In other words, any such measure is presumptively a tax. We believe that the proposed levy does not squarely fall within any of the enumerated exceptions and that it constitutes a tax imposed for a specific purpose.***

The election will be conducted using mail in ballots between February 8 and March 8, 2016. Separately LAFCO is recommending that this election be consolidated with the vote by property owners in the proposed district area on the formation of the district itself.

The question this week will be whether the Board of Supervisors will follow its consultant's recommendation or will deviate by seeking to classify the tax as something else, such as an assessment or fee in order to obtain a less challenging vote formula.

**2. A New Complication:** In a new wrinkle, it will be the County Flood Control District (a dependent special district governed by the Board of Supervisors) which will actually be levying and receiving the new tax – not the proposed new Paso Basin Water Management Authority. This tax will be levied as a new zone of benefit of the Flood Control District. As the write-up says, *"If the Parcel Tax is approved and the PRBWD is formed, **the Flood Control District will agree to transfer the Parcel Tax revenue to the PRBWD**".*

a. By what legal mechanism will the Board of Supervisors "agree to transfer the Parcel Tax revenue"?

b. Does this give the Board of Supervisors a chokehold on the future district that is primarily being justified on the basis of local control outside the Supervisors control?

- c. Will the Flood Control district have to rake off some of the funding to pay for its administration of the funds?
- d. What if a future Board of Supervisors gets mad at the new district and refuses to transfer the tax funds?
- e. Is it prudent to approve this funding if the proposed district is rejected? Staff is arguing that it will save the cost of a new election at some point in the future. The problem is that rejection of the district will set a whole new context for the entire issue. New fresh plans with a different perspective will necessarily be required. To presume the same funding mechanism as would be used for the proposed district for an as yet unknown structure would fly in the face of voter sentiment if the district were rejected. Moreover spending \$1 million per year each year for 5 years to develop a GSP is ludicrous. Try bidding this one out to the private sector and see what kinds of numbers emerge.

**3. We Are Going to Tax You Anyhow - Even if the District Vote Fails:** The County is hedging its bets in case the voters refuse to approve the new district but do approve the new tax. In this bait and switch scheme the County will simply keep the money (initially \$950,000 per year) and use it to fund development of a groundwater sustainability plan (GSP) pursuant to the State Groundwater Sustainability Act (SGMA). The write-up states:

*If the PRBWD is not formed, the Flood Control District **may** retain the Parcel Tax revenue to fund the (Groundwater Sustainability Agency (GSA) activities.*

- a. What does “**may**” mean here? Is there another undisclosed possibility for assignment of the funds?
- b. The County says the cost of the new special district preparing the GSP and the cost of the existing County Flood Control District preparing the GSP is essentially the same (\$950,000 per year for 5 years). They have provided spreadsheets to demonstrate this. The problem with this theory is that the Flood Control District already exists, and its budget already contains the staffing, supplies, vehicles, and overhead support costs such as legal, personnel, information technology, insurance, space, utilities, and so forth. The new entity not only has to cover the operational costs but must cover the overhead costs of being a government entity that conducts meetings, maintains records, and supports the clerks and other functions endemic to a government entity.

**4. They Can’t Have It Both Ways:** Moreover, the County already has years of accumulated studies about the basin and has spent large sums on analyzing alternatives and the costs of supplemental water. Why would either entity need to spend \$950,000 each year for 5 years to develop a GSP under such circumstances? This is not a de novo situation. Why has the Board of Supervisors not penetrated these cost estimates?

If it is not true that the county has sufficient data and rationale, how can it be proposing the so-called Water Management Plan (making the Paso basin moratorium permanent)? Planning Commission item 5 below? Is the so-called Paso Basin Updated Model worth anything?

**5. No Full Disclosure or Analysis:** The formula used to determine amount of the tax to be levied on property owners is discussed under item 6 below. Significantly the amounts presented only cover a small portion of the costs that are ultimately likely to be incurred by the proposed district (the district). This is because both the applicant County (representing PRAAGS and Pro Water Equity - the true applicants) have indicated that during its first 5 years of operation, the district's sole activities will be preparing a groundwater sustainability plan and managing its administrative and housekeeping overhead. For this purpose an annual budget of \$950,000 has been established. As the LAFCO staff report for its hearing on the application on August 20, 2015 states:

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

Significantly the LAFCO report states that additional efforts will require new voter approvals in the future. Neither LAFCO nor the applicant county has prepared any analysis of any future cost scenarios for actual substantive operation of the district in terms of regulatory activities, capital projects, operation and maintenance of works, purchase of water, etc. The powers that be simply say that they can't think about these until the GSP is approved. The problem with this rationale is that the basin residents will have no idea of the eventual true costs of operation of the entity that they are being asked to create.

- a. Why has the Board of Supervisors refused to have staff generate some specimen operating and cost scenarios?
- b. Why is LAFCO letting the Board get away with this incomplete analysis? (Of course Mecham and Gibson, who have been staunch supporters of the proposed district, are both on LAFCO).

This is a situation in which the proverbial camel is getting his nose under the tent. It will only be later that residents will actually find out about the true costs. If they refuse to vote for these at that future time, the whole effort will have been a huge waste and boondoggle.

- c. Shouldn't there be a full disclosure of some estimates in advance?

**6. The Camel’s Nose Tax:** NBS, the Staff, and the Paso Basin Advisory Committee (largely made up of agency representatives) have devised a formula for the tax levy. As noted above, it only funds the preparation of a GSP and the overhead of the new district at \$950,000 per year. Thus it is an extremely low-ball picture of what will actually be required if the proposed district is to undertake the actual operational activities provided in its enabling legislation (AB 2453). The tax will be applied to various classes of property as depicted in the chart below:

ESTIMATED COUNT	RATE ELEMENT	RATE	ANNUAL REVENUE GENERATED	% OF TOTAL
	<b>PER PARCEL</b>			
6,397	Total parcels	\$ 15.00	\$ 95,955.00	10%
	<b>PER UNIT</b>			
3,807	Single Family Residential (SFR) Parcels	\$ 20.00	\$ 76,140.00	8%
309	Multi-Family Residential (MFR) Parcels	\$ 40.00	\$ 12,360.00	1%
124	Commercial/Gov per Parcel	\$ 100.00	\$ 12,400.00	1%
2,157	Vacant per Parcel	\$ 10.00	\$ 21,570.00	2%
				13%
	<b>PER ACRE</b>			
312,977	Non-Irrigated Acres (ALL)	\$ 0.25	\$ 78,244.00	8%
36,390	Irrigated Acres	\$ 18.00	\$ 655,020.00	69%
				77%
	<b>TOTAL</b>		<b>\$ 951,689.00</b>	100%

The staff report goes on to provide some sample cases depicting how the tax would impact various classes of property.

**Sample Cases:**

10 Acre Parcel		25 Acre Parcel		100 Acre Parcel	
	Annual Tax		Annual Tax		Annual Tax
SFR	\$ 37.50	SFR	\$ 41.25	SFR	\$ 60.00
MFR	\$ 57.50	MFR	\$ 61.25	MFR	\$ 80.00
Commercial	\$ 117.50	Commercial	\$ 121.25	Commercial	\$ 140.00
Rangeland	\$ 27.50	Rangeland	\$ 31.25	Rangeland	\$ 50.00
Irrigated Ag (100% of Acreage Irrigated)	\$ 205.00	Irrigated Ag (100% of Acreage Irrigated)	\$ 475.00	Irrigated Ag (100% of Acreage Irrigated)	\$ 1,825.00

What would the tax be for a 400-acre property with a winery with a tasting room, bottling facility, wine storage facility, 2 homes, a guesthouse, equipment maintenance and storage facility, and an events/concert facility?

## **7. Some Missing Legal and Administrative Details:**

a. What is the appeal procedure if you disagree with your rate element (categorization) and /or tax?

b. How are liens and penalties imposed? AB 2453 gives the district the power to charge interest of 1.5% per month on unpaid taxes. The normal property tax penalty is 10% after the December and April due dates. This tax will be included on the property tax bill.

c. As things change on a property such as expanded crops, changes in crop type, addition of facilities, who will keep track of these and report them to the Assessor? What will this cost? Who will pay?

d. SGMA exempts properties that use less than 2 acre-feet per year from inclusion. How can the County or the new district tax them for a “benefit which they don’t receive” and compliance with a law which does not apply to them? Staff argues in aggregate that the rural residential in aggregate is a big water user, but the Updated Paso Basin Model shows it’s only 3%.

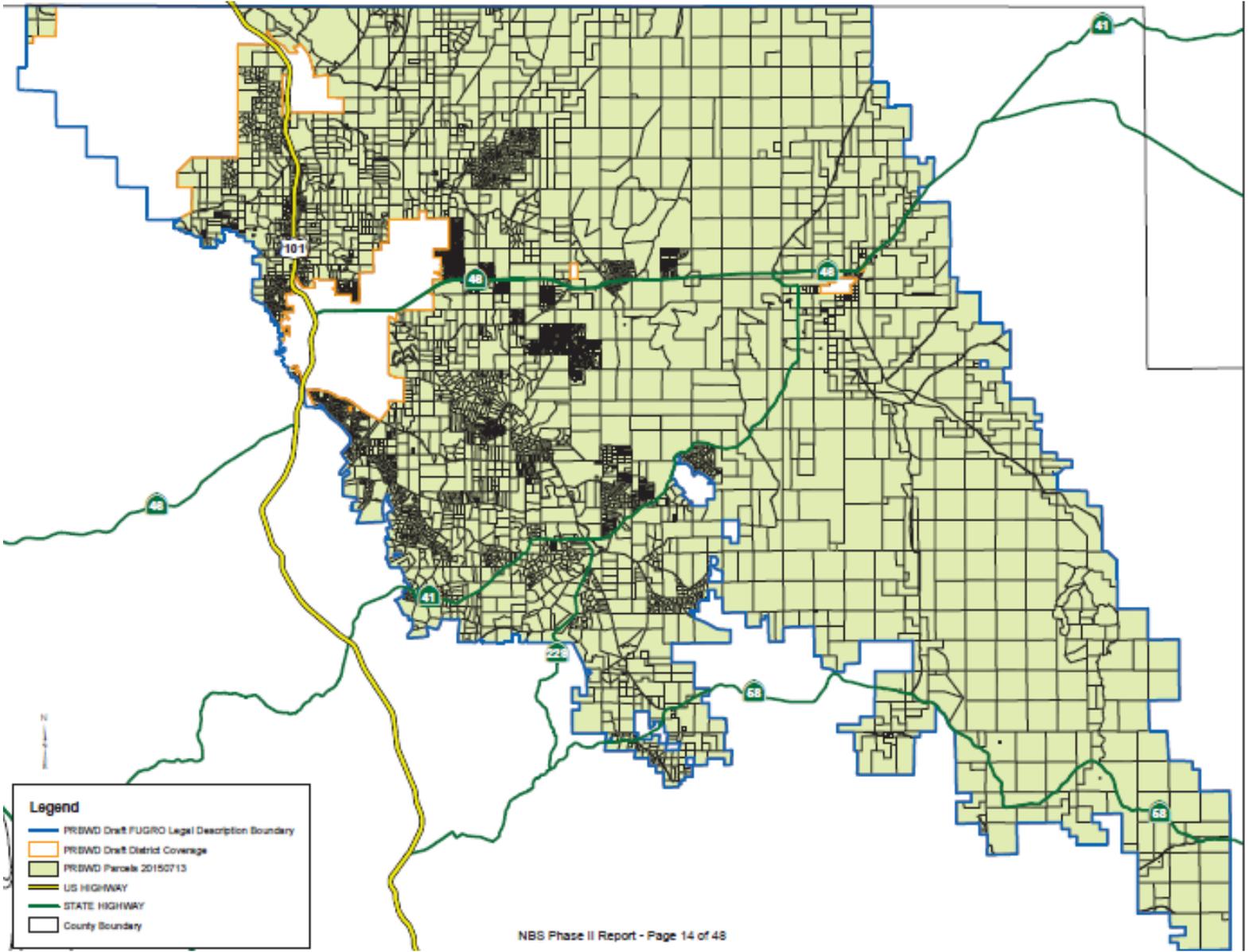
e. How does the County’s proposed so-called Water Conservation Plan, which contains major land use restrictions on agriculture and residential development in the Basin, intersect with the new tax and all the powers allocated by AB 2453 and SGMA? For example, what if you extinguish some of your irrigation and sell the credits to someone else? Will this tax go down? How will all the puts and takes for this issue be managed?

f. There is some discussion in the write-up that traditionally tax-exempt properties should pay the tax. What about schools, government-owned parcels, parks, and churches?

g. The Williamson Act provides for lower property tax assessments for active agriculture. Does this tax run squarely in opposition to the purpose of the Act even if it is separately determined to be a different kind of tax?

**8. What happens to this tax if the quiet title/adjudication effort is approved?** Would 20,000 acres and 600 properties signed up as plaintiffs in that action be exempt from paying this tax? If these are irrigated acres, the loss of 20,000 x \$18 per acre (\$360,000) would put quite a dent in district’s \$950,000 annual budget.

The blue line on the map below is the proposed boundary of the district. Areas inside the orange line are exempted.



**Legend**

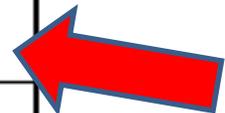
- PRBWD Draft FUGRO Legal Description Boundary
- PRBWD Draft District Coverage
- PRBWD Parcels 20150713
- US HIGHWAY
- STATE HIGHWAY
- County Boundary

Draft Proposition 218 Funding Calendar

**SAN LUIS OBISPO COUNTY ELECTION OFFICIAL'S ACTIVITY SCHEDULE FOR PLACING A SPECIAL PARCEL TAX MEASURE ON THE BALLOT FOR THE MARCH 8, 2016, SPECIAL ELECTION FUNDING FOR SUSTAINABLE GROUNDWATER MANAGEMENT ACT OF 2014 COMPLIANCE WITHIN THE AREA OF THE PASO ROBLES GROUNDWATER BASIN**

NOTE: THE DEADLINES FOR SUBMITTAL OF ARGUMENTS, IMPARTIAL ANALYSIS AND OTHER DOCUMENTS FOR ACTUAL MEASURES WILL BE DETERMINED ONCE A MEASURE IS PLACED ON THE BALLOT. THE FINAL CALENDAR FOR EACH BALLOT MEASURE WILL BE POSTED ON THE WEBSITE.

November 3, 2015 EC Sec 4000, 4108	LAST DAY for Governing Boards to submit their resolutions calling for and placing a measure regarding the funding of the Paso Robles Basin Water District on a Special Election ballot. The resolutions must contain the FULL TEXT OF THE MEASURE and the EXACT FORM OF THE QUESTION as it is to appear on the ballot. If the question is the Full Text of the Measure, this needs to be stated in the resolution. File the original resolution with the Elections Official
November 4-13, 2015 EC Sec 9190, 9380	PUBLIC EXAMINATION PERIOD – Ten day examination period begins the day after the adoption of the resolution by the Governing Board.
November 16, 2015 EC Sec 9163, 9316	BY THIS DATE the Elections Official shall send the Notice Calling for Submission of arguments FOR or AGAINST the measure to be published.
December 11, 2015 EC Sec 9161-9163, 9315-9316, 9600-9601	PRIMARY ARGUMENTS DUE – The dates for Impartial Analysis, Arguments and Rebuttals will be established once a resolution is filed with the County Elections Official. LAST DAY for proponent(s) to change or withdraw Primary Arguments.
December 11, 2015 EC Sec 9160, 9313	IMPARTIAL ANALYSIS DUE from County Counsel. FISCAL IMPACT STATEMENT DUE from Auditor (if directed by B.O.S.)
December 12-21, 2015 EC Sec 9190, 9380	PUBLIC EXAMINATION PERIOD - Primary Arguments, Analysis, & Fiscal Impact Statement.
December 21, 2015 EC Sec 9167, 9317, 9600-9601	REBUTTAL ARGUMENTS DUE - File with the County Elections Official. LAST DAY for proponent(s) to change or withdraw Rebuttal Arguments.
December 22-31, 2015 EC Sec 9190, 9380	PUBLIC EXAMINATION PERIOD - For Rebuttals Only.
February 8, 2016 (E-29) EC Sec 3001	FIRST DAY BALLOTS ARE AVAILABLE
February 22, 2016 (E-15) EC Sec 2107	CLOSE OF REGISTRATION
March 8, 2016	ELECTION DAY
April 7, 2016 EC Sec 15372	COMPLETE OFFICIAL CANVAS



Happy Holidays!  
How convenient,  
just what folks  
want to be  
working on in this  
season.

Planning Commission Meeting of Thursday, August 13, 2015 (Completed)

**Item 4 - Hearing to consider a request by JANNECK, LIMITED (LAETITIA AGRICULTURAL CLUSTER) for a Tentative Tract Map and Conditional Use Permit to allow an agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots. The proposed project includes 101 1-acre residential lots plus one existing single-family residence, a ranch headquarters (includes a homeowner's association facility, recreation center, and community center), 25 acres of internal access roads, and a wastewater treatment plant. The ranch headquarters and wastewater treatment plant are proposed on the open space parcels.** The Commission received a staff presentation as well a presentation by the applicant about the proposed project. The staff had strongly recommended against approval of the proposal in its write-up. It persisted and verbally reinforced its recommendation for denial. In fact, and perhaps revealing a little guilt, the Planning Director gave a somewhat apologetic introduction at the start of the session defending the integrity and professionalism of the staff and recommendation. About 60 residents opposed to the project were in the room. Many spoke against it. By mid-afternoon and after public comment, the Commission continued the hearing to September 10, 2015 in order to take up the so-called Water Conservation Plan (see Item 5 below). They did not close off public comment, so it is likely that everyone will come back on the 10<sup>th</sup> and speak again.

**Background:** The Planning staff recommended the denial of the project in the strongest terms we have seen for any project in the past 5 years (even worse than the Las Pilates Quarry outside Santa Margarita earlier this year). As most readers know, the project is located on the Laetitia Winery property to the east of State Highway 101 in Nipomo. The area is characterized by ranches, farms, and estate houses. Essentially, the project proposes carving out about 130 acres of the total 1,910 vineyard property for 102 estate houses on 1 acre lots which would be clustered down to maintain most of the property as vineyard and open space.

#### **Item 5 - Water Conservation Program/General Plan and Land Use Ordinance**

**Amendments.** The Commission approved the Program on a 3/2 vote, with Commissioners Topping (Gibson), Meyer (Hill), and Irving (Mecham) voting yes.<sup>1</sup> Commissioners Campbell (Arnold) and Harrison (Compton) voted no. The Plan now goes to the Board of Supervisors on August 25, 2015. Perhaps the most revealing statement of the day came from Topping, who is the Chairman. In dealing with agenda management he announced that the Laetitia matter would be discussed until the noon break and then continued to a future date because the Board of Supervisors wished the Commission to finish the Water Conservation Program and forward it on to them for action. This decision was in the teeth of a Boardroom full of citizens who had come for the Laetitia matter.

As noted above, the Board is likely to consider the issue during its August 25<sup>th</sup> meeting, adopt the General Plan amendments, and then continue the ordinance provisions of the program to its September 1, 2015 meeting for final adoption.

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<sup>1</sup> The names in parenthesis are the respective appointers of the Commissioners.

**Remember, the basic purposes of the program include:**

1. Making permanent the Paso Water and Development Moratorium.<sup>2</sup>
2. Creation of a Water Offset Program (Pay to Use Your Own Water).
3. Miscellaneous Restrictions on the Use of Water.

**The Basin Overdraft Calculation Issue:** As we pointed out in the last three Weekly Updates, there is a major issue involving the numbers used to justify the need for the program in the first place.

**The Water Use Calculation Problem:** *It turns out that a large technical-substantive problem has now been exposed. The calculations utilized to justify the need for the entire Water Conservation Program (basin overdraft) were based on incorrect water amounts needed for grape growing. The original calculation for the amount of water needed for grape production (as claimed in the Draft Environmental Impact Report (DEIR) was significantly higher than the actual amount required, as is now presented in the Final EIR. The amended finding shows that grapes use much less water than had been previously claimed.*

At the same time it is not clear what are the correct numbers used in the Updated Paso Basin Water Model for grapes and other crops. As we have been point out, the Model would seem to be using 1.8 acre-feet of water use per year for grapes. For purposes of the Plan the County is using 1.25 acre-feet. The difference has huge implications for the true overdraft or lack thereof for the Basin. We have met with staff directly and listened to the public presentations. It is still not clear. Someone needs to go to the proverbial black board and explain the whole thing in public. The Board should not consider the program until this is done.

During the August 13, 2015 meeting, as we predicted, the County circled the wagons and had the Public Works Director present data that supported the County position on the rationale for why there is no discrepancy. Crucially, Commissioner Irving concluded that the County's overall basin numbers are correct. He is still concerned about the lack of data about the amount of water being pumped by the City of Paso Robles and its impact on the most severely "over drafted" portion of the basin. Nevertheless he supported sending the recommendation for approval forward to the Board of Supervisors.

The Commission made numerous changes to language in various portions of the ordinances and Plan elements that comprise the so-called Water Conservation Program. These consisted mainly in eliminating vague wording which would give the staff opportunity in the future to mess with

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<sup>2</sup> The ordinance says that it will sunset when a sustainable water management plan is approved. Does anyone think the State will approve a plan that doesn't contain all the restrictions and regulations proposed to be adopted here?

farmers. Commissioner Campbell termed the whole Plan “a kick in the teeth to agriculture” and voted against it.

**Local Agency Formation Commission (LAFCO) Meeting of Thursday, August 20, 2015  
Scheduled- Note Special Time and Location- 5:30 PM at the Paso Robles Events Center  
(Fairgrounds)**

**A-1: File# 2-R-15. Formation of the Paso Robles Basin Water District-Boundaries, Powers, Options (Recommend receiving the staff report and public testimony, provide staff with direction, and continue this item to the September 17, 2015 LAFCO meeting.)**

The issue at hand here is an application by the Board of Supervisors of San Luis Obispo County for the creation of a Water Management district over a portion of the Paso Robles water basin.

**Background:** Per prior Board direction, the staff has prepared an application to the Local Agency Formation Commission (LAFCO) for the creation of the AB 2453 Paso Basin Water Management District. The LAFCO Board consists of 2 members of the Board of Supervisors, 2 elected representatives of the cities in the County, 2 board members of special districts in the County, and a citizen representative selected by the other members. They are collectively called the commissioners. LAFCO’s job is to review the application and determine if it meets various requirements of the State’s Cortese-Knox Act, which regulates local government formation matters. The LAFCO may approve the application as submitted, modify it and approve it, or reject it. LAFCO may also add conditions to any approval. If LAFCO approves the district formation, it must be submitted to a vote of the property owners living within the proposed boundary. Fifty percent plus 1 of the voters who actually vote must approve the final LAFCO structure for it to become activated. Our discussion here is organized into 4 sections, including A) What Is the Benefit of Creating the District? B) Process Issue Problems, C) Financial Issues, and D) Powers and Functions of the District.

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

**1. Local Control?**

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

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

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

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

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

**c. Local Control by Whom and to What Ends?** The fact that the new district is designed to have a board of directors elected from various classes of ownership of people living in or near the district is given as proof of local control in contradistinction to control by the Board of Supervisors. Much effort was expended by proponents to demonstrate that no one faction by ownership class (amount of acreage owned) could get control of the district board. This discussion was a distraction. The real issues include: 1) what is the likelihood that some combination of 5 directors will include maintenance of the moratorium as a key element of the district's future groundwater sustainability plan (GSP)? 2) Since all the powers included in AB 2453 are recommended to be operationalized in the LAFCO approval (and most of those powers are regulatory in nature), what is the likelihood that some combination of 5 directors will adopt ordinances to implement them?<sup>3</sup> 3) Since the approval of future fees, assessments, and taxes are based on Prop 218 land ownership vote, the 2 representatives of 30-40 largest landowners will control the future budgets once the proposed district has adopted a SGMA compliant groundwater sustainability plan (GSP).

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

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

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

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

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<sup>3</sup> One power has been requested not to be activated. This is a provision which would allow 4 members of the proposed district board of 9 to adopt emergency ordinances by 4 votes. It was included by mistake when the language of the AB 2453 enabling legislation was in large part copied from a large district in Ventura County.

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

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

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

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

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

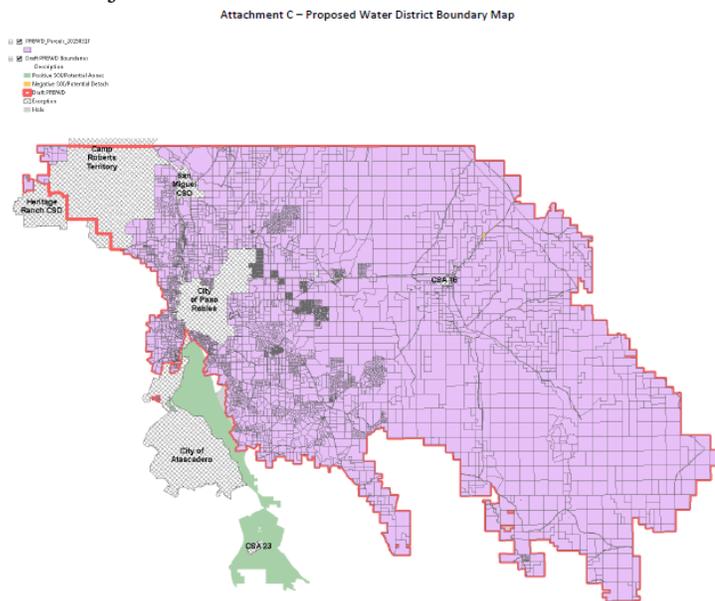
### **2. The Moratorium Is Essentially Permanent:**

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

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

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

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



### 3. The Plan is Unfair:

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

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

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

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

*LAFCO Commissioner Participation. LAFCO includes seven Commissioners: two City Council members, two Special District members, two County Supervisors and one Public Member. The question often comes up: “Can an elected official who voted on a project/application as a City*

*Councilperson, District Board of Directors, or County Supervisor still vote on the application as a LAFCO Commissioner?” The State Law governing LAFCOs specifically allows for this situation. Commissioners who vote on an application or project as part of another governing body are allowed to consider that application acting as a LAFCO Commissioner. State Law speaks directly to this question:*

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

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

**b. Law vs. Ethics:** LAFCO Commissioners and Supervisors Mecham and Gibson have been staunch and forceful proponents of the district. They have voted to appropriate \$350,000 to fund the application. They have directed the preparation of the application. The application is an absolute creature of their creation and public policy advocacy. How can they in any rational universe meet the standard highlighted in yellow above? They would have to betray the very public policy which they have not only endorsed by their repeated votes but for which they have appropriated \$350,000 of tax payer money. If they think there are reasons not to approve the district, how could they have knowingly appropriated the money? Would it not be a deliberate act of malfeasance in public office to countermand their position under such circumstances? In other words, you appropriated \$350,000 of tax payer money, and now say you knowingly knew that you would vote against the outcome for which the money was expended.

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

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

By allowing the County to be the applicant before LAFCO, the district proponents were able to avoid the normal legal democratic process of circulating a petition and obtaining sufficient signatures to demonstrate that there is enough support for a new district to justify the time and expense of preparing and processing an application. By the time the voters ultimately decide, the County will have spent \$350,000. Instead, 3 members of the Board of Supervisors preempted the

public and made the determination for them. As noted above, 2 of the 3 same Board of Supervisors members (Gibson and Mecham) will be “independently” reviewing the application as members of LAFCO.

## **6. Polling:**

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

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

## **C. Financial Issues:**

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

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

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

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

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

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

In effect Board flew blind.

### **2. Budget:**

A \$1 million per year budget (for the next 5 years) for 2 staffers and various consultants is presented. The budget provides no services other than the preparation of a groundwater sustainability plan and coordination with abutting entities plan. In other words, the district will tax the basin property owners \$5 million for a service which the County could already provide. The staff has provided a separate budget that indicates that it would cost the County the same \$5

million to perform the same work. It seems impossible, given all the data, major reports, and analyses that have been prepared over recent years, as well as plans already in effect, that a new \$5 million on top of everything else is required.

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

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

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

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

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

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

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

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

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

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

As we have in pointed out in the past, the powers allocated to the district are formidable. The problem is that the Board of Supervisors has never held an item-by-item discussion of them and

made itself accountable for accepting the formidable regulations implicit in the AB 2453 enabling legislation. The application went forward to LAFCO without this vital step. As the Board letter states:

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

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

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

### **Not Full Disclosure**

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

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

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

**LAFCO Board: Please see the chart on the next page.**

**MISSION STATEMENT**

The Local Agency Formation Commission is committed to serving the residents of San Luis Obispo County and the State of California by discouraging urban sprawl and encouraging the orderly formation and development of local agencies based on local conditions and circumstances.

**COMMISSIONERS**

Tom Murray, Chair, Public  
Frank Mecham, Vice-Chair, County  
Roberta Fonzi, City  
Marshall Ochylski, Special District

Muril Clift, Special District  
Bruce Gibson, County  
Ed Waage, City

**ALTERNATES**

David Brooks, Public  
Robert Enns, Special District  
Adam Hill, County  
Jamie L. Irons, City

**Meeting Location**

Adelaide Room  
Paso Robles Event Center  
Paso Robles, CA

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