



**COLAB SAN LUIS OBISPO COUNTY**



**WEEK OF AUGUST 23-29, 2015**

**PASO WATER DISTRICT TAX SENT TO  
LAFCO ON SPLIT VOTE**

**(AND THEY WILL TAX YOU EVEN IF THE DISTRICT PROPOSAL FAILS)**

**HUNDREDS ATTEND LAFCO INFO  
HEARING ON PASO DISTRICT  
DECISION DATE SET FOR SEPT. 17<sup>TH</sup>**

**(OPPONENTS SUBMIT 892 OPPOSITION LETTERS)**

**DESALINATION REPORT AT BOS ON  
AUGUST 25<sup>TH</sup>**

**TRANSFER OF DEVELOPMENT CREDITS  
EXTORTION APPEALED**

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

**Item 22 - Discussion and approval of the Proposition 218 Funding Mechanism for the Paso Robles Basin. Districts 1 and 5.** The Board approved the financing plan for the proposed district and sent it on to LAFCO on a 3/2 vote with Arnold and Compton dissenting. The action included:

*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*

Please see last week's Update at the link below for all the unfortunate details starting on page 2. It's a real travesty.

[http://www.colabslo.org/prior\\_actions/Weekly\\_Update\\_August\\_16-22\\_2015.pdf](http://www.colabslo.org/prior_actions/Weekly_Update_August_16-22_2015.pdf)

**Board of Supervisors Meeting of Tuesday August 25, 2015 (Scheduled)**

**Item –16 Submittal of a Desalination Opportunities Summary Report and recommended direction to staff to proceed on emergency and long term desalination opportunities.** Per the Board's prior direction the staff has returned with a very preliminary report on the feasibility of desalination. Actually there are two reports. One, the more limited in scope, addresses the possibility of utilizing surplus capacity of the Diablo Nuclear Plant desalination facility to provide either emergency water for firefighting or, in a more developed version, an actual municipal water supply. The staff has characterized this one as the near term opportunities project. The second, and more global in scope (the regional project), discusses the process whereby the County and other agencies would conduct a project to assess the feasibility and costs of developing some sort of inter-agency regional desalination facility which could provide substantial amounts of water, particularly of the current drought turns out to be part of a long term trend.

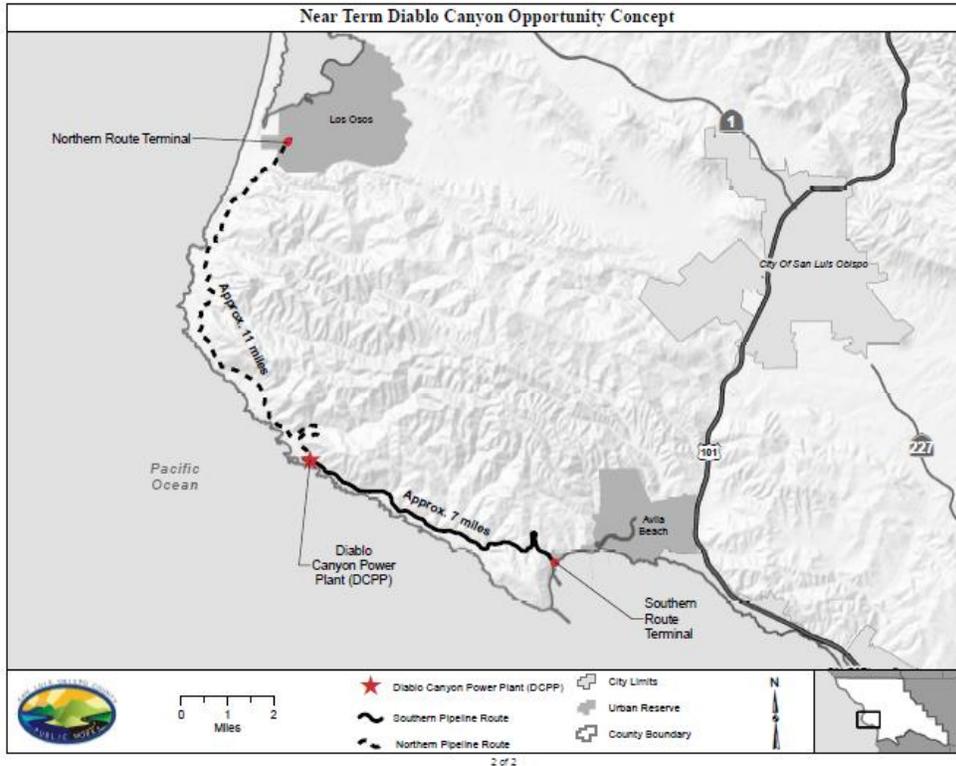
1. The near term opportunities project would involve connecting the Nuclear Plant desal source to the water system in Avila Beach and thence to other water districts and cities to the south. The write-up includes a nice summary of the proposed feasibility work:

**Attachment 1 - Diablo Canyon Desalination Near-Term Opportunities Summary**  
 Desalination Water Supply Opportunities and Considerations Report  
 Diablo Canyon Power Plant Near-Term Opportunities Analysis

**Objective:** Provide information on the opportunity to bring desalinated water from Diablo Canyon Power Plant (DCPP) to Los Osos Groundwater Basin or the Northern Cities Management Area (NCMA) of the Santa Maria Groundwater Basin so that management entities can compare against other alternatives to address existing deficiencies and drought reliability needs.

Desalinated Supply <sup>1</sup>	DCPP-Side Logistical Steps <sup>2</sup>	SLO County-Side Logistical Steps <sup>3</sup>	Need/Beneficial Use Concepts	End Use Concepts
Estimated Available to Areas of Need at Existing Capacity 500 AFY	<ul style="list-style-type: none"> <li>Post-treatment system capital and O&amp;M</li> <li>Conveyance capital and O&amp;M</li> <li>Existing system compensation</li> <li>Project implementation steps and level of complexity</li> </ul>	<ul style="list-style-type: none"> <li>Develop Project Description</li> <li>Evaluate ability to use existing distribution infrastructure</li> <li>Conveyance capital and O&amp;M</li> <li>Project implementation steps and level of complexity</li> </ul>	<b>NCMA</b> <b>1,026 AFY<sup>4</sup></b> Offset current urban pumping from the Northern Cities Management Area of the Santa Maria Groundwater Basin to mitigate against drought / seawater intrusion	<b>NCMA</b> Urban customers via agreements between project partners
Estimated Available to Areas of Need at Full Capacity 1,000 AFY	<ul style="list-style-type: none"> <li>Treatment expansion capital and incremental O&amp;M</li> <li>Post-treatment system capital and O&amp;M</li> <li>Conveyance capital and O&amp;M</li> <li>Existing system compensation</li> <li>Project implementation steps and level of complexity</li> </ul>	<ul style="list-style-type: none"> <li>Develop Project Description</li> <li>Evaluate ability to use existing distribution infrastructure</li> <li>Conveyance capital and O&amp;M</li> <li>Project implementation steps and level of complexity</li> </ul>		

There is also a nice map (see below) which shows how the Diablo desal plant could be connected to several municipal water systems.



Ironically, the County has not been forceful in supporting PG&E's application for relicensing the Diablo Nuclear Plant. Instead it has supported extensive and costly seismic studies. If PG&E

determines to close the plant, its desalination facility would have no purpose. Perhaps PG&E would sell it to the County. It would be a shame for the County, cities and water districts to invest in the water lines, pumps, and other facilities shown on map above and then find out that the whole operation is going away.

2. The purpose of the regional project would be to research the feasibility of a number of jurisdictions getting together to construct and operate a new desal plant as a permanent and ongoing source of water. The actual report is 28 pages. It is accompanied by a number of appendices, which bring the total package to 538 pages. For this reason, a link is displayed below. It's a big file and may take a while to load.

<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/5038/RGVzYWwgQXR0IDIgRGVzYWxpbmF0aW9uIE9wcG9ydHVuaXRpZXMgU3VtbWFyIFJlcG9ydCAyMDE1IFBERiBBLnBkZg==/12/n/49174.doc>

The immediate bottom line is that the staff generally thinks a large scale facility would be too expensive and difficult to get approved environmentally, given both County and State regulatory policies.

*As demonstrated by the recently-completed Carlsbad Desalination Plant and other pending projects referenced in the attached Report, successful regional desalination projects in California have been implemented only after long and extensive project vetting, development and implementation processes. Therefore, it is recommended that the Board direct staff to engage the Integrated Regional Water Management Program Regional Water Management Group and potential project partners in discussions about regional desalination facility concepts. The Integrated Regional Water Management Program is a public forum designed to facilitate the development of broadly supported recommendations regarding strategies to develop and potentially fund integrated, regional water resources projects in the county.*

As noted in the paragraph above, the staff would like to defuse the issue into a larger regional forum. If the Board is serious about exploring this option, very strong didactic policy leadership will have to be exercised or it is likely to get lost in the woods.

**Item 19 - Appeal of the Transfer of Development Credit (TDC) Purchase Requirement.** An applicant who is splitting a 5-acre parcel into two 2.5-acre parcels has been required to purchase a development credit from the County's TDC program as a condition of approval. The TDC program requires that sub-dividers pay for credits if their subdivisions are outside a village or urban limit line. The TDC program is part of the County's smart growth program and is designed to discourage suburban and rural development of single-family freestanding homes on acreage. The TDC bank is created by other developers extinguishing their right to a portion of their developable land in exchange for permission to develop some of it.

The County shakes down both the sending and receiving owners. The program is simply government extortion. The County insists it's a "voluntary" program. You don't have to split your lot.

The applicant is not requesting increased density or substandard lots.

The Board letter neglects to say how much one development credit now costs.



Pauli always gets his tribute.

**Background:** According to the write up:

*The County's Transfer of Development Credit (TDC) program was adopted in 1996 as a land use planning tool which allows for the movement (transfer) of development from one parcel of land to another. A site from which development credits have been transferred is called the "sending site", and has its development potential reduced or retired through recordation of a permanent conservation easement or other instrument. A site which receives development credits is called the "receiving site" and may be developed with a higher density than would otherwise be allowed under the current land use category or as otherwise set through planning area standards. The overall goal of the program is to encourage development in locations that can better support it, namely urban areas where services and public improvements are more available or established, rather than rural areas.*

*The Board of Supervisors amended the Ordinance in 2011, adding language requiring the retirement of a TDC credit for any land division (parcel map or tract map) located outside of an urban or village reserve line (Section 22.22.020(D) and Section 22.24.070(B)(2)). Those rural subdivisions required to purchase TDC's are governed by Section 22.24.070(B)(2) rather than those "receiving sites" required to purchase density bonus TDC's governed by Section 22.24.060 and Section 22.24.070.*

**Planning Commission Meeting of Thursday, August 27, 2015 (Scheduled)**

There are no items of general policy impact on the agenda.

**Local Agency Formation Commission (LAFCO) Meeting of Thursday, August 20, 2015 (Completed)**

**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 Local Agency Formation Commission (LAFCO) meeting.)**

The LAFCO conducted a series of presentations on why the 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 should be approved. The LAFCO staff, an executive of the State of California Water Resources Board, and the County staff filled over an hour with PowerPoint presentations supporting the creation of the proposed district.

Significantly, the organized opponents from the basin were granted no opportunity to present LAFCO with a comprehensive presentation. They are thus relegated to giving dispersed 3-minute limited public comments. Clearly the full power of the State and County are in alignment to shove the district down everyone's throat without any meaningful organized rebuttal. COLAB requested that the opponents from the basin (not COLAB) be given such an opportunity to present a public rebuttal on the record. No member of the Commission responded.

Around 400 people filled the room. 79 spoke. Of these, 39 spoke in favor, 35 were opposed, and 5 were unclear. Notwithstanding the speaker statistics, it was evident that the audience was overwhelmingly opposed to the proposed district. This was very evident from the applause for speakers in opposition and body language displayed by the crowd.

Significantly, opponents delivered 892 protest letters to the Commission opposing the district as proposed. No member of the Commission commented on the letters or thanked the 892 citizens for their efforts. The box of letters was quickly shunted to the Clerk and ignored. In a normal LAFCO proceeding such a large percentage of the property owners and voters filing such a protest would require that the LAFCO cease processing the matter. In this case that provision has been vitiated by provisions of AB 2453. Apologists suggest that the voters will ultimately decide whether the district is approved, and therefore the provision is unnecessary. The problem is that the well-financed political action committee CALM (Citizens Advocating for Local Management of the Paso Robles Groundwater Basin) will run a full political campaign. Members were already handing out slick literature at the hearing.

It is almost certain that by the next LAFCO meeting in September, there will be well over 1,000 opposition letters. These are signed and list the assessor's parcel number. The LAFCO can verify each one. What if all 1,000 signers show up at the next LAFCO meeting and pull a 3 minute speaker slip?

Organizations with representatives speaking in support of the district included the City of Paso Robles (not included in the district), the City of Atascadero ("but don't include us in the district"), the Paso Robles Wine Alliance ("this is a local issue which needs to be decided by local voters"), PRAAGS, and the San Luis Obispo Farm Bureau. The Farm Bureau qualified its endorsement. The Bureau had opposed the district until the State Groundwater Management Act (SIGMA) was adopted. Their Board felt this was a game changer and although they don't like the idea of another layer of government regulation, they see the local control by the district as the least bad choice.

Former County Supervisor Patterson spoke in favor while former Supervisor Ryan was opposed. Anthony Calvans, of the San Miguel Community Service District and current first district Supervisorial candidate spoke in opposition.

North county civic activist Susan Harvey (with whom COLAB would usually disagree) spoke against the district formation and provided the most succinct and concentrated distillation of the issue when she called the proposed district board structure a “plantation”. She was referring to the structure where, on financial assessments, fees, and related matters, the board representatives of the large landowners (30-40) will have the preponderate votes based on acreage owned. As more and more large holdings are merged and/or taken over by national and international corporations and as the impact of the structure becomes apparent, the promise of local control could evaporate.

Commissioner Roberta Fonzi (Councilwoman of Atascadero) seemed most interested of all the Commissioners in actually delving into some the issues substantively. Clearly for Mecham and Gibson, it’s a done deal and all the public comment and questions are irrelevant irritants (see the conflict of interest section below). The County staff and proponents have successfully created a straw man by repeatedly insisting that there are only 3 choices to manage the basin - the district, the County administration, and, failing either of those, a takeover by Darth Vader in the form of the State.

**County As Applicant Is Huge Conflict:** We repeat the section from last week here as a convenience to our readers, many of whom have asked to have it available for forwarding to others.

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 an admission 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.

**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 to 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.

**The Schedule:** The Commission continued the hearing to Thursday, September 17, 2015 at 9:00 AM in San Luis Obispo. The Commissioners indicated that they would be ready to take action on that date. Pointing to the done deal, and as Commissioner Clift said, our role is simply to see if the proposal conforms to the Cortese-Knox Act. If LAFCO approves the County’s application on September 17<sup>th</sup>, the ball will be back in the County’s court to carry out the schedule illustrated below:

**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

Plan your holiday season now. No Christmas shopping or parties. You have to draft rebuttal arguments