



COLAB SAN LUIS OBISPO COUNTY



WEEK OF MAY 24-30, 2015

LAFCO RECEIVES ORIENTATION ON PASO WATER DISTRICT

**NO BOARD OF SUPERVISORS MEETING ON
TUESDAY MAY 26TH**

**WILL APCD ATTEMPT TO EVADE COURT
DECISION INVALIDATING DUNES DUST RULE?**

**PASO BASIN WATER EIR NOTICING MUFFED?
COULD REQUIRE NEW 45 DAY COMMENT PERIOD AND NEW
RESPONSE PERIOD RESULTING IN LAPSE OF EMERGENCY
MORATORIUM PRIOR TO EFFECTIVE DATE OF PERMANENT
ORDINANCE**

Board of Supervisors Meeting of Tuesday, May 19, 2015 (Completed)

Item 3 - Purchase Agreement For Diablo Power Plant Surplus Desalinated Water Becomes Hill Campaign Piece. The County is entering into an agreement to purchase water that could be used in an emergency in Cambria. It would have to be trucked, since there are no pipeline connections from the remotely located power plant. During the meeting Supervisor Hill portrayed himself as the key expediter/facilitator of the matter and champion of desalination. Other board members inexplicably and submissively followed the script. Actually, getting the water to where it can be used may be highly problematic, as noted in the write-up. Hill, in an egotistic move, was quick to post a revisionist self-adulatory ad on his campaign web site.

Adam Hill Leads On Local Water Solutions

Supervisor Adam Hill leads the County in its first step to securing a new and significant drinking water source for south county residents.

Today, at their regular meeting, the Board of Supervisors considered and approved a consent agenda item to enter into a Water Sale Agreement with Pacific Gas and Electric Company (PG&E), enabling CalFire to use Diablo's desalinated water in emergency situations. PG&E utilizes a reverse osmosis desalination facility to produce water for their onsite operations at Diablo. The desalination facility has the capacity to produce more than 450 gallons per minute and the system currently runs between 40% – 50% capacity.

Supervisor Hill pulled the item from the consent agenda to discuss the potential of expanding the County's partnership with PG&E to include use of their fully permitted and operational desalination plant to replenish and stabilize south county's severely declining water aquifers. Supervisor Hill shared his vision of a capital project with the County as the lead agency that would pipe the desalinated water from Diablo into south county aquifers. Hill's motion that passed unanimously will have the County's Drought Task Force work with PG&E to prepare a logistical report that will study the proposed capital project and partnership with PG&E. The report will then be presented to the Board of Supervisors within 120 days. Hill and 4th District Supervisor Lynn Compton, also a south county Supervisor, agreed to serve as a subcommittee from the Board to coordinate with the Drought Task Force.

"I believe the hard work put in to create this opportunity will pay off with an agreement to buy desalinated water to help our declining aquifers," said Hill.

So just how is this water going to get to south county aquifers?

County to PG&E: "Thank you for your water and now please close the power plant as quickly as possible."

Background:

The write-up stated:

The Pacific Gas and Electric (PG&E) Company's Diablo Canyon Power Plant uses a reverse osmosis desalination facility to produce water for their onsite operations. The desalination facility has the capacity to produce more water than needed for such day-to-day onsite operational needs. The desalination facility can produce more than 450 gallons per minute and the system currently runs between 40% - 50% capacity.

The water would be stored and used in a fire emergency. The drought-stricken Cambria pines present a tremendous hazard. The Board letter did not mention sending water to south county aquifers in the first place.

Item 38 - 3rd Quarter FY 2014-15 Financial Report. The Board used the occasion of receiving the 3rd Quarter FY 2014-15 Report as an opportunity to crow about how well it has managed the budget. Instead of rigorously questioning staff, it accepted a bland report and never tested the CEO or Department Heads. Even if everything is absolutely perfect, it's the duty of our elected representatives to poke around and see what emerges.

The staff and Board assert that the \$7.4 million of internal transfers and contingency transfers were planned to cover negotiated salary increases previously approved by the Board and the \$2.4 million, \$1,000 per employee Christmas present, even though the Board item described these as "prevailing wage adjustments."

The Board letter stated:

County departments report that they expect to absorb 94% or approximately \$8.3 million of this through a combination of salary savings generated by staff vacancies, reductions in services and supplies costs, and unanticipated revenue. The balance of the expenditures is proposed to be covered with \$494,295 General Fund contingencies.

- a. If the departments can offset \$7.4 million of cost by savings generated by vacancies, savings in services and supplies, and unanticipated revenues, was the budget too large in the first place?
- b. Why were the triggering labor contract mechanisms (prevailing wage adjustments) not foreseen in the preparation of the proposed FY 2014-15 Budget?

The CAO's Board letter stated in part:

Of the \$8.8 million in unbudgeted expenditures, approximately \$7.4 million (84%) is due to prevailing wage adjustments granted to many employee bargaining units and the one-time \$1,000 Health Care Cost Offset payment to all permanent full-time employees and a prorated amount to all permanent part-time employees in FY 2014-15. As noted, departmental savings will be the primary source of funding for unbudgeted expenditures associated with the compensation increases. To the extent departmental savings are not available to cover the amount, staff recommends that your Board authorize a transfer of the deficient amount out of General Fund contingencies and/or reserves to the departmental operating budgets.

Note that the CAO's own write-up states that the \$8.8 million (including the \$7.4 million in salary costs) is comprised of "unbudgeted expenditures." The justification for this way of handling the raises and Christmas gift was that they didn't want the unions to know how much money they had during labor negotiations. Of course any union negotiation team worth its salt can read the Annual Budget and the Comprehensive Annual Financial Report just like anyone else.

No Board of Supervisors Meeting on Tuesday, May 26, 2015 (Not Scheduled)

Monday, May 25, 2015 is Memorial Day. The Board typically does not meet on Tuesday following a holiday.

Local Agency Formation Commission (LAFCO) Meeting of Thursday, May 21, 2015 (Completed)

Item B-1: Study Session - Paso Robles Groundwater Basin Water District-History and Current Status of Basin, County's Resolution of Application (Recommend Receive and File). The Commission received a status report on the history and current conditions in the Paso Basin prefatory to the beginning of its processing of the County's application for creation of a Paso Robles Basin Water Management District.

County Paso Basin District Formation Manager John Diodati presented the various components of the application. As of the meeting date, no formal complete application had been filed by the County. This is because the County has never finished the required work, but rushed it through its own Board meeting without real examination or debate. In effect the County is piecemealing its application and making up some parts (particularly the financing and proposed district boundaries) as it goes along. COLAB asked the LAFCO Commissioners if they would cut this slack for any other hypothetical applicant. NO answer.

Similarly, we asked how the Commission could make a determination without actually knowing what the proposed district's services, functions, and regulatory activities would be after the 5-year period where its only function will be preparing a water sustainability plan (for \$1 million per year). We pointed out that they wouldn't approve the formation of a new city if they did not know if it would provide policing, fire, road maintenance, and so forth.

In the case of the proposed district, we know from the enabling legislation (AB 2453) the potential activities that it is likely to undertake over time. The least LAFCO could do is require the County to prepare hypothetical specimen budgets which include the actual service and regulatory activities beyond simply preparing sustainable basin plan. If it fails to do this, the financial impact on resident tax and fee payers will be wildly understated.

There was considerable discussion about the LAFCO processing schedule and whether there should be hearing in the north county. A specimen schedule is displayed on the next page. Staff will report back on further refinements, including dates and locations.

Process Ramrodded? Gibson was absent, so Hill was there in his place. Will Mecham and Gibson, as applicants, dominate the other 5 members of the Commission? The Commission's Counsel, Ray Biering, objected to complaints from citizens that, since the County is the applicant, Mecham and Gibson have an inherent conflict. Biering dismissively excused the problem on the basis that the State law provides that local officials whose jurisdiction has an application before LAFCO do not have a conflict. The fact that a law provides a dodge does not vitiate the problem logically or ethically. Those who oppose the district or who would like to

have alternatives explored are simply being told to shove it. Tom Murray, who is the Chair and the Public Member (does not represent a city or the County), seemed to be willing to ask questions.

Possible Schedule		
Action	Target Date	Comment
Board Consideration of Resolution of Application	April 21, 2015	Approved by the Board of Supervisor
LAFCO Staff Review-30 day Initial Review Begins	When Submitted	Expect application to be submitted soon
LAFCO Staff Analysis and Staff Report Preparation	On-going	Complete staff review and analysis of Boundary and Powers
Study Session: The Basin and the Resolution of Application	May 21, 2015	Study Session
Study Session: DWR and Fox Canyon Groundwater	June 18, 2015	Study Session
Notice of Public Hearing: Pending Board approval of funding plan and other information	July - 2015	21-Day newspaper notice is required. Direct landowner-voter notice is not required, but will be completed at least 21 days in advance of the hearing
Staff Report and Documentation Release	July - 2015	Staff Report and other documentation
1st Public Hearing	August 20, 2015	Public Hearing-Boundaries/Powers
2nd Public Hearing	Sept. 17, 2015	Public Hearing-Funding /Other Topics
Additional Hearings as Needed		

Note that the critical 1st public hearing is tentatively scheduled for August 20, at the peak of the summer vacation period for families. It is likely that many impacted land owners and citizens will not be able to attend. This was one of the ploys used when the Board of Supervisors adopted the Paso Basin Moratorium.

The Commission letter confirms that a number of areas are to be exempted from subjugation to the proposed district.

The Boundary excludes the Atascadero Sub-Basin, the Cities of Paso Robles, and Atascadero, Heritage Ranch, San Miguel and Templeton CSDs from the proposed service area of the District.

Air Pollution Control District (APCD) Meeting of Wednesday, May 27, 2015 (Scheduled)

Item B-1: Hearing to Consider Adoption of Amendment to Rule 1001, Coastal Dunes Dust Requirements. The amendment is to remove one sentence from the Rule. That sentence states:

5. All facilities subject to this rule shall obtain a Permit to Operate from the Air Pollution Control District by the time specified in the Compliance Schedule.

The Board letter recommends that the sentence be removed because the Court found it to be illegal. Specifically, The Second Appellate District Court found that the APCD *exceeded its authority in adopting rule 1001 of Regulation X, Fugitive Dust Emission Standards Limitation and Prohibitions (Rule 1001), which requires that the California Department of Parks and Recreation obtain an air emissions permit to operate the Oceano Dunes States Vehicular Recreation Area.*

The APCD held a special meeting on April 16, 2015, to consider whether it would appeal the decision to the California State Supreme Court. During that meeting no decision was made with respect to an appeal. Instead, the APCD determined to request clarification of the decision from the Appeals Court. Reportedly the Court confirmed the decision and its reasoning. Significantly, the response from the Appeals court is not included in this package.

There are at least 4 potential problems resulting from the current situation, the content of this agenda item, and the Court decision itself :

1. It is not known if the appeal to the State Supreme Court option is still open. Did the time deadline pass (normally 30 days) to file a notice of appeal. Or did the filing of the request for clarification somehow toll the deadline period? Could the APCD suddenly authorize an appeal during its meeting of May 27th ?

2. The APCD Board letter states in describing a potential alternative action:

The Board could choose not to remove the permit condition from the Rule. In that case, the Rule would remain inconsistent with the court finding and could be subject to further legal challenge. Staff does not recommend this option.

This sentence seems strange. Ignoring the Court of Appeals could subject the APCD members and Executive Director to contempt proceedings. Moreover they would be in violation of a valid court decision (if not pending appeal) and subject to removal from office.

3. The Board letter further states:

This proposed Rule revision will remove the permit requirement without changing the effectiveness of the Rule. District.

Essentially the staff is minimizing the impact of the Court decision and suggesting that they plow ahead as if nothing happened.

But the Rule is now unenforceable. What if State Parks fails to carry out some of the tests or fails to keep the required schedules?

4. The Consent Decree: More significantly the Court decision stated:

Because air pollution control districts are precluded from regulating indirect sources of PM10 emissions, District asserts on appeal that fugitive dust/sand from the SVRA is a direct source emission. We reject this contention. The argument would be plausible if a state park was operating a sand quarry or removing contaminated soil with machinery. The Legislature has provided that those activities (a stationary source emitting air pollutants) are subject to regulatory permits.⁴ (See e.g., § 42310.5 [asphalt plants]; §§ 42314.1, 42315 [facilities that burn municipal waste, landfill gas, or digester gas].) A sand dune, however, is an inert mound of sand. If off-road recreational vehicles cause or exacerbate PM10 emissions and District can regulate them, then any local air pollution district could control any recreational activity that combines with any natural phenomenon causing air pollution. This would include boats on a lake, motorcycles in a desert, and snowmobiles in a forest.

This would suggest that not only can the APCD not require a permit, but that it is precluded from regulating indirect sources of PM10 emissions. This would seem to throw the whole Rule and process into the dumpster. The Board letter says the rest of the provisions are still in effect because of a separate consent decree between the State Parks and the APCD:

In March of 2014 the District entered into a Consent Decree with State Parks that fully incorporated the Rule requirements and established a collaborative mechanism for implementing the Rule and resolving disputes outside the permit process. As a result, the requirement for a permit has not been utilized since the Consent Decree was initiated. Nonetheless, an April 6, 2015 decision by the State Court of Appeal rendered the permit requirement invalid, making it necessary to formally remove that requirement from Rule 1001 to make it consistent with the court finding.

The fact that a permit has not been utilized is irrelevant.

The problem for APCD is that, as noted above, the Court found that Air Districts don't have the legal power to regulate non-point sources of PM10 in the first place. The consent decree outlines the process by which the APCD is regulating non-point sources of PM10. Is not the Consent Decree a nullity at this point?

B-3: APCD 2015-16 Proposed Annual Budget. The Budget decreases from \$4.7 million to \$4.2 million, yet maintains the current staffing level at 23.5 FTE's. This is the result of declining revenues. The gap will be made up on the expenditure side by reducing the amount expended on consulting contracts. The write-up indicates that the agency will be able to perform its "core functions" satisfactorily.

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO
SUMMARY BUDGET REQUEST - FY 2015-2016

05/27/15

	BUDGET 2014-15	ESTIMATED 2014-15	REQUESTED 2015-16
REVENUES			
Property Taxes	\$ 302,598	\$ 314,817	\$ 323,815
Operating & Authority to Construct Permits	1,860,000	1,810,677	1,850,000
Other District Fees (Asbestos, Environ Assess, Burn Fees)	191,144	214,294	171,600
Mutual Settlements	15,000	49,988	15,000
Interest	5,000	7,683	7,000
DMV Air Fees	994,526	1,015,124	1,004,471
State & Federal Aid	229,141	253,091	237,416
Other Sales & Miscellaneous Revenues	2,000	4,737	2,000
Cancelled Reserves & Designations	218,952	218,952	105,101
Fund Balance From Prior Year	668,259	668,259	508,897
Encumbrance Reserve From Prior Year	142,033	142,033	0
TOTAL FINANCING	\$ 4,628,653	\$ 4,699,655	\$ 4,225,300

As outlined above, key revenues include permit fees and State Department of Motor Vehicle Air Fees. The APCD has been using significant amounts from its prior year fund balance as well. For the past 2 years there have been no broad based fee increases. We expect the pressure for new fee increases to build.

MUFFED WATER CONSERVATION PLAN (PERMANENTIZATION OF THE PASO MORATORIUM) EIR NOTICE MAY REQUIRE RE-DO

Reportedly, the County failed to publish one of the legally required notices announcing the publication and comment period start for the so called “Water Conservation Plan” EIR. Water Conservation Plan is the County’s euphemistic title for the collective amendments to various sections for the Plan of Development and zoning ordinances which would render the Paso Basin Moratorium permanent, impose new water conservation requirements, and spread some aspects to other parts of the county. No doubt the lawyers are scrambling around trying to figure out an excuse to ignore the problem. Of course they have to be careful, because if they willfully give advice contrary to law, they could be subject to sanctions. Moreover, the ordinance and Plan amendments could ultimately be determined to be invalid by a Court. Thus, sweeping the problem under the rug has severe risks.

The RE-DO: The better practice would be to re-notice the circulation of the EIR and allow for a new 45-day comment period. This would be followed by a 30-day period for the staff to prepare responses to any new comments. The Planning Commission is in the process of reviewing the program and the EIR. The Commission would not be able to take formal action until new process is complete, which means that they would have to wait until late July. Once the Planning Commission finishes and adopts a recommendation to the Board of Supervisors, there must be a minimum 10-day interval which elapses before the Supervisors can conduct a hearing and take action. The current moratorium expires in mid-August. Even if the Board adopted the program in early August, the moratorium would lapse, because there is a 30-day waiting period before a new ordinance takes effect. The Board cannot adopt the new ordinance on an emergency basis,

because the State law that allowed the original urgency ordinance forbids adoption of a 2nd one for the same purpose.

Given the muffled notice, another question arises: **Is** the Planning Commission's current review legal? If there is a re-notice, new circulation, new comment, etc., isn't their current review invalid? Shouldn't they start over?

Planning Commission Meeting of Friday, May 29, 2015 (Scheduled) --

NOTE: It's on a Friday!

Please see the item immediately above, which may slow or render the matter discussed here invalid. Please note the extensive portions of the County General Plan, Zoning Ordinances, and Building Code impacted in the title summary below.

Item 4 - Continued hearing to consider a request by the COUNTY OF SAN LUIS OBISPO for amendments to the Agricultural Element and the Conservation and Open Space Element of the General Plan; and amendments to Title 8 (Health and Sanitation Ordinance), Title 19 (Building and Construction Ordinance), and Title 22 (Land Use Ordinance) of the County Code in order to implement the Water Neutral New Development and the Water Waste Prevention components of the proposed Countywide Water Conservation Program. The proposed Countywide Water Conservation Program and associated amendments would affect water use in both new and existing development, including all urban and rural land uses within the unincorporated areas of the county as well as agricultural operations. The requested amendments would specifically modify: 1) the Agricultural Element of the County General Plan, Agricultural Goal – AG1 (Support County Agricultural Production), Agricultural Policies – AGP10 (Water Conservation) and AGP11 (Agricultural Water Supplies); 2) the Conservation and Open Space Element of the County General Plan, Water Resource Policy – WR 1.7 (Agricultural operations), Water Resource Implementation Strategy - WR 1.7.1 (Protect agricultural water supplies), and Water Resource Policy - WR 1.14 (Avoid net increase in water use); 3) Title 8 (Health and Sanitation Ordinance) of the County Code for the addition of a new Chapter 8.69 – Urban and Rural Development Water Conservation Requirements; 4) Title 19 (Building and Construction Ordinance) of the County Code, Chapter 7 – Plumbing Code, Section 19.07.42 – Water Conservation Provisions; and 5) Title 22 (Land Use Ordinance) of the County Code, Chapter 22.06 – Allowable Land Uses and Permit Requirements by Land Use Category, Section 22.06.030 - Table 2-2, Section 22.06.040 – Exemptions from Land Use Permit Requirements, Chapter 22.30 – Standards for Specific Land Uses for the addition of a new Section 22.30.204 – New or Expanded Crop Production Overlying the Paso Robles Groundwater Basin, Section 22.30.310 – Nursery Specialties, Chapter 22.62 – Permit Approval or Disapproval, Section 22.62.030 – Zoning Clearance, and Chapter 22.80 – Definitions/Glossary, Section 22.80.030 – Definitions of Land Uses, and Specialized Terms and Phrases. This project affects all of the unincorporated portions of the County.

Or in a nutshell - Water Conservation Program/General Plan and Land Use Ordinance Amendments which will:

- 1. Make the Paso Water and Development Moratorium permanent.**
- 2. Create a Water Offset Program (Pay to use your own water).**
- 3. Add miscellaneous restrictions on the use of water.**
- 4. Begin to spread various portions of the moratorium to other parts of the county.**

The Commissioners began the process of considering the program on May 14, 2015. The session lasted from 9:00 AM until 5:00 PM and was continued to Thursday, May 28th for further review and potential adoption.

Background:

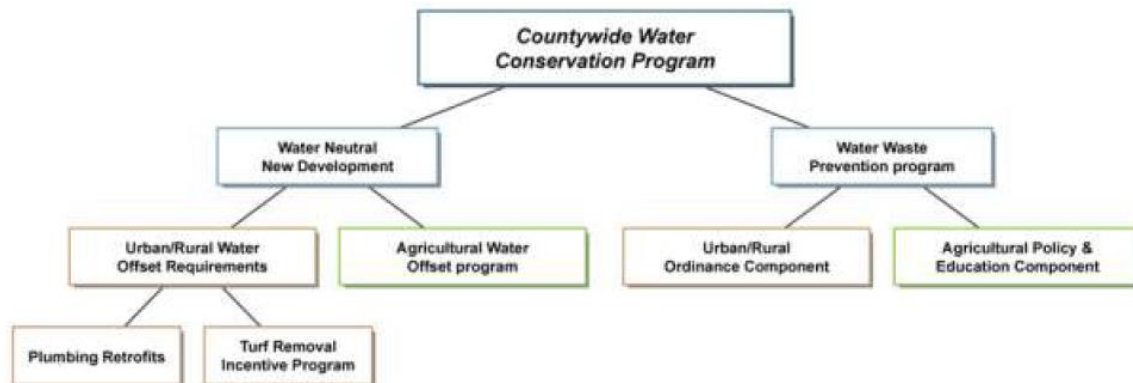
The objectives of the development and implementation of the proposed Countywide Water Conservation Program (Program) are to substantially reduce increases in groundwater extraction in areas that have been certified LOS III; provide a mechanism to allow new development and new or altered irrigated agriculture to proceed in certified LOS III areas, subject to the requirements of the County General Plan and County Code, in a manner that fully offsets projected water use; and to reduce wasteful use of water in the county.

The write-up goes on:

The proposed Program is comprised of two components, Water Neutral New Development (WNND) and Water Waste Prevention (WWP). The figure below shows the individual components of the Countywide Water Conservation Program.

Background:

The chart below illustrates the key strategy components of the program. No information is presented on how much water will be saved through the implementation of each category. How can the Commission recommend a public policy with major impacts on peoples' property and lives without any detailed performance estimates backed by current data (of which there is a huge amount)?



Important considerations include:

1. Planning Commission should structure its review process before jumping in the swamp.

The staff report and substantial accompanying attachments are designed by staff to lead the Commission to support the proposed so-called “Water Conservation Program.” Rather than simply watching the proverbial movie, the Commission should set a process structure for its multi-meeting deliberations.

a. It should direct staff to prepare a more complete chart, which shows each of the program components that are included under the boxes in the chart below.

b. This new chart should be accompanied by a table showing the purpose, the geographic areas impacted by each program component, the estimated amount of water to be saved from current use (if any), and the estimated amount of water to be saved by forestalling growth.

Right now the entire program is based on subjective opinion.

c. The Commission should then set up a schedule and order for its consideration of each component.

2. The Commission should direct staff to present data in a complete and non-relative way.

For example, for the Paso Basin offset program:

a. The Commission should receive a presentation on the new Paso Basin model from the consultants who prepared the model. One cannot approach policy-making without a clear understanding of the facts contained in this report.

b. The Commission should pay particular attention to the amount of pumping by agriculture, municipal, residential, commercial, and so forth.

c. It is absolutely essential for the Commission to understand how the proposed program would impact each of these categories.

d. It is especially important and necessary that the staff break down the amount of water used by the major agricultural subcategories, including irrigated agriculture (and then further estimates of grapes, alfalfa, nut trees, and other major subcategories). This should be relatively easy, since the staff already has the Resource Conservation District Report on the program design, which shows how much water each crop type uses. The staff also has a list of the acreage for each crop type and other land uses which was generated by the County's LAFCO consultant, NBS, from the County Assessor's parcel data.

Note: The Commission should receive a presentation from NBS (not about district financing, but about its analysis of the land use categories.)

e. Other ag uses include grazing, 143,184 acres of the 453,729-acre Paso Basin (SLO County portion).

f. Similarly, single-family residential consists of approximately 85,000 acres. What percentage of the water do single-family residences use? How much would the moratorium extension save in this category?

The Commission cannot properly assess the proposed so-called "Water Conservation Project" without this data.

3. The Commission should receive a briefing from County Counsel on the impact of the current Quiet Title Adjudication proceeding and its ultimate impact on the proposed program. The Save Our Water Rights group indicates that nearly 500 separate owners, representing 17,000 acres, have signed up to become plaintiffs against the County and other municipal appropriators. The trial has been set for December 7, 2015. If the basin is placed in adjudication, can the County enforce the offset and other restrictions?

4. How much water is being used by the municipal appropriators (Paso Robles, Atascadero, Templeton CSD, and the County itself) and others which will be exempt from the program? The County planning and zoning laws do not pertain to the cities, and Templeton CSD is tying itself to the Atascadero Water Company's assertion that the Atascadero sub-basin should not be subject to any of this.

5. The Commission should carefully examine the water credit program, which is an intrinsic part of the larger program as it applies to the Paso Basin. The Commission should receive a report from the Las Tablas Resource Conservation District staff on this subject. County staff should provide the Commissioners with copies of the RCD's report, which contains some strong warnings.

MEMORIAL DAY



FALLUJAH



GETTTYSBURG