

COLAB SAN LUIS OBISPO COUNTY
WEEK OF SEPTEMBER 28 - OCTOBER 5, 2013

ALERT

**BOS TO VOTE ON EXTENDING PASO WATER
MORATORIUM FOR FULL 22 MONTHS
(TUES. OCT. 1, APPROXIMATELY 9:30 AM)**

***Two Meetings to Choose From:
Santa Maria and Santa Barbara!***
Meet Me Half-Way Dinner Conference

**October 30 at the Santa Maria FairPark
&
October 31 Luncheon At the Reagan Center in Santa Barbara**
Featuring

Robert Zubrin Ph.D
“Merchants of Despair”

Combining riveting tales from history with powerful policy arguments, *Merchants of Despair* provides scientific refutations to antihumanism's major pseudo-scientific claims, including its modern tirades against nuclear power, pesticides, population growth, biotech foods, resource depletion, industrial development, and, most recently, fear-mongering about global warming. *Merchants of Despair* exposes this dangerous agenda and makes the definitive scientific and moral case against it.

Both Events Include a copy of the book, a \$25 value

Plus, A Great Meal by Testa Catering

Dinner meeting includes beer and wine!

**Dinner Meeting: Reserved Seating \$550 for ten guests
or open seating \$55 per person**

**Lunch Meeting: Reserved Seating \$350 for ten guests
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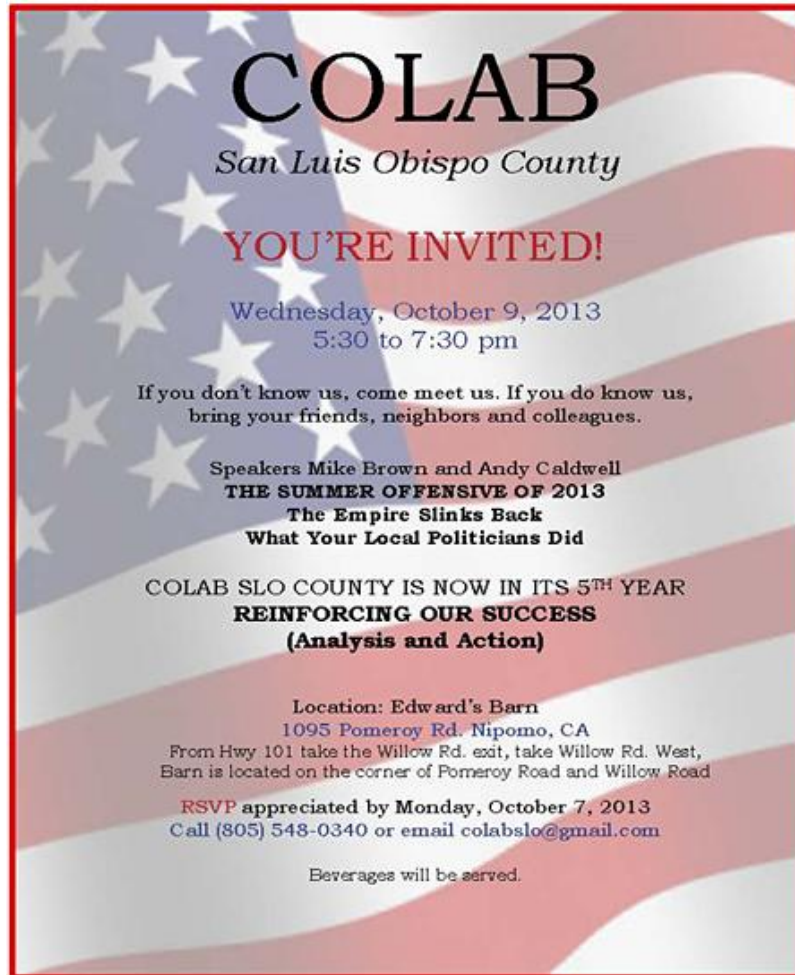
Santa Maria, CA 93456

Or Pay Online at www.colabsbc.org (events tab)

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COLAB SB and SLO County

SAVE WEDNESDAY OCTOBER 9, 2013 FOR NIPOMO EVENT 5:30 PM



**SUPERVISORS IGNORE REQUEST FOR PUBLIC AIRING
OF ICLEI RESILIENT COMMUNITIES DOCTRINE
(For the 3RD Week in a Row)**

**PASO WATER MORATORIUM
COMPLEXITIES AND
CONSEQUENCES METASTASIZE
(SEE BOS ITEMS 13 AND 14 BELOW)**

**APCD ELECTS HILL VICE-CHAIRMAN
(POSITIONS HIM FOR CHAIRMAN IN 2014-SEE PAGE 13)**

**DOES SLOCOG UNDERSTAND SUSTAINABLE
COMMUNITY STRATEGY DENSITY IMPLICATIONS?
(SEE PAGE 10 BELOW)**

Board of Supervisors Meeting of Tuesday, September 24, 2013 (Completed)

No Significant Items. There were no significant policy matters on this agenda.

General Public Comment. For the 3rd week in a row, speakers requested that the Board agendaize an item to receive an explanation from Supervisors Hill and Gibson concerning their signatures on the ICLEI Resilient Communities for America Agreement.¹

The Board ignored the request without comment. The Board should conduct a full discussion of the commitment and its policy implications for the County. Please see last week's COLAB Weekly Update and the September COLAB SLO Newsletter for details at the link: http://www.colabslo.org/weekly_alerts.asp . A copy of the preamble to the agreement signed by the two Supervisors is displayed below:

A CALL TO ACTION

Communities across the country are on the front lines of three related challenges: record-breaking extreme weather fueled by climate change, unreliable and costly energy, and ongoing economic uncertainty. As the pace of change quickens, city and county governments must work to make communities more “resilient”: able to bounce back from disruptions in a sustainable way and maintain a good quality of life for all. As local elected officials:

Board of Supervisors Meeting of Tuesday, October 1, 2013 (Scheduled)

PASO ROBLES WATER BASIN MORATORIUM ITEMS

Introduction: The Board will consider extending the moratorium from the current interim 45 days to the maximum allowed 22 months and 15 days. It would be in effect until August 26, 2015. The actual extension of the moratorium is contained in Agenda Item 14 along with other corollary items. Matters pertaining to the potential structure of a water management district or other governance structures are contained in Agenda Item 13. Item 13 also contains an extensive discussion of what further studies and resulting rules are needed to inform and implement a basin management system.

Thus, there are actually two separate hearings. Further complicating (and confusing the day's proceedings) is the problem that Item 14, which contains the legally required hearing on the extension of the moratorium, also contains 3 separate and distinct matters other than the extension of the moratorium. One of these is a proposed resolution defining “vesting” for purposes of “pipeline” projects. (For example, if a farmer

¹ ICLEI is the International Council for Local Environmental Initiatives. **ICLEI - Local Governments for Sustainability**, founded in 1990 as the **International Council for Local Environmental Initiatives**, is an [international](#) association of local [governments](#) and national and regional local government organizations that have made a commitment to [sustainable development](#). The association was established when more than 200 local governments from 43 countries convened at its inaugural conference, the World Congress of Local Governments for a Sustainable Future, at the [United Nations](#) in New York in September 1990. Wikipedia, September 18, 2013

contracted for plants but they have not been installed, is he subject to the ordinance?) This subject alone deserves its own analysis and hearing.

The Board should break apart Item 14 and hold two separate hearings and deliberations – one on the moratorium and one on the vesting resolution.

Each of the Agenda items is discussed below:

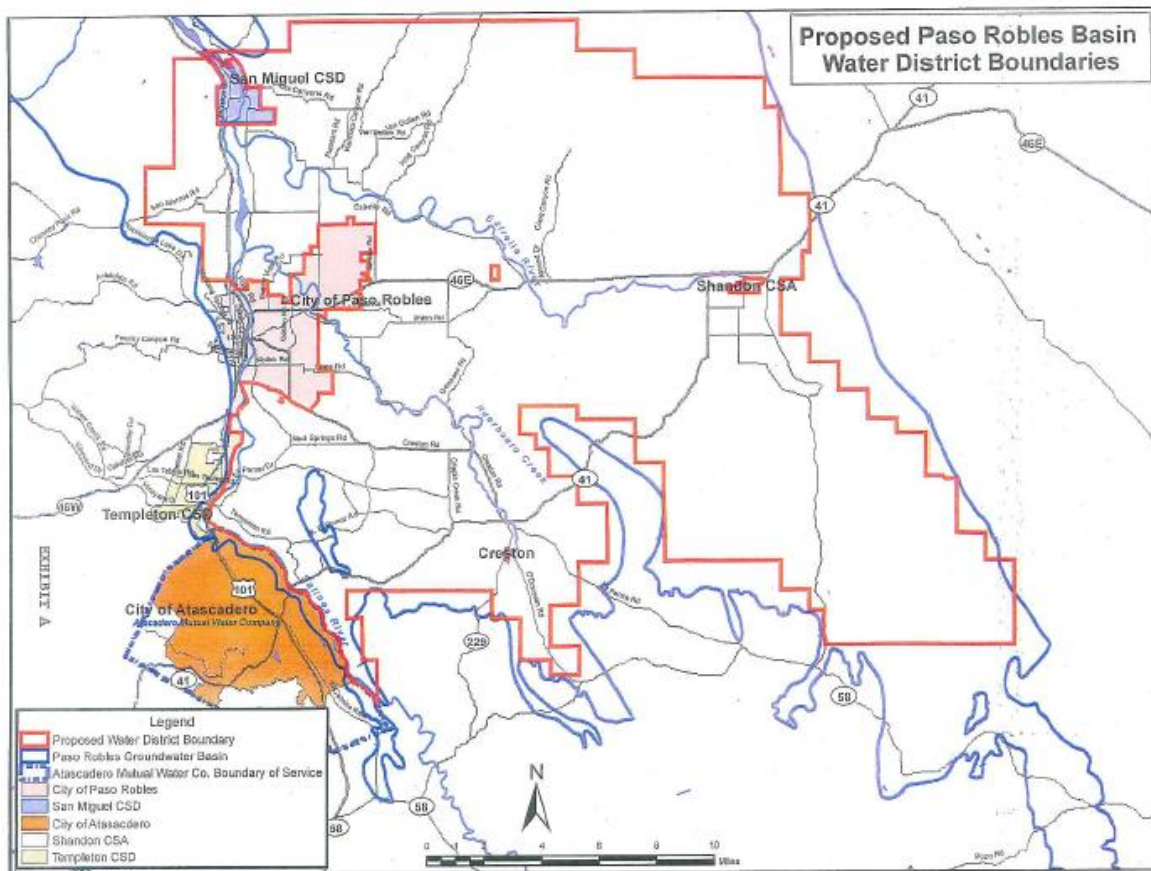
Item 13 - Paso Robles Groundwater Management Plan Implementation Update.

This item contains a fairly complex discussion of:

- Studies and further “proofs” which will be necessary for the Board to be able justify the moratorium and successor permanent regulations.
- The legal and process advantages and disadvantages of both adopting and operating various versions of dependent (county governed) and independent water management agencies.
- Reasons not to use a Joint Powers Agreement (JPA) as the form of a water management agency. Because the area subject to the moratorium (and in all likelihood) permanent restrictions is in the unincorporated County outside of the cities (the County has no authority) and the unincorporated villages (which the County has declared exempt), there are no agencies directly involved with which to form a JPA. (Except perhaps the Conservation District).
- An option to seek special legislation to develop a district with a balance of representation in which some Board members will be elected by the normal one person one vote method and some elected on the basis of the land they own and hence their dollar assessments. The current version is based entirely on the latter.
- Creation of a new entity with new revenues, fees, or taxes that will require a vote of the impacted property owners. This will be a high bar to achieve. As we have pointed out before, the County has not delineated how many and the location of properties with well problems. Thus it is difficult to assess actual interest.

The Paso Robles Agricultural Alliance for Groundwater Solutions (PRAAGS) has already filed a petition with the Local Agency Formation Commission (LAFCO) to start the process of establishing a district. It will be interesting to see how the Board deals with this fact as it speculatively discusses alternative structures. Have some Board members promised to support the PRAAGS proposal in order to obtain its support for the moratorium? The petitioners propose a \$14 per year assessment for irrigated land and a \$4.67 per year assessment for non-irrigated land within the district. Votes and fees would be based on acreage owned.

The map of the proposed district is displayed below:



Clearly Item 13 points out the many risks and issues stemming from the moratorium and especially the underlying notion that the County or some other entity can, by fiat, allocate water to create “equity,” as demanded by the Pro Water Equity Group. Pro Water Equity opposes an independent district and supports a district within a district concept:

PRO Water Equity, Inc. believes that the best governance structure for the Paso Robles Groundwater Basin is a "dependent district" under the San Luis Obispo County Flood Control District ("Flood Control District"). This could be set up as a zone of benefit under the Flood Control District with an advisory committee or with a separate Board of Directors.

Under this version the Board of Supervisors would have the ultimate legal and budgetary authority. This again underscores the fact that this issue is really about prohibiting development in the rural and suburban unincorporated North County. Have some Board members encouraged or promised to support Pro Water Equity in promoting this version?

The Moratorium Already Violates Water Law: Buried deep in the Item 13 report is a paragraph which exposes a truth that should have been made salient and discussed

before the Board ever considered the moratorium. The relevant section is highlighted below:

On August 27, 2013, your Board also directed staff to return to discuss water allocations. When dealing with water from a groundwater basin, the concept of a water allocation most often refers to the amount of water that a particular pumper has a right to take from the basin. This is a legal determination that requires the evaluation of evidence of past pumping practices, the historical use of the water, the safe yield of the basin, and the types of other users within the basin, among other things. Such evidence must be evaluated against complex constitutional and statutory provisions, including case law interpreting those provisions that is sometimes a century old. This process is adjudicatory in nature and, as a result, is determined by a court. Because of this legal landscape, attempting to allocate water within the Paso Robles Groundwater Basin through an AB 3030 plan is likely both legally and practically infeasible.

This type of allocation of water rights differs from regulations that would limit pumping through an AB 3030 Plan. The Water Code provides that an agency that adopts a Groundwater Management Plan pursuant to AB 3030 has the authority to limit or suspend extractions if it is determined through study and investigation that the groundwater replenishment programs or other alternative sources of water supply have proved insufficient or infeasible to lessen the demand for groundwater. If instituted, these limits on pumping would not allocate water rights but would address shortages through specific demand management practices.

(From page 9 of the staff report)

Here is the rub. By adopting the arbitrary moratorium, the Board of Supervisors (not a Court) just allocated water from people who have water under their property, but have not developed it and are not using it, to people who already have permitted wells and projects.

The Board's own report says that this has to be a judicial determination.

Item 14: Package of Actions Related to the Paso Robles Water Basins Moratorium, Including Setting the 22 Month and 15 Day Maximum. The item actually contains four separate and distinct groups of policy questions of which only one is the extension of the moratorium. Each of these is significant:

(1) Discussion of options for implementation of the Urgency Ordinance relative to the development of an Approved County Water Conservation Program;

(2) Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246;

(3) Consider directing staff to explore possible amendments to the General Plan, Title 22 of the County Code, and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin; and

(4) Hearing to consider the extension of urgency Ordinance No. 3246 pursuant to Sections 25123, 25131 and 65858 of the California Government Code for a period of up to 22 months and 15 days. Districts 1 and 5.

Policy Question 1 - Water Conservation Program: This portion of agenda item 14 deals with how the County will develop and implement a water management plan in the basin. Some of the structural complexities and legal issues are noted in the discussion of Item 13 above. The problem is that the moratorium ordinance is already in effect and if extended must be implemented immediately. Staff recognizes that such program will be difficult and that there is little precedent for or knowledge about how to administer such a program for agriculture.

Agricultural Offset Program

Just as new residential uses need to offset their proposed new water use, irrigated agriculture is also required to offset its new water use at a ratio of 1:1. Developing a program for agriculture is complex, and unlike residential retrofit programs, County staff has little information at this time about development and implementation of an agricultural program.

The staff report considers the initial challenges of the Board having adopted the moratorium prior to developing the procedures which are necessary for its administration.

This “no net increase” requirement will necessitate implementation of water conservation programs for rural residential development and irrigated agriculture. The alternative to the design, adoption and implementation of a basin wide water efficiency and conservation program is to let individuals identify and create offsets themselves on a project by project basis. While it is possible to accomplish this, having an approved program will make it easier and provide certainty to homeowners and agriculturalists subject to the requirement.

Until your Board approves offset programs, staff will be working with individual applicants to determine the appropriate offset for the proposed project. Where a discretionary permit is required, current planning area standards, as well as the Urgency Ordinance, will be applied. Note this sly little last sentence means that for all discretionary projects the 2:1 offset requirement will actually be in effect. Double jeopardy! Staff lists further difficulties in administering the program:

- ☐ *the basin covers an area of approximately 790 square miles.*
- ☐ *There are over 8,000 extraction points in the basin.*
- ☐ *There is no centralized administration for outreach, education and monitoring.*
- ☐ *There is no ability to use water rates to manage demand.*
- ☐ *Lack of water rates results in a lack of funding for efficiency/conservation measures and subsidies.*

And a Water Cap and Trade Program: The staff proposes a major program to force owners to upgrade their water systems, forbid landscaping, and to generate credits which the County will market:

In addition, in order to jumpstart the program and provide a “bank” that homeowners can use to purchase retrofit credits, the County could create a retrofit program that could focus on the antiquated subdivision lots and other targeted areas with residences constructed prior to 1994. The County would contract with licensed professionals who would complete the retrofitting work on the properties of participating owners and report the savings from the efficiency measures. The County would then determine the water savings achieved and create a bank. The bank could then provide builders with credits (that would be correlated with the achieved water savings) upon payment of a fee. The fee can cover all County costs associated with the retrofitting activities. These activities could include such items as:

- ☐ Toilet replacement
- ☐ Showerhead replacement
- ☐ Removal of turf
- ☐ Front loading washing machines
- ☐ Water efficient dishwashers
- ☐ Hot water recirculation systems
- ☐ Greywater systems

In this way, individual landowners would not need to find residences in need of retrofit on their own, and hire professionals to complete the retrofits and report the water savings to the County. The County Public Works Department could administer this program and the funding could come from the Flood Control District. As the costs will be recouped, the funds will be replenished.

- a. Does this mean the County is going to become a bank and get into the home loan business?
- b. Will it be placing liens on the properties to secure the loans?
- c. Since the County is a property taxing authority, will the water credit loans be in first position on top of existing mortgages and private home loans?

Policy Question 2 - Vested Rights: This is the tricky item about managing situations in which a landowner asserts that he or she had already undertaken actions to use water prior to August 27th 2013, when the moratorium was imposed. Other than the extension of the ordinance itself, this is the most significant action of the day.

A person seeking to plant irrigated crops will have to meet the requirements listed below to qualify for vesting:

1. Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting, or sale of product, as described in Section 6.A.4 of Ordinance 3246, consists of evidence that the vested area intended to be planted was fully capable of being planted with its intended crop and meets all of the following requirements and time limitations:

a. 100 percent of the area intended to be planted was prepared for planting prior to August 27, 2013, including all of the following: (1) evidence that the area that is intended to be planted has been disked or tilled, (2) if the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified, and (3) fencing required to maintain the crop has been installed; and

b. All wells and at least 50 percent of the irrigation infrastructure required to supply water to the area intended to be planted (such as tank, pumps, underground piping) were installed as of August 27, 2013; and

c. As of August 27, 2013, either (1) the plants intended to be planted (i.e. rootstock) were delivered to the applicant, or (2) the applicant was contractually obligated to accept future delivery of the plants intended to be planted and all contractual conditions precedent to accepting future delivery of said plants were satisfied.

2. Persons or organizations wishing to rely on the exemption described in Section 6.A.4 of Ordinance No. 3246 to establish new or expanded irrigated crop production, and/or to convert dry farm or grazing land to new irrigated crop production, will provide the evidence described in Section 1 above to the Director of Planning and Building prior to establishment of, and/or conversion of dry farm or grazing land for, new irrigated crop production, who will review the evidence submitted and render a written decision.

3. Any aggrieved person may appeal the decision of the Director of Planning and Building described in Section 2 above directly to the Board of Supervisors using the procedures otherwise set forth for appeals to the Planning Commission in Subsection 22.70.050.A of the Land Use Ordinance, Title 22 of the County Code.

Some questions:

a. What are the fees for the staff review and determination on an application for vesting?

b. How can the County make the completion of the items in the vesting Resolution retroactive to August 27, 2013? This is an ex post facto law.

c. What turnaround time can the Planning Department guarantee for review and decision?

d. How long will appeals to the Board take to be processed and scheduled on the Board agenda?

e. What will be the dollar fee for an appeal to the Board?

f. How can the Board of Supervisors set a requirement that 100% of the area to be planted had to be prepared as required in item 1.a above? No notice or warnings were provided prior to August 27, 2013 that such requirements would be invoked.

g. How will the Planning Department determine if the requirements were met prior to August 27, 2013? Written certification of the applicant followed by inspection?

h. What if one of the roving citizen snitches, who are driving around and making allegations against their neighbors ,disputes the applicants' data?

j. Will citizens be able to appeal Planning Department vesting approvals if they disagree? How long will such appeals take and who pays for the staff work, etc.?

Policy Question 3 - Permanent Ordinance: This section betrays the County's intention to essentially undertake the necessary processes (plan amendments, ordinance revisions, CEQA review) to make the moratorium permanent.

Policy Question 4 - Extension of the Ordinance: This is the hearing on the actual extension of the moratorium to 22 months and 15 days. The language must stay the same as in the original. If the Board wishes to change the ordinance, it must lapse the current version and start over. The vote requirement is 4/5ths. (All four supervisors). Given all the problems and legal questions outlined above and in previous commentary, the Board should vote against extending the moratorium. Subsuming the hearing on the extension of the ordinance and combining it with all the other matters in Item 14 is outrageous.

Some of our previous objections are repeated in the Addendum at the end of this Weekly Update Starting on page 14.



Board Inspired Water Snitch

San Luis Obispo Council of Governments (SLOCOG) Meeting of Wednesday, October 2, 2013, 8:30 AM (Scheduled)

Item B-7: Sustainable Communities Strategy (SCS). The SLOCOG will receive an update on the development of the SCS. Readers may recall that this is a regional Plan required under SB 375 (part of the State's suite of global warming legislation). The SCS must demonstrate how the County as a whole (all the cities and the County government) will reduce greenhouse gases by curbing the use of light trucks and cars. The reduction would be achieved by prohibiting suburban and rural development, thereby presumably reducing commuting and other trips. The SCS would be included in a new Regional

Transportation Plan (RTP). Once the RTP is adopted, including the SCS, it must be submitted for approval to the California Air Resources Board (CARB) for approval. Jurisdictions which do not have an approved SCS and RTP would not be eligible for State and Federal transportation funds.

The critical logic begins with projections for the growth of the County between 2010 and 2035. The chart below contains the SLOCG projections.

Table C-1 **Projections for Population, Housing, and Employment (2010 to 2035)**
Medium Growth Projection

Year	Population	Housing Units	Employment
2010	269,637	117,315	95,900
2015	275,590	119,518	101,300
2020	286,590	124,515	106,700
2025	296,851	129,463	110,700
2030	309,288	135,641	115,700
2035	321,741	141,888	120,800
*CAGR	0.71%	0.76%	0.93%
Numeric Growth	52,104	24,573	24,900
Annual Average	2,084	983	996

*Source: SLOCOG 2040 Regional Growth Forecast (AECOM, 2011) *CAGR = Compound Annual Growth Rate*

(Chart from page 15 of the report)

The SCS then must promulgate policies that channel this projected growth into the incorporated cities and unincorporated villages, which will supposedly reduce the light truck and car trips, thereby reducing greenhouse gases. Because various cities (among themselves) and the County do not agree on many aspects of the global warming and “smart growth” doctrine, a SOLCOG subcommittee has been working on the language. The exhibit below illustrates some of the proposed changes from the staff version which the subcommittee is proposing. Although better than the staff version, the language still contains the fundamental doctrine of climate change-inspired smart growth, including limiting suburban and rural living opportunities, promoting stack and pack urban densities, using habitats to limit growth, and promoting social equity.

Exhibit A

<u>Policy and Strategy Amendments Recommended by Advisory Committees</u>	
<u>Policies</u>	
SCS 5	Support compact, mixed use and infill development in target development areas and within 1/3 mile of near major transit stops <u>services</u> and centers; and, encourage incentives such as funding, flexible standards and streamlined permit processing for mixed use and affordable housing.
SCS 7	Promote <u>Support</u> equitable, affordable housing. Expand location - and energy-efficient housing choices for people of all ages, incomes, races and ethnicities to increase mobility and lower the combined cost of housing and transportation.
SCS 14	Protect important farmland, valuable habitats, and natural resources through acquisitions, setbacks, easements and environmental mitigation programs.
SCS 15.	<u>Protect valuable habitats, and natural resources through acquisitions, setbacks, easements and environmental mitigation programs</u>
<u>Strategies</u>	
SCS 3	Support the implementation of programs and projects that enhance multimodal transportation choices, limit automobile-oriented development and promote pedestrian scale communities.
SCS 9	Encourage jurisdictions to provide streamlined installation and permitting procedures for vehicle <u>Support efforts to expand charging and other alternative fuel facilities.</u>
SCS 24 -	Work with <u>Advocate for</u> Caltrans, local jurisdictions, and transportation providers to develop transportation facilities and amenities that fit within the unique character of the community, providing landscaped medians and walkways along major multi-lane arterial highways, streets, and roadways.
SCS 25 -	Coordinate with <u>Advocate for</u> Caltrans and local jurisdictions to implement measures to protect and enhance the distinctiveness of the county's character with appropriate landscape, <u>attractive median and other barrier treatments</u> and screening measures along major transportation rights-of-way with native vegetation in rural areas and theme vegetation in urban areas; <u>and, through the use of distinctive signage, building form and setbacks, walkways, and an appropriate mixture of land uses.</u>

BACKGROUND

(From page 7 of the report)

Analysis: Table C-1 above projects that by 2035, the county's total population will increase by 52,104, which will require the construction of 24, 573 new dwelling units (DU's). The policy above in Exhibit A strongly supports "compact, mixed use development in target areas..."

- Between the 7 cities and the unincorporated County, how many buildable lots exist today? Note: the County just eliminated an unknown number of developable lots (perhaps thousands) in the Paso Basin via its moratorium and announced plans to develop Plan amendments and ordinances to make the moratorium permanent.
- If new lots are needed, will they be allowed solely in the incorporated cities and unincorporated villages?
- What densities will be required under the SCS policy?
- Which communities and in what neighborhoods will these densities be assigned?

Item B-9: Reform of SLOCOG’s Legislative Program. Over the years SLOCOG has adopted a legislative program to advocate in Sacramento and Washington for funding and other policies that assist the planning and construction of local roads and bridges, acquisition of buses, and the improvement of State highways. In recent years the program has become laced with endorsements of “smart growth,” stack and pack housing, social equity concepts, carbon cap and trade, and related canons of the whole enviro-socialist movement.

This year some SLOCOG members objected, and after several meetings the SLOCOG Board abandoned its effort to adopt a 2013 program.

The staff has now prepared a set of Legislative Procedures, which if adopted by the SLOCOG Board, would guide preparation of future programs. The report seems to say that future efforts will be more focused; however, it then opens the door to more mischief:

1. Adopt State & Federal Legislative Programs - Staff will continue to prepare State and Federal Legislative Programs based on a core set of policy principles that address the transportation related interests of the San Luis Obispo region. Each program will identify a range of objectives that address the policy principles and a set of strategies to implement. The programs will designate applicable positions adopted the County, local jurisdictions and the following organizations:

- a) National Association of Regional Councils (NARC)*
- b) Association of Metropolitan Planning Organizations (AMPO)*
- c) League of California Cities (LCC)*
- d) California State Association of Counties (CSAC) and*
- e) California Association of Councils of Government (CALCOG)*
- f) Other MPOs and Councils of Government*

2. Review Proposed State & Federal Legislation – At the start of each new legislative session staff will review proposals to identify those that address an issue that could positively or negatively affect the region and would recommend action based on answers to the following questions:

- a) Is the proposed legislation likely to affect SLOCOG or its member agencies?*
- b) Does the legislation address SLOCOG’s advocacy principles?*
- c) Does the legislation include a mandate?*
- d) Is the legislation likely to have an impact on SLOCOG work?*

e) Is SLOCOG a credible voice on the issue and can it provide applicable input?

f) Does the legislation uniquely affect SLOCOG or its members?

If the organizations named above support global warming driven polices such a smart growth, won't it be more of the same? For example, CSAC has supported every bit of the doctrine and resulting legislation.

SLO County Air Pollution Control District Meeting of Wednesday, September 25, 2013, 9 AM, 1055 Monterey St., SLO (Completed)

Item A-1: Election of a Chair. Due to the death of Supervisor Paul Teixeira, the Chair Position became vacant. The Board voted to make Atascadero City Councilwoman Roberta Fonzi chair until January when there will be a new vote. Fonzi would like to continue for a full year term at that time. Ominously, the Board voted to install 3rd District county Supervisor Adam Hill as Vice-Chair. In January, he will no doubt assert that the historic rotation should occur with him acceding to the Chairmanship.

In a disturbing sequence of events, member Ed Waage nominated Fonzi for Chair and 5th District Supervisor Arnold for Vice-Chair. When objections were raised by Gibson to the Arnold nomination, Waage agreed to separate the questions. Thus there were two votes. In the first Fonzi was appointed. On the second vote Gibson nominated Hill and he was voted in. There was no opportunity for the Board to vote for Arnold. Collegiality seems to benefit the left.

Item D-5: Agreement with Philips 66 Nipomo Refinery for Payments to APCD for Review of Rail Spur Application. The Board adopted the staff recommendation. Troublingly, a number of the same Nipomo planned community residents who want a moratorium on OHV riding on the dunes, stated that they oppose the rail spur and want the refinery shut down.

Background: Phillips has applied to the County for a land use permit to install an extended rail spur on its property. The spur would be used to park oil tank cars. The ability to park oil tank cars will enable the refinery to process more oil (the County already approved a plan for Phillips to process more oil). The rail spur is needed to enable the tank cars to be parked off the main rail line which passes the plant so that other trains are not held up. The County has required that the APCD assist in the review of the Phillips application. In turn the APCD will charge Phillips for the "service."

Item E-2: Air Pollution Control Officer (APCO) Employee Performance Review (EPR) Process. The APCD Board adopted the staff recommendation as outlined in the background section below. One problem is that Board members could lobby each other in secret. For example, if the rating sheet contains rankings of 1 to 5 (1= fail and 5 = excellent), several could agree to weight the rankings very high or very low in order to skew the totals to conform to their opinion of the APCO's performance. COLAB asked if the APCO and every Board member would see each member's rankings, and received

no answer. If the individual rankings are kept secret from the members and the APCO and only the attorney knows the details, the process will be subject to manipulation.

The better practice would be for the full APCD Board to conduct the EPR together and each member express his or her rankings openly (in executive session). The APCO should be present to hear and respond. At best, the newly adopted process blurs APCD Board member accountability. If the individual ratings of each member are not disclosed to the APCO and all the members, the process becomes a kind of Court of the Star Chamber.

Background: The standard EPR process since the 1990's has been for the APCD Executive Committee to review the APCO's job performance and report to the full Board. The Executive Committee consists of the of the Chair, Atascadero City Councilwomen Roberta Fonzi; Vice-Chair Adam Hill, Third District Supervisor; and the past Chair, Paso Robles City Councilman John Hamon. The APCO requested that the procedure be changed to allow the entire Board to participate by submitting a structured rating sheet and comments. The Board's attorney will tabulate the results and the executive committee would synthesize them and make a determination.

E- 3: Proposed On-site APCD Review of Dunes Dust Management and Operations with State Parks Staff. It turned out that only Councilman Smuckler from Morro bay was interested in a group trip. The rest of them had already been or do not wish to go. The matter was tabled.

E-4: Update on APCD's Assistance to Six of the County's Cities To Develop Climate Action Plans. This matter was continued because 12-noon was approaching and some members had to leave for other commitments or wanted to go to lunch.

Background: The staff report detailed the extensive efforts undertaken by the APCD staff and consultants to "assist" the cities to prepare and adopt climate action plans designed to reduce greenhouse gases (GHG) and forestall global warming.



ADDENDUM

RE: Proposed Paso Robles Water Basin Moratorium

Dear Chairman Gibson and Supervisors:

The Coalition of Labor, Agriculture, and Business of San Luis Obispo County is an independent San Luis Obispo County based not for profit public policy analysis and advocacy organization. Our members consist of hundreds of farmers, ranchers, professionals, contractors, independent business people, and civic minded citizens. We

have studied the proposed urgency ordinances which would essentially prohibit approval of any new water using development in the rural unincorporated area overlying the Paso Robles Water Basin. We ask that you reject the ordinances and, instead, accelerate and prioritize projects which will promote recharge, replenishment, voluntary conservation, and use of water which is currently underused and/or benefitting areas outside of the basin and County.

At a minimum you should reject the ordinances for the reasons outlined below.

1. The Board Cannot Make the Finding Required by Law: In order to adopt an urgency zoning ordinance, you, the Board of Supervisors must comply with Section 6585 of the Government Code (State Statute). The Section states in part:

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

In order to comply with highlighted section of the statute above, four of you must make findings that support “a current and immediate threat to the public health, safety, or welfare,” and that approval of growth promoting activities (see the list in yellow) “would result in that threat to public health, safety or welfare.”

Additionally there is substantial case law which requires that four of you must find that the “threat” poses a “clear an imminent danger.” Your draft finding actually states that

the “clear an imminent danger results from the sudden, unexpected failure of a large number of residential wells.”

One problem is that you have no statistical data on how many wells are dry or have “experienced sudden unexpected failure.” There is no real data, and the statement in the finding is based on unverified hearsay. In fact Attachment 1F of the agenda item demonstrates that the County’s weak and insufficient efforts to ascertain how many wells are dry (whether sudden and unexpected or gradual and cyclical) found only eight residents stating that their well is dry (no verification) and eight stating that their pump had to be lowered (no verification). This is out of thousands and thousands of wells within the basin.

In Section D of the “finding,” which exhibits a shocking lack of investigation and analysis, the draft finding states that you have received testimony that “numerous wells have gone dry in the recent past.” Actually, you have not conducted verification, and the meaning of “numerous” is subjective. In fact, later in the same draft “finding,” you state that “... several homeowners have experienced severe drops in water levels.”

You cannot meet the imminent threat to public health and safety standard on the basis of unverified hearsay, eight reported dry wells, and “several” reports of declining wells.

Your draft finding cites various studies, water level measurements, increased agricultural planting, and data from your own resource management system as further justification for the moratorium. The problem is that none of these are relevant to the legal requirement that the findings must prove an imminent threat to public safety, health and welfare. Such data may suggest that measures should be taken to manage the basin, but they do not prove that there is an imminent threat. If there were hundreds of households with toilets that could not be flushed and if sewage were flowing into the creeks and down the roads, there might be an argument, but this is not the case.

Do eight (8) dry wells constitute an emergency that justifies a draconian moratorium?

2. The Moratorium Will Not Have a Meaningful Impact on the Problem:

Attachment 2C of the staff report, Estimate of Groundwater Demand and Savings, purports to demonstrate the water savings that would occur if the moratorium is adopted. The attachment presents 3 calculation methodologies which are summarized in the chart on the next page:

Method/Scenario	Agricultural Pumping	Rural Residential/Small System
Method 1: Vineyard Acreage, 2011-2013	4,000-5,000 afy	
Method 2: Average Irrigated Water Demand - 15-year Projection (Set 1 Assumptions)	1,066 afy	
Method 3: Average Irrigated Water Demand - 15-year Projection (Set 2 Assumptions)	2,416 afy	
Method 1: Average Rural Residential Water Demand - 1997-2009		185 afy
Method 2: Average Rural Residential Water Demand - 15-year Projection (Set 1 Assumptions)		230 afy
Method 3: Average Rural Residential Water Demand - 15-year Projection (Set 2 Assumptions)		135 afy

Method 1 (detailed on page 7) is a false analysis because it assumes that all projected applicants for vineyards will agree to the 2:1 offset requirement. This is unlikely to impossible because it assumes that these applicants can find other property (and obtain control) on which they would extinguish the water rights on a ratio of 2 acres for every one-acre of new irrigation on their new proposed vineyards. At “best” this methodology would result in the planting of no new vineyards, which would save only 2000-2500 acre feet per year.

Methods 2 and 3 (detailed on page 7) purport to save only 1,066 acre feet per year (AFY) and 2,146 AFY respectively.

Clearly and per the County’s own estimates, the proposed moratorium ordinance results in a statically insignificant savings in relation to total basin inflows and outflows, which approach 100,000 AFY. Note that “savings” in this context is a relative term. Moreover, it is not true savings but projected foregone future usage. The word “savings” is misleading.

Agricultural Pumping

Method 1: Vineyard Acreage, 2011-2013

According to the County Agricultural Commissioner’s Office, the years 2011-2013 saw an estimated 4,000 acres of new or expanded vineyard development in the groundwater basin. The new water demand on the basin represented by this increase in acreage is estimated to be 1.0 to 1.25 acre feet per acre per year. Assuming that all of the new acreage was previously not irrigated, then the prior two years of vineyard expansion represents a water demand increase of 4,000 – 5,000 acre feet per year. If a 2:1 offset program had been in place during those years, it would have resulted in a decrease in pumping of approximately 4,000 to 5,000 acre feet per year.

Method 2: Average Irrigated Agricultural Water Demand Projection over 15 years (Set 1 Assumptions)

The 2011 Resource Capacity Study used the estimates from Fugro 2010 and Todd 2009 to produce water demand “scenarios” using different water duties and assumptions. The range of future water use below is determined by using the listed assumptions.

- 1) Vineyard use: 1.0-1.25 acre feet per acre per year
- 2) Yearly increase in irrigated agricultural water use of 1.5% per year.

These assumptions result in an average increase of approximately 1,066 acre feet per year. A 1:1 offset ratio would result in no increase in water use due to the increased irrigated acreage. A 2:1 ratio would result in a yearly reduction in pumping of approximately 1,066 acre feet per year.

Method 3: Average Irrigated Agricultural Water Demand Projection over 15 years (Set 2 Assumptions)

- 1) Vineyard use: 1.0-1.25 acre feet per acre per year
- 2) Yearly increase in irrigated agricultural water use of 3.0% per year

These assumptions result in an average increase of approximately 2,416 acre feet per year. A 1:1 offset ratio would result in no increase in water use due to the increased irrigated acreage. A 2:1 ratio would result in a yearly reduction in pumping of approximately 2,416 acre feet/year.

All of the preceding estimates using Methods 1, 2 and 3 are basin-wide estimates (excluding the Atascadero Sub-basin). An ordinance that addresses a smaller area of the basin would result in less water savings.

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- 3. The 2:1 Offset Could Be Illegal:** Section 7 subsections 1-3 of the proposed ordinance require the offset in the event that any permits for new wells are issued. To try to get around the problem of applicants not being able to acquire properties on which to extinguish existing water rights, the ordinance provides that it can be accomplished “through participation in an Approved County Water Conservation Program.” This raises serious questions. An applicant wishes to plant 400 acres of grapes. The staff says OK, show us how you are going to save 1000 acre-feet per year, ($2.5 \text{ AFY} \times 400 = 1000$). (Note: the 2.5 is 2×1.25 , the County estimate for the required water for 1 acre of grapes).

Since the applicant can't achieve the savings with a low flow toilet and rain barrels, the staff says why don't you buy the old Arabian Horse farm over in Creston and extinguish the water rights? The farm is listed for \$3.2 million. This sounds like a Knoutz doctrine violation, a recent US Supreme Court decision, which forbids local governments from extorting money from applicants for environmental and other policy goals. See the COLAB August Newsletter Article at: [http://www.colabslo.org/newsletter/COLAB%20SLO%20Newsletter%20Vol%203%20Issue%206%20\(July%202013\).pdf](http://www.colabslo.org/newsletter/COLAB%20SLO%20Newsletter%20Vol%203%20Issue%206%20(July%202013).pdf)

As the Pacific Legal Foundation, which represented the Knoutz family stated “The ruling underscores that homeowners and other property owners who seek permits to make reasonable use of their property cannot be forced to surrender their rights. Regulators can't hold permit applicants hostage with unjustified demands for land or other concessions...” The oppressive and arbitrary 2:1 ratio is exactly the type of government extortion which the Court has outlawed.

4. The Proposed Ordinance is Discriminatory:

(a). It Only Impacts Agriculture. Since the County does not have land use authority to place an emergency land use ordinance on people living in the cities of Atascadero or Paso Robles and has exempted people living inside the unincorporated village urban limit lines (URLs), Templeton, etc., the full force of the ordinance falls on farmers who propose irrigated agriculture. Other sectors of the community escape. The chart below from the Board, attachment 1-I, shows that municipal pumping continues to grow unchecked during the moratorium period.

County of San Luis Obispo
March 2010 (Project No. 3014.036)



Table 16. Projected Urban Groundwater Pumping and Nacimiento Water Project Deliveries from 2010 to 2025

Water Year	City of Paso Robles			Atascadero MWC			Templeton CSD			San Miguel CSD		
	Groundwater Pumping (acre-feet)	Nacimiento Project Water (acre-feet)	Total Water Demand (acre-feet)	Groundwater Pumping (acre-feet)	Nacimiento Project Water (acre-feet)	Total Water Demand (acre-feet)	Groundwater Pumping (acre-feet)	Nacimiento Project Water (acre-feet)	Total Water Demand (acre-feet)	Groundwater Pumping (acre-feet)	Nacimiento Project Water (acre-feet)	Total Water Demand (acre-feet)
2010	7,239	0	7,239	5,367	2,000	7,367	1,467	250	1,717	396	0	396
2011	8,498	1,000	7,498	5,367	2,000	7,367	1,461	250	1,711	416	0	416
2012	9,471	2,000	7,471	7,073	59	7,132	1,524	250	1,774	436	0	436
2013	9,723	2,000	7,723	5,984	1,639	7,623	1,555	250	1,805	454	0	454
2014	9,855	2,000	7,855	7,051	498	7,549	1,624	250	1,874	472	0	472
2015	6,193	2,000	8,193	6,765	828	7,593	1,657	250	1,907	491	0	491
2016	6,438	2,000	8,438	7,427	170	7,597	1,650	250	1,900	509	0	509
2017	4,892	4,000	8,892	6,956	1,940	7,896	1,724	250	1,974	528	0	528
2018	4,953	4,000	8,953	5,824	1,986	7,810	1,757	250	2,007	547	0	547
2019	5,221	4,000	9,221	7,278	324	7,602	1,797	250	2,047	565	0	565
2020	5,488	4,000	9,488	6,823	875	7,698	1,823	250	2,073	584	0	584
2021	5,783	4,000	9,783	6,989	607	7,595	1,856	250	2,106	603	0	603
2022	6,077	4,000	10,077	7,112	479	7,591	1,865	250	2,115	621	0	621
2023	6,379	4,000	10,379	6,960	626	7,586	1,923	250	2,173	640	0	640
2024	6,690	4,000	10,690	5,940	1,639	7,579	1,965	250	2,205	658	0	658
2025	7,011	4,000	11,011	7,073	498	7,571	1,969	250	2,219	677	0	677

The chart shows that during the two years of the moratorium, Paso Robles is expected to increase its groundwater pumping by 470 (AFY; Atascadero by 853 AFY, Templeton by 59 AFY, and San Miguel by 59AFY. This is a total of 1,454 AFY. This is more than the projected Method Two “savings” attributed to the moratorium in item 2 (Projected Moratorium Savings) on page 6 above! Has the County even asked the cities and community service districts to support and join its proposed moratorium? Fat chance. It's really about “smart growth/no growth,” not water.

(b). Discrimination against Agriculture De Facto Discriminates against AG Workers. During the August 6, 2013 Public Hearing, C.R. Lara, an expert advocate for working people and the Hispanic Community, asked the Board of Supervisors to consider the impact of the proposed moratorium on the 30,000 people who work in Agriculture and, often relatedly, in the Hospitality Industry.

The Planning Director's memorandum to the Board (Attachment 2) admits that the Staff, and therefore that you, has no idea what the economic impact of the moratorium will be on property owners or industries. The memo does not even mention the direct and indirect impacts on workers and especially the high concentration of Hispanic workers in agriculture. The Director's memo states in part:

Due to the short time period between the board directive and the scheduled hearing date, providing quantified economic impact information was not feasible. In order to produce a quantified economic impact analysis (or analyses), the County would need to implement the following steps, which could require several months to accomplish:

1. Identify numerous assumptions to guide the analysis, such as:

a. The degree to which the proposed ordinance would preclude certain types of developments and land uses or impose additional costs in order to offset water use over a maximum potential two-year effective period of the ordinance;

b. The number of each type of new development or land use which might be expected to occur over the potential two-year period of the ordinance were it not to be enacted, given recent market conditions;

c. The type (or types) of economic impact information desired (business output or sales, value added to the economy, wealth such as property value, personal income such as wages, or jobs).

2. Then the County could proceed to fund and procure services of a qualified firm to assist in prepare the analysis (or analyses).

The sentence highlighted in yellow above underscores the kinds of risks involved in the precipitous adoption of the urgency ordinance. Since the Board has been warned, but continues to plow ahead and may willfully ignore this problem, the specter of Federal, State, and local discrimination complaints arises.

5. The County Intends to Make the Moratorium Permanent: The wording in Section H of the Findings section the ordinance strongly suggests that the "time out" will be used to develop permanent plans and ordinances:

Section H states : that in order to address these urgent water needs within the Paso Robles Groundwater Basin, the County is contemplating amendments to its general plan and/or zoning ordinance and intends to study those potential amendments within a reasonable time. In the meantime, the approval of additional subdivisions, land use permits, variances, building permits, construction permits, grading permits, well permits, or any other applicable entitlement for use required to comply with the Land

Use Ordinance within the Paso Robles Groundwater Basin would threaten the public health, safety, and welfare by exacerbating the declining water levels of the Basin and contributing the failure of additional residential and agricultural wells. This urgency and interim zoning ordinance will allow County staff time to complete necessary studies and reports for the contemplated amendments to its general plan and/or zoning ordinance while preserving the resources of the Basin.

The amendments to the general plan and zoning ordinance are already “contemplated.”

Each of you should publicly state your position in this regard and explain, on the record, what the “contemplated amendments” are and how, in your minds, they would differ from the policies in the “interim” moratorium.

CONCLUSION:

THE BOARD SHOULD REJECT THE URGENCY ORDINANCES AND GET ON WITH MANY OF THE GOOD SUGGESTIONS FOR STRENGTHENING THE BASIN AND ASSISTING THOSE OF LIMITED MEANS WHO HAVE DRY WELLS OR WHO ARE AT IMMEDIATE RISK OF HAVING A DRY WELL.

Thank you.

Very truly yours,

Michael F Brown, Government Affairs Director