



**Fw: Proposed Amendment to Staff Recommended Water Vesting Language**

**Debbie Arnold** to: Kami Griffin

11/15/2013 09:02 AM

Sent by: **Jennifer Caffee**

Cc: cr\_board\_clerk Clerk Recorder

FYI

**Debbie Arnold**

Supervisor, 5th District  
San Luis Obispo County  
(805) 781-4339

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/15/2013 09:02 AM -----

From: Dean at Rockin R Winery <rockinRwinery@att.net>  
To: Debbie Arnold <darnold@co.slo.ca.us>, Frank Mecham <fmecham@co.slo.ca.us>, bgibson@co.slo.ca.us, ahill@co.slo.ca.us, cray@co.slo.ca.us  
Date: 11/14/2013 06:38 PM  
Subject: Proposed Amendment to Staff Recommended Water Vesting Language

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Honorable Supervisors:

I have previously written to each of you regarding the Paso Robles Groundwater Basin, your proposed (now enacted) Moratorium, and the problems associated with taking land rights away from dutiful citizens who have previously made significant investments in agricultural in this part of the county.

In reading the definition of vesting proposed by staff (for a possible vote by your body on November 26, 2013), my worst fears have been realized. If adopted as proposed, I will literally be forced out of business within just a few years, and will lose perhaps \$1 - \$2 million in the process. How can you honestly and ethically do such a thing? Wouldn't that be an incredibly callous act?

I have attached an amended version of the proposed vesting definition for each of you to consider. The added portion reads:

*3. Parcels shall be categorically exempt from Ordinance 3246 in its entirety where the Applicant can demonstrate that (1) Applicant owned the parcel(s) prior to August 27, 2013, (2) the parcel(s) are zoned Agricultural, Rural Lands or Rural Residential, (3) Applicant has previously been granted a conditional or minor land use permit from the county for agricultural production, processing or sales related to the Agricultural use proposed, AND (4) Applicant has previously relied upon and acted upon such permit in any substantial way (i.e., filing for a building permit, commencing building, or begin business operations based upon such entitlements).*

This amendment would apply to a very small percentage of parcels, but is absolutely necessary to prevent a terrible injustice against those of us who have otherwise played by the rules and methodically pursued the business of agriculture in North County.

In my specific case, I own two parcels of high-quality vineyard land, each of which is approximately 20 acres with each having 10 - 12 acres of south-sloping acres suitable for premium grape production. Each already has a well and a home. I purchased these properties in 1989 and 2006. In 2007, I applied for a minor use permit for my winery and tasting room. That permit was granted in 2008, including a phase 2 expansion entitlement expiring in 2019. My business strategy has been to grow my wine label "organically": Start by using an humble existing building on one of the parcels (on Union Road), grow using internal cash flows (i.e., without debt), make wines only from 100% Paso Robles AVA grapes, establish wine club members to whom I could sell 100% of my wine, and *only then* build a larger facility and plant the grapes needed to support that established wine club. A very conservative business plan.

So, after 20 years of planning and dreaming, and now 5 years and over \$2 million invested into the execution and growth of this small business (600 club members currently), this moratorium threatens to take all of that away from me. What will happen when I can no longer buy grapes from my neighbors (because none will be available if supply cannot keep pace with the burgeoning demand for Paso Robles grapes), and then cannot even grow my own grapes on my own winery-related lands to supply my own winery with its key raw material? I will be forced to close-up shop! Even if grapes are somehow available in a few years, their cost will be such that unless you grow your own grapes, you will not be able to afford to buy them from the other (now monopoly/oligopoly) growers. How can you, in all good conscience, do that to me and others similarly trapped by this draconian Moratorium?

The attached amendment is clean and simple: It applies only to those who have previously taken significant steps toward establishing their specific agricultural businesses, livelihoods and lifestyles in this area of the county, and it treats those citizens who have made significant investments of time and money in our local economy with the respect which everyone deserves from their government. As a bonus, it helps to avoid claims of an unpaid governmental "taking" of one's property by simply avoiding that taking altogether.

I will contact, and look forward to speaking with, each of you in the coming week in order to understand what could possibly prevent you from adding and adopting the proposed amendment *as written* .

Thank you for your time and consideration,

Dean DiSandro

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Vested\_Rights\_Definition\_AMENDMENT\_131114.pdf

Dean DiSandro  
Proprietor/Cellar Rat

Rockin' R Winery  
email to: [rockinRwinery@att.net](mailto:rockinRwinery@att.net)  
[www.rockinRwinery.com](http://www.rockinRwinery.com)

PO Box 3587  
Paso Robles, CA 93447



**PROPOSED ADDITIONS TO VESTING DEFINITIONS**  
**submitted by Dean DiSandro, Rockin' R Winery**

**Stakeholders' Suggested Language Regarding Vested Rights**  
**Under Ordinance No. 3246**

County staff shall use the following procedure when presented with a request for an Ordinance 3246 vested right determination:

**3. Parcels shall be categorically exempt from Ordinance 3246 in its entirety where the Applicant can demonstrate that (1) Applicant owned the parcel(s) prior to August 27, 2013, (2) the parcel(s) are zoned Agricultural, Rural Lands or Rural Residential, (3) Applicant has previously been granted a conditional or minor land use permit from the county for agricultural production, processing or sales related to the Agricultural use proposed, AND (4) Applicant has previously relied upon and acted upon such permit in any substantial way (i.e., filing for a building permit, commencing building, or begin business operations based upon such entitlements).**

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 all of the following:

- a. Evidence of a valid well permit applied for and issued pursuant to Chapter 8.40 of the County Code prior to August 27, 2013.
- b. Evidence that a well has been installed onsite pursuant to the valid well permit described above, or evidence that a contract was entered into with a licensed well driller prior to August 27, 2013 for installation of the well.
- c. Evidence that the applicant owned the land prior to August 27, 2013 or had entered into an irrevocable lease for the specific purpose of agriculture prior to August 27, 2013.
- d. For permanent crop types (i.e. vineyard, orchard, tree fruits, tree nuts) evidence shall be provided to show that at least three (3) of the following requirements have been met prior to August 27, 2013:
  - i. 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 including a deposit paid towards the full cost of the contract or the plants intended to be planted (i.e. rootstock, trees) were delivered to the applicant.
  - ii. The applicant has entered into a contract , including paying a deposit towards the full cost of the contract, for the design and installation of irrigation infrastructure (such as tanks, pumps, underground piping) required to supply water to the area intended to be planted or such infrastructure has been installed in the area intended to be planted.
  - iii. 100 percent of the area that is intended to be planted has been

ripped, disked or tilled

or other observable and evident site preparation for the intended crop has occurred.

iv. If the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified or other observable work such as trellis installation has occurred.

v. Any fencing required to maintain the crop has been installed.

vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the time frame the Ordinance 3246 is in effect.

e. For annual crops (i.e. grains, field crops, vegetables, field fruits, flower fields and seed production, ornamental crops, irrigated pasture) evidence shall be provided to show that at least two (2) of the following requirements have been met prior to August 27, 2013:

i. 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 including a deposit paid towards the full cost of the contract or the plants intended to be planted (i.e. rootstock, trees) were delivered to the applicant.

ii. The applicant has entered into a contract , including paying a deposit towards the full cost of the contract, for the design and installation of irrigation infrastructure (such as tanks, pumps, underground piping) required to supply water to the area intended to be planted or such infrastructure has been installed in the area intended to be planted.

iii. 100 percent of the area that is intended to be planted has been ripped, disked or tilled or other observable and evident site preparation for the intended crop has occurred.

iv. The area that is intended to be planted has had soil amendments appropriate for the intended crop applied.

v. If the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified or other observable work such as trellis installation has occurred.

vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the time frame the Ordinance 3246 is in effect.

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. The decision of the Director of Planning and Building pursuant to Section 2 above is

equivalent to  
issuance of a ministerial permit. At the discretion of the Director, any request for an Ordinance 3246 vested right determination that does not meet the evidence described in Section 1 above, may be referred to the Board of Supervisors who will review the evidence submitted and render a decision.



**Fw: Submission on Vested Rights**

**Board of Supervisors** to: BOS\_Legislative Assistants,  
cr\_board\_clerk Clerk Recorder

11/20/2013 11:36 AM

Sent by: **Cytasha Campa**

----- Forwarded by Cytasha Campa/BOS/COSLO on 11/20/2013 11:36 AM -----

From: Daniella Sapriel <info@hummingbirdhouse.org>  
To: bgibson@co.slo.ca.us, fmecham@co.slo.ca.us, darnold@co.slo.ca.us, ahill@co.slo.ca.us,  
cray@co.slo.ca.us  
Cc: wmcDonald@co.slo.ca.us, tmcnulty@co.slo.ca.us, BOARDOFSUPS@CO.SLO.CA.US,  
ccampa@co.slo.ca.us, kgriffin@co.slo.ca.us  
Date: 11/20/2013 11:11 AM  
Subject: Submission on Vested Rights

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The attached PDF file represents the submission by the Coalition of Rural Residents and Landowners to the Board of Supervisors with respect to the Vested Rights Issue of the Urgency Ordinance. Please make sure a copy is distributed to all Board members, their L.A., and also included in the public record for the November 26, 2013 meeting. Please let me know if you are unable to open the file.

Thank you,  
Daniella Sapriel



13 Ltr Vested Rights.pdf



# Coalition Of Rural Residents and Landowners

For Fairness, Integrity, and Non-Partisan Leadership

November 20, 2013

Dear Chairman Gibson and Supervisors Mecham, Arnold, Hill and Ray:

## **Re: Vested Rights Determination Ordinance No. 3246**

The Coalition of Rural Residents and Landowners (CORRAL) includes residents and landowners whose properties and livelihoods are dependent on water from the Paso Robles Groundwater Basin and other dwindling water sources. Our ownership of (or residency on) an affected property gives us a vested interest, and makes us stakeholders, in any decisions impacting water supply and water use by any property overlying the Basin or drawing from a common water source.

### **November 6, 2013: Stakeholder Small Group Proposes “Checklist” Approach**

On November 6, 2013, the Vesting Rights Outreach Stakeholder Small Group, organized by Planning, met to identify the factors to be considered in any determination of a “vested rights” exemption to the Urgency Ordinance. Although not a participating group, we were allowed to make a brief presentation, in which we argued that a vested rights exemption was an “*equitable remedy*,” not a “*legal right*,” and that Equity required a showing of “good faith” detrimental reliance, including proof of “due diligence” -- not just “detrimental reliance” shown by investments or activities alone.

Although no one attending contradicted our argument that the standard was “good faith detrimental reliance,” the Group’s discussion remained limited to determining at what point the economic investments made by the claimants or the completion of certain project activities showed sufficient “detrimental reliance” to support an exemption based on “vested rights”.

The Group adopted a “Checklist” approach that sought “bright line” determinations based on what activities had been completed and how much investment was expended by a certain date. No showing of “due diligence” or “good faith” was included as part of the evidence needed to support the claim for exemption. In addition, the impact of a project on neighboring properties, residents, landowners, or the Basin itself were absent from the discussion.

Equally dismaying was the brief discussion towards the end of the meeting in response to our question regarding the issue of giving a pass, so to speak, to those who might be unable to show “good faith and due diligence”. Planning and the Group provided two responses:

- Given how far the discussion had moved since May, we should consider passage of the Ordinance alone a great accomplishment.

- County staff was unable to compete with “floors of corporate lawyers” ready to challenge any attempt to require a showing of “due diligence” to establish “good faith” detrimental reliance.

### November 20, 2013 Staff Report Adopts “Checklist” Approach

The Staff Report posted November 20, 2013 recommends the same “Checklist” approach proposed at the November 6th Small Group meeting. Staff’s Checklist exclusively focuses on the investments made and project activities completed, with no requirement that the claimant show “due diligence” to establish “good faith”.

Planning’s Checklist is an appropriate threshold to fulfill the “detrimental reliance” part of the equation, but is insufficient because:

- “Good faith” shown by “due diligence” are not “optional” requirements.
- The Urgency Ordinance was passed in large part because of the impact large-scale ag and pumping operations are having on neighboring wells throughout the Basin.
- The Board explicitly found the situation to be a **public** health, safety, and welfare threat, yet the analysis includes no mention of the **public** interest in limiting this equitable remedy to those who can show their exemption is sought in “good faith” after “due diligence.”
- If not drawn as narrowly as legally allowed, these exemptions could render the Ordinance toothless, and some rural residents homeless.
- The process of exemption, to be fair *and equitable*, cannot consider only the interests of a small group of claimants, without regard to the impact on a large group of rural residents and landowners whose livelihoods, property values, and way of lives are being threatened by the increasing demands made on the Basin by the same large-scale ag operators now seeking an *equitable* exemption on “fairness” grounds.

### “Vested Rights” Is An Equitable Remedy, Not a Legal Right<sup>1</sup>

- A claim for exemption based on a “vested right” is not a “**legal** right”. It is an “**equitable remedy**” provided to one who otherwise would be legally bound by a duly enacted law. It must comply with the requirement in Equity of “dealing fairly and equally with all concerned.”
- Equity provides a “vested rights” remedy when a claimant can show that it is not FAIR to impose an ordinance on one who has “**detrimentally relied in good faith**” on a previous law

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<sup>1</sup> A judge wears two hats: sitting “In Law” the judge applies strict legal principles that allow bright line determinations, sitting “In Equity” requires a “balancing of equities” based on equitable principles, enshrined in “Maxims,” of which the two most important are: “He who seeks equity must do equity” and “He who seeks equity must come with clean hands.” As an “equitable remedy,” a exemption based on “vested rights” is decided In Equity.

that has now changed. **Detrimental reliance alone is not enough. It is the addition of the “good faith” element that establishes the claim in “Equity”.**

- Claimants seeking an equitable remedy have the burden of showing that they have acted with due diligence and good faith.
- Adherence to these basic principles of Equity means that AFTER the claimants have shown an established level of investment and project completion activities, they must then provide **evidence of due diligence and good faith (“clean hands”) before the exemption is granted.**

### **Equity Demands Equal Fairness to All Affected Residents and Landowners**

Although the wish for a simple, formulaic analysis, is well-intentioned, the insistence on a bright line formula actually *subverts* the process by trying to make what is *intended* to be an *equitable* “balancing” process into a *legal* bright line.

Planning’s Checklist may be *simple*, but it isn’t *equitable*, because it looks only at one side of the equation -- the side of the ag interests claiming exemption. Equity *always* involves a “balancing of equities,” rarely a bright line process. Requiring a showing of good faith and due diligence (“clean hands”) is part of the fundamental showing *any* claimant is asked to make when seeking an *equitable* exemption from a law that legally binds them but that they claim does so “unfairly”.

- The Dictionary definitions are instructive: **to be equitable means 1: to “deal fairly and equally with everyone concerned.”. and 2: existing or valid in equity as distinguished from law <an equitable defense> <sup>2</sup>**
- Staff’s approach ignores equitable principles that, legally and historically, require any vested rights exemption process to **“deal fairly and equally with all concerned”**. [Id.]
- Extending *equal fairness* to all landowners, large and small, would help insulate the County from a legal challenge from anyone, regardless of wealth and influence.
- Extending *equal fairness* to all rural residents and landowners would help create public acceptance of and support for an Ordinance and process that has been bitterly contested.

### **Factors Evidencing “Due Diligence,” “Good Faith” and “Clean Hands”**

- Claimants seeking exemption should be required to prove, at a minimum, that they performed their “due diligence” prior to commencement of any project or property for which an exemption is claimed, and that they acted in “good faith” (i.e., with “clean hands”).

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<sup>2</sup> [ [www.merriam-webster.com/dictionary/equitable](http://www.merriam-webster.com/dictionary/equitable) ]

- “Due diligence” determinations can be based on specific markers. For example, was the project initiated after the Paso Robles Groundwater Basin was announced as being at Level III Severity in February 2011?
- Was the project planned in an area of known long-term drought conditions or in a previously dry-farmed area known to have scarce water resources?
- What level of resources and knowledge does the claimant have? For example, a corporate conglomerate with sophisticated legal and other resources who initiated a project or bought a property AFTER February 2011 for which they now claim exemption, if they did their “due diligence,” must be deemed to have known that in February 2011, after years of studying Basin hydrology and supply/demand issues, the Board of Supervisors approved [The Paso Robles Groundwater Basin Resource Capacity Study \(RCS\)](#), which links the state of the Basin to land use policy, basin monitoring and water conservation, and which concluded that the groundwater basin was approaching or had reached its “[perennial yield](#),” defined as: “*The amount of usable water of a groundwater basin that can be withdrawn and consumed economically each year for an indefinite period of time.*” [ <http://www.slocounty.ca.gov/planning/commguidelines/PRgroundwater.htm>]
- A large ag landowner planning a significant purchase or project would also know, had they done “due diligence,” that the Board of Supervisors established a Level of Severity III (the highest) for the main basin and a Level of Severity I for the Atascadero sub basin. [Id.]
- Corporate claimants would be deemed to have known, had they done “due diligence,” that the County was experiencing a record drought, that the Basin was already being over pumped, and that additional significant draws on the aquifer (e.g., to fill large new reservoirs) could strain an already taxed Basin on which neighboring landowners also depend, perhaps impacting wells.
- A smaller local farmer without the “floors of lawyers” available to the larger ag owners and conglomerates might more easily show “good faith,” even with a far lower percentage of resources expended, so long as they did “due diligence” commensurate with their resources.

### Summary and Conclusions

The bedrock principle in Equity is: “*to ask for equity you must give equity.*” Unless claimants can make the required showing of “good faith” shown by “due diligence,” then regardless of the amount of money expended and activities completed, they have not sufficiently met the equitable standard to support a “vested rights” exemption from the Urgency Ordinance. Investment of resources to a level indicating “detrimental reliance” is the threshold consideration, but it’s **GOOD FAITH detrimental reliance that seals the exemption, and “good faith” requires a showing of “due diligence” to establish “clean hands”**.

Broadening the analysis to include fairness to all affected landowners means few bright lines and some tough decisions that may call down the wrath of those “floors of lawyers.” But “bright lines” and “simplicity” are not synonymous with fairness and equity, especially when:

- The County has duly enacted an Urgency Ordinance that rested on findings that the decline in the Basin has created a threat to **public** health, welfare and safety.
- Property owners who continued planting and pumping until the very last instant in previously dry-farmed areas where they knew, or should have known, there was insufficient water and a possible impact on neighboring wells should not be exempted from showing “due diligence” sufficient to establish “good faith.”
- Enactment of the Urgency Ordinance is premised on the requirement that the Board move quickly to address the long-term threat to the Basin. Rural residents and landowners whose water source has been threatened (and whose properties often represent the majority of their net worth), must receive equal consideration to that given the handful of claimants unwilling to accept offsets or delay additional plantings on thousands of acres simply to realize maximum profits on their investments.

Ignorance, short-sightedness, or anti-regulatory fervor are not illegal, but nor do they support a claim for exemption based on “**good faith** detrimental reliance.” If a claimant knew or should have known of the drought conditions, if they knew or should have known of the LOS III determination in February 2011, if they knew or should have known of possible impact on the Basin and neighboring wells, and heedlessly planted and pumped despite this knowledge, then regardless of the amount of capital invested or activities completed, they should not receive an **EQUITABLE** exemption from a duly enacted ordinance. It would **NOT BE EQUITABLE**.

Daniella Sapriel, Esq.  
Coalition of Rural Residents and Landowners



**Fw: Water Crisis**

**Board of Supervisors** to: cr\_board\_clerk Clerk Recorder  
Sent by: **Cytasha Campa**

11/20/2013 11:38 AM

----- Forwarded by Cytasha Campa/BOS/COSLO on 11/20/2013 11:36 AM -----

From: John Long <jlong50@yahoo.com>  
To: "BoardofSup@co.slo.ca.us" <BoardofSup@co.slo.ca.us>, "darnold@co.slo.ca.us" <darnold@co.slo.ca.us>, "fmecham@co.slo.ca.us" <fmecham@co.slo.ca.us>, "ahill@co.slo.ca.us" <ahill@co.slo.ca.us>, "bgibson@co.slo.ca.us" <bgibson@co.slo.ca.us>, "ccampa@co.slo.ca.us" <ccampa@co.slo.ca.us>  
Date: 11/20/2013 10:57 AM  
Subject: Water Crisis

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The North County's dwindling ground water basin has been a long time concern of mine and I commend and very much appreciate the folks working hard to see that we have water for the future.

I am flabbergasted, whatever that means, or just cannot understand the mentality of those believing our water reserves are endless and any project "in the pipeline" should be granted a full go-ahead with their plans. When our wells go dry and water must be brought in for our residents to live on, and vineyards and orchards dry up and die, and landscaping is reduced to dead or dieing brown skeletons - maybe then we will have realized just how serious maintaining an equitable use of our water resources should be.

Paso Robles was just voted the most popular, or whatever, wine region in the nation! I think we can all imagine what that means for the economy of the North County or SLO County for that matter. But that will be a short lived distinction if our wells go dry and we are only able to survive under very strict water useage. No one knows how much water is in our basin but it sounds like we are consuming more than what is being replenished. How long do we continue this before the tap goes dry? Frustrated!!!

*John Long*

*Lord, Please keep Your arm around my shoulder  
and Your hand over my mouth.*



**Fw: Interim Ordinance Vested Rights November 26, 2013**

**Annette Ramirez** to: cr\_board\_clerk Clerk Recorder

11/20/2013 11:42 AM

Annette Ramirez | Deputy Clerk-Recorder | San Luis Obispo County Clerk-Recorder  
1055 Monterey Street, Suite D120 | San Luis Obispo, CA 93408  
Telephone: (805) 781-5145 | Fax: (805) 781-1111 | Website: [www.SLOvote.com](http://www.SLOvote.com)  
[www.facebook.com/slocountyclerkrec](http://www.facebook.com/slocountyclerkrec) | [www.twitter.com/slocountyclerk](http://www.twitter.com/slocountyclerk)  
----- Forwarded by Annette Ramirez/ClerkRec/COSLO on 11/20/2013 11:42 AM -----

From: Cherie Aispuro/BOS/COSLO  
To: Catrina Christensen/ClerkRec/COSLO@Wings, Annette Ramirez/ClerkRec/COSLO@Wings  
Date: 11/19/2013 01:16 PM  
Subject: Fw: Interim Ordinance Vested Rights November 26, 2013

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fyi

Cherie Aispuro  
San Luis Obispo County  
Legislative Assistant  
District 2  
781-4338

----- Forwarded by Cherie Aispuro/BOS/COSLO on 11/19/2013 01:16 PM -----

From: Board of Supervisors/BOS/COSLO  
To: BOS\_Legislative Assistants@co.slo.ca.us  
Date: 11/19/2013 10:30 AM  
Subject: Fw: Interim Ordinance Vested Rights November 26, 2013  
Sent by: Cytasha Campa

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----- Forwarded by Cytasha Campa/BOS/COSLO on 11/19/2013 10:30 AM -----

From: "Susan Harvey" <[susan@ifsusan.com](mailto:susan@ifsusan.com)>  
To: <[BoardOfSup@co.slo.ca.us](mailto:BoardOfSup@co.slo.ca.us)>  
Cc: "'Andrew Christie'" <[santa.lucia.chapter@sierraclub.org](mailto:santa.lucia.chapter@sierraclub.org)>, <[cchristensen@co.slo.ca.us](mailto:cchristensen@co.slo.ca.us)>  
Date: 11/18/2013 06:05 PM  
Subject: Interim Ordinance Vested Rights November 26, 2013

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Please distribute the attached letter to the Supervisors.

Thank you.  
Susan Harvey  
North County Watch

**Susan A. Harvey**

“We can either have democracy in this country or  
we can have great wealth concentrated in the hands of a few.  
But we can’t have both.”

*Supreme Court Justice Louis Brandeis  
1856-1941*



NCW BoS vested rights 11-18-13.pdf



North County Watch

Looking Out Today For Tomorrow



SIERRA  
CLUB  
SANTA LUCIA  
CHAPTER

San Luis Obispo County Board of Supervisors  
RE: Interim Ordinance and vested rights  
*Sent via email: BoardOfSupps@co.slo.ca.us*  
November 19, 2013

Chairman Gibson and Supervisors,

The Interim Ordinance (IO) is only the first step to managing the basin and addressing the crisis that impacts the water supply for 29 percent of the county's population.

During the hearing process, agricultural representatives sought and received an exemption for large agricultural ponds, some measuring 50 acre feet or more. In September applications were pending for seven new ag ponds totaling 255 acre feet.

Agriculture also sought and received the removal of the urgency provision requiring a 2:1 offset of any new water use. This was replaced by a 1:1 offset, which, even if enforceable, simply locks in the current rate of basin decline.

Having already compromised the potential for the ordinance to make any headway toward basin balance, we support stringent standards for determination of vested rights because each new acre planted is increasing the basin deficit over the lifetime of the vineyard. It is our position that applicants have no vested right to proceed with agricultural development that is not compliant with the terms of the Interim Ordinance after August 28<sup>th</sup>, the date of adoption of the ordinance.

The question here is at what point in the continuum of planning a project is the activity beyond the reach of the county to enforce or apply new regulation or rules, whether or not the project requires a permit. This is not an insignificant issue. This decision on vesting rights will set an important precedent that may put the police powers of the county and future Boards at risk.

The standards for establishing any right of vesting must be stringent because the crisis is huge. The risk of degradation and loss of water to nearly 80,000 people must be part of the risk assessment. The risk goes far beyond what any one individual has spent in anticipation of planting. This will set a precedent for future claims of vesting that could have long term negative ramifications in all aspects of county governance.

In adopting the urgency IO, the county made findings that the Interim Ordinance was necessitated by current and immediate threats to the public health, safety and welfare. The county has applications for vesting totaling over 1,200 acres requesting exemption from the Interim Ordinance. We believe the county does not have any basis for granting exemptions to the IO. An additional 1,200 acres of irrigated ag could add an annual water demand of 1,800 acre feet or more annually far into the future.

We believe that the county will further endanger the health, safety, and welfare of the public if it establishes some premise that conveys a vested right where none exists.

A vested right is usually claimed predicated on the expectation of the issuance of a permit or anticipated issuance of a permit or in anticipation of a zoning change. In the case of the IO, permits are not an issue because no permits are required for agricultural uses such as planting. No zoning changes have been made. (Some applicants for vested rights have received permits for agricultural ponds).

The courts have established a number of thresholds to govern the granting of vested rights. The government makes no representation that by zoning a property, the landowner will be exempt from zoning laws at a subsequent time. To do so would cause serious impairment to the government's right to control land use policy.<sup>i</sup> In the case of the issuance of a permit, for example a permit for ag ponds, rights that may vest upon reliance on a government permit are no greater than those specifically granted by the permit itself, i.e. a permit for a pond in ONLY a permit for an ag pond.<sup>ii</sup> An owner of undeveloped property has no vested right in existing zoning or zoning for the highest and best use.<sup>iii</sup> A landowner has no contractual right to develop based on any action by a government officer in excess of his/her authority.<sup>iv</sup> And finally, if a vested right were determined to exist, a vested right may be restricted or revoked if the use would be a menace to the public health and safety or a public nuisance.<sup>v</sup>

While court decisions address common law vesting rights from the starting point of permits having been issued or zoning permissions, it is reasonable to apply the court's reasoning to land use situations that require no permit. The premise of the underlying power of the government to control land use is still primary as is the government's authority to protect the health, safety and welfare of its citizens and eliminate public nuisance. In addition, we question the county's right to confer a vested right absent any permit requirement or historic use that would invest a right.

In adopting the urgency Interim Ordinance, the county was obliged to make findings of a threat to public health, safety, and welfare. Absent any permanent or temporary moratorium on the use of the land, absent the elimination of ALL economically beneficial use of the land, we believe no claim of vesting should be perfected.

One of the bright lines of judicial review of vesting right is the ability to make the case for "good faith" planning. In light of the many years of public study of the basin, and in particular the declaration of Level of Severity III in February 2011, and the recent extensive publicity, it is

simply not possible for any applicant to make the case that good faith investment secured their vested right.

If we consider the reasonably anticipated investment value of a project/planting, the costs of site preparation, all the way up to and including plants in the ground, are a small fraction of the anticipated investment values and do not create a vested interest. There is no injury to be remediated and the land has not lost economic viability. There is no basis for a claim of good faith effort. Denial of a claim of vested rights does not mean anyone will have been denied viable use of the land which is historically dry farmed cattle grazing land. The land is still economically viable. No remedial injury has occurred.

And finally, if the county is establishing vested rights beyond “plants in the ground by August 28<sup>th</sup>”, it must make findings that vesting additional acreage in a basin in severe overdraft, a basin that has likely been mined for years, is a reasonable and beneficial use of water. The county has been derelict in its management of the basin, endangering the health and safety of residents, creating a public nuisance, and ignored the co-equal standing of public trust assets.

There is no vested right established that would relieve the requirement for compliance with the Interim Ordinance. If the county is going to proceed with allowing planting outside of compliance with the Ordinance, at a very minimum, the following requirements should be adhered to:

- A cutoff date for acceptance of vesting applications.
- Applicants must be required to install meters and report use quarterly.
- Base value of the land should not be considered in determining vesting. If land ownership or value were considered, every landowner would be in a position to claim to be “vested”.
- A market based cost per acre for planting should be adopted based on current industry costs as the starting point. For example, if the current cost per acre to install vines from raw land to plants in the ground is \$30,000 per acre, the cost to plant 100 acres would be 3 million dollars. It is our recommendation that at least 80% of the total cost should have been expended, out of pocket, as of the cutoff date. If the applicant wishes to proceed with the project but can only show 40% expended by the cutoff date, he could proceed by offsetting 60 acres at a 1:1 offset and complying with all other provisions of the Interim Ordinance. Those 100 acres will very likely be grossing between \$600,000 and \$1,000,000 annually in as short a time as 5 years and consuming between 150 to 250 AF/year of water for decades from a basin already in overdraft. Clearly, planting costs are a very small percentage of reasonably anticipated investment value. In our example, \$2.4 million (80%) would be out of pocket by cutoff date but over a ten year period, the gross return could be 8 million dollars or more and certainly much higher over the life of the project. Or, looking at it another way, the investment dollars could see a 300% gross return in 10-15 years. If industry leaders disagree with this assessment, they should show the public the numbers to refute these assumptions of investment and return.

Again, it is our position that there is no injury to be remediated and the land has not lost economic viability, there is no basis for a claim of good faith effort, and the County should reject the claims of the applicants. All vineyard expansion post August 28, 2013 must comply with the terms of the urgency Interim Ordinance.

Yours truly,



Susan Harvey, President  
North County Watch

[ifsusan@tcsn.net](mailto:ifsusan@tcsn.net)



Andrew Christie, Executive Director  
Santa Lucia Chapter of the Sierra Club

[sierraclub8@gmail.com](mailto:sierraclub8@gmail.com)

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<sup>i</sup> *Avco Community Developers, Inc. v. South County Regional Commission* 17 Cal. 3<sup>rd</sup> (1976)

<sup>ii</sup> *Santa Monica Pines, Ltd. V. Rent Control Bd.*, 35 Cal. 3d 984)

<sup>iii</sup> *Gilliland v. County of Los Angeles*, 126 Cal App. 3d (1981)

<sup>iv</sup> *Horsemen's Benevolent & Protective Association v. Valley Racing Association* 4 Cal. App 4<sup>th</sup> (1992)

<sup>v</sup> *Davidson v. County of San Diego*, 49 Cal. App. 4<sup>th</sup> (1996)



**Fw: North County Land Owner concern . Please read.**

**Debbie Arnold** to: cr\_board\_clerk Clerk Recorder

Sent by: **Jennifer Caffee**

11/20/2013 06:08 PM

**Debbie Arnold**

Supervisor, 5th District  
San Luis Obispo County  
(805) 781-4339

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/20/2013 06:08 PM -----

From: "James R. Redick" <jrrdlr@aol.com>  
To: darnold@co.slo.ca.us, fmeacham@co.slo.ca.us, ahill@co.slo.ca.us, bgibson@co.slo.ca.us, ccampo@co.slo.ca.us  
Date: 11/20/2013 11:06 AM  
Subject: North County Land Owner concern. Please read.

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Our water issues are having a negative impact on our real estate values. This issue will remain with North County until important pending decisions are made. A universal message to people living outside of North County should be developed and supported by all state holders.

"LIVING IN THE NORTH COUNTY OF SAN LUIS OBISPO IS STILL A DESIRABLE PLACE TO CALL HOME. THE WATER ISSUES WILL BE RESOLVED."

Thank You, Jim Redick, North County Land Owner.

"



**Fw: Water Ordinance**

**Board of Supervisors** to: BOS\_Legislative Assistants,  
cr\_board\_clerk Clerk Recorder

11/21/2013 08:44 AM

Sent by: **Cytasha Campa**

----- Forwarded by Cytasha Campa/BOS/COSLO on 11/21/2013 08:44 AM -----

From: David Boles <daboles@sbcglobal.net>  
To: "BoardofSup@co.slo.ca.us" <BoardofSup@co.slo.ca.us>  
Date: 11/20/2013 10:01 PM  
Subject: Water Ordinance

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First I would like to say that the percentages of water use by municipalities, rural domestic, small commercial and irrigated agriculture needs to be clearly talked about to make sure that everyone knows without a doubt that irrigated agriculture uses 79% of the water in the county as the graphs I saw clearly wanted to make it look the opposite. They made the graphs look like everyone else uses more. Unless you looked very closely at the numbers on the graph which has clearly confused some people and raised unnecessary questions on who uses the majority of the water which is very clear. Also the only accurate figure on the graph that can be documented is municipalities where everything is metered and can be accurately accounted for. Also as far as the Urgency order, wine growers who seriously care about the condition of the water in this county should clearly see that No new growth is what we need until we reach some sort of control of the water table. It is for their benefit also. I would seriously like to know how many planting permits were given out right before this ordinance was passed. Many people do not realize that many of these wineries are owned by big wine growing corporations whose major concern is to make wine and if they can't get it here they will just get it somewhere else. Their concern isn't about our aquifer. And finally as a rural homeowner who just spent about \$17,000 on a dried up well and seen the fear in my neighbors faces of that it could happen to them is very sad. The worse part about this is that the county has known about this problem for at least 5 years and nothing was done until suddenly many many peoples wells started drying up. As county supervisors please step up to the plate and do what is TRULY right for Everyone.

Thanks for your time Dave and Anita



**Fw: CAB letter on the definition of Vested Rights**

**Cytasha Campa** to: BOS\_Legislative Assistants, cr\_board\_clerk  
Clerk Recorder

11/21/2013 09:06 AM

Kindest regards,

## Cytasha Campa

Board Secretary

Board of Supervisors

San Luis Obispo County

805-781-4335

----- Forwarded by Cytasha Campa/BOS/COSLO on 11/21/2013 09:05 AM -----

From: "Sheila Lyons" <salyons@airspeedwireless.net>  
To: <ahill@co.slo.ca.us>, <bgibson@co.slo.ca.us>, <fmecham@co.slo.ca.us>, "Caren Ray" <cray@co.slo.ca.us>, "Cytasha Campa" <ccampa@co.slo.ca.us>, "Darnold@Co. Slo. Ca. Us" <darnold@co.slo.ca.us>  
Cc: "Kami Griffin" <kgriffin@co.slo.ca.us>, <jcaruso@co.slo.ca.us>, <nforester@co.slo.ca.us>, <kharris@waterboards.ca.gov>, <Caren.Trgovcich@waterboards.ca.gov>, <Eric.Oppenheimer@waterboards.ca.gov>  
Date: 11/20/2013 10:24 PM  
Subject: CAB letter on the definition of Vested Rights

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Please find enclosed a letter from the Creston Advisory Body related to Item #33 of the Board of Supervisors agenda for the November 26<sup>th</sup>, 2013 meeting with our recommendations on what we feel the definition of vested rights, part of Urgency Ordinance No. 3246 should be.

Thank you for the opportunity to comment on this topic.

Sheila Lyons



CAB Chairperson CAB on Vested Rights definition Nov 20, 2013.doc

# Creston Advisory Body



Chairperson: Sheila Lyons

P. O. Box 174 Creston, CA 93432 salyons@airspeedwireless.net

November 20, 2013

San Luis Obispo County Board of Supervisors  
County Government Center  
San Luis Obispo, California 93408

RE: Item #33 of the November 26, 2013 Board of Supervisor's agenda: Definition/clarification of "Vested Rights" as part of Urgency Ordinance No. 3246, adopted Aug. 27, 2013

Dear Chairperson Gibson and Supervisors Arnold, Mecham, Hill and Ray,

The Creston Advisory Body (CAB) has discussed vested rights during several recent monthly meetings and have summarized what we feel should be the definitive criteria when considering the multitude of applications seeking grants of approval to compete projects "in the pipeline". We conducted these discussions in a town hall type forum in order to hear from all present, advisory council members and the public, allowing for free and open opinions to be expressed. The diversity of our council members and meeting attendees (rural residents, agriculturalists and small business owners) gives us a broad perspective on the issues. CAB is the only Citizen's Advisory Council over the Basin whose residents all rely completely on private wells.

At our November 20, 2013 we reviewed the latest draft by Planning Staff for defining "vested rights" as set forth by Planning and Building Staff to be presented at the November 26th Board of Supervisor's (B of S) meeting (See Attachment A).

The following comments were made during the subsequent discussion:

1. Is the Urgency Ordinance (UO) necessary or not? When the B of S voted to adopt the UO, and then to extend it for the full two years, it made a statement about where we are in this water crisis. All the arguments for adopting the UO, including the fact that the Paso Robles Groundwater Basin (Basin) was declared at a **Severity Level III in February 2011**, still apply today. The water deficit in our basin grows daily. Considering any new water uses, such as those requested under vested rights which are not critical to public safety, are unacceptable while we are in this crisis. It is our firm belief that there should be no consideration of vested rights to allow any new plantings. The cut off date for plantings should remain Aug. 27, 2013.
2. The adoption of the Urgency Ordinance (UO) on Aug. 27, 2013 was a step in the right direction; however the watering down, and removal of some of the "teeth" originally proposed in the UO (such as removing the 2:1 offsets in favor of 1:1 offsets and no specific limitations on Ag ponds), makes it all the more important that the intent of the definition of "vested rights" proposed at the B of S meeting on Oct.1 remain intact. The original proposal of 2:1 offsets would have moved us in the right direction, allowing for recovery of the Basin to begin. Instead, with 1:1 offsets each additional acre that is planted forces a basin that is in over draft even further into debt because demand will continue to be more than the annual safe yield.
3. It should be noted that retaining the Oct. 1, 2013 proposed definition, or adopting the one being proposed for the Nov. 26<sup>th</sup> B of S meeting, of vested rights does not mean that nothing can be planted or built. It simply means that new water uses must be offset (1:1). This is the morally and ethically correct thing to do.
4. In the October 1, 2013 definition of vested rights item 1 a. (1) "evidence that the area that is intended to be planted has been disked or tilled," the language should be modified to state that the kind of soil preparation should be completed for the kind of crop to be planted. In the case of vineyards the ground must be "ripped". We would suggest that the wording should be as follows: "evidence that the area that is to be planted has been entirely prepared in the manner necessary and appropriate for the intended crop (tilled, disked, ripped, etc.)".

5. There is no limit to the density for each new acre of vineyard to be planted under the vested rights requests, therefore there is no way to measure the amount of water that will be needed. While in this crisis, how can we sanction the planting of new crops without knowing this critical factor? Do you have any idea how many acre feet of water you will be approving? The vested rights criteria in the UO does not, but should, include a limit to the planting density, and therefore the water use, allowed on new vineyards. Plantings should not be allowed to be of greater density than the standard industry practices for this area. Applicants should be asked to state their intended water usage for the new plantings. In addition, we believe any petitioner that is approved for vested rights should be required to install a meter, monitor and report the usage on the planted parcel(s). The agriculturists have not made a good faith effort to come forward and establish their usage. Why not? Are the viticulturists using more than the 1.25-1.5 AF estimates? If not, why don't they band together and publish their usages by vineyard name? They have stated repeatedly that they are water efficient. They should be asked to prove it. This process would provide valuable usage information to the County in future water reports. The Blue Ribbon Committee in their final list of "Top Ranked Solutions" included "Meter all new and replacement wells and measure all well outputs and report" as #5 on their list of short term solutions.

6. Some arguing for the applicants state that there is as much as two years worth of planning and investing prior to actually physical placement of plants in the ground. However, our basin has been steadily declining for a decade. The basin was declared to be at **Severity Level III in February 2011** indicating that there has been a crisis for nearly three years. These facts have been documented in multiple hydrology reports prepared for the County. A primary need for any agri-business is water. When developing a business plan these agri-businesses would surely have investigated the water situation prior to moving forward with their plans. Why would anyone plan to plant a water intensive crop in a semi-arid climate? All applicants for vested rights should be required to answer a question up front, "Were you aware that the Paso Robles Groundwater Basin was at a Level of Severity III when you planned this project?" If they did not investigate the water situation, they were taking a gamble that has not paid off and they should not be rewarded for their negligence. If they did investigate the water situation then are they simply unethical and believe that they could deprive their neighbors of their life sustenance? Did they see San Luis Obispo County officials as naïve when it came to managing water and believe that if they rushed to plant their crop there would be no one to stop them? As stated in prior comments to the Board of Supervisors, why is their bad business decision our problem? Should the Basin's overlying taxpayers be on the hook for these gambling debts?

7. There has been discussion that agriculturalists who still want to plant would like the definition of vested rights to be loosened, and that all proposed conditions put forth for establishing vested rights be modified to replace all "ands" with "ors". The original intention was that all three items in the Oct. 1<sup>st</sup> definition— a, b, & c be inclusive. The substitution of "ors" in place of the "ands" would remove the original intent and leave the door wide open, allowing all applicants to proceed with planting. The latest definition for Nov. 26<sup>th</sup> remains too loose if only three (3) requirements are required for permanent crops. Reducing the requirements to only two (2) of the statements is ludicrous. Anyone with deer fencing and a section of plowed ground (fire breaks?) would be eligible whether they had actually considered planting a crop or not. A minimum of four (4) requirements should be necessary to qualify for vested rights.

8. As stated in prior letters, we continue to believe that the definition of "vested rights" as it pertains to agriculture, vineyards in particular, needs to be plants in the ground on Aug. 27, 2013. There is never a good time to impose restrictions. There are always going to be people caught in the middle. We recognize that businesses may have put forth substantial investments but so have the established rural residents. The rural residents should not suffer at the expense of "future" plantings. Rural residents were already here on Aug. 27, 2013 and 100% vested. Allowing more extensive planting is essentially a "taking" of their existing overlying beneficial domestic use water rights. Water for new plantings may be beneficial to the agri-business but it is not beneficial to the existing rural residents whose domestic use has priority under California Water Code 106. New plantings will do nothing to improve our economy or give this appellation a better reputation. In fact it will do the opposite. There will be no thriving economy without water for the residents.

9. All petitions for exemption from the UO should have a deadline for submittal. We would suggest that deadline be December 31, 2103. In addition, all requests to establish vested rights prior to Aug. 27, 2013 should be evaluated in a public forum allowing for public comment and demonstration of equitable application

of the criteria for approval. Once again, denial of vested rights does not mean that plantings can not occur. It simply means that the 1:1 offsets must be met before moving forward.

10. The 12 or so petitions for vested rights already submitted to the County indicate well over 1300 more acres identified for planting of vineyards. Depending on the densities, this equates to a minimum of 1300-1600 acre feet, or 1.5% of our annual safe yield which is already exceeded by several 1000 acre feet. Some have argued that 1.5% is not that much. To put this all in context, the average household in the city of Paso Robles uses 0.36 acre feet per year. The 1300-1600 acre feet necessary for these plantings would supply over 4000 households for a year. There are 6400 developed rural residential parcels. Additionally, Nipomo is spending \$21M – even before paying for the water itself – to build a pipeline that won't bring in much more water (2700 acre feet) than these new "vested" acres would use. Are we to ask the Basin's overlying taxpayers to pay \$10M, or more, for these petitioners? What about the petitioners still to come? Once we open the door for these petitioners, especially if the criteria are loosened, there will be more. The storage deficit for the Basin in 2012 was calculated to already be at 13,000 AF, more today. Hydrology reports estimate the amount of water needed for the Public Trust is around 3000 AF. Approval of these petitions would increase our deficit by 10-20%, sending us further into overdraft, cause more wells to go dry and cost us substantially from a financial perspective in the long run.

11. The California State Water Board (CSWB) has already expressed concern for our Basin (letter to SLO County dated Aug. 20, 2013). Representatives from Sacramento have been in the area collecting information and observing what is happening in our County. If this CSWB perceives that the UO exists in name only, and does not make a real effort at staving off the crisis (by weakening the definition of vested rights allowing for more plantings) there is a good chance they will feel more inclined to intervene.

12. It must be noted that although there have only been a handful of vested rights petitions submitted to the County as of the writing of this letter, there is still substantial evidence of preparation for planting – tilling, ripping, instillation of irrigation piping, staking, etc. on properties that have not submitted requests for vested rights. It is believed, based on personal conversations with some of the individual participating in these activities, that "what the County doesn't know" won't incur any repercussions. They think they can move forward quickly and remain under the radar. The full impact of the activities currently underway is not yet quantifiable but it is certain to have a demonstratively serious impact on the Basin. Establishing a clear definition as soon as possible is of utmost importance so that violators can be stopped. It is difficult for the average rural resident to determine who is in violation and who is not. Plants in the ground as of Aug. 27, 2013 will make that definition clear and allow for reporting and enforcement to take place immediately. A convoluted definition leaves uncertainty pitting neighbor against neighbor and making enforcement difficult.

13. It was unfortunate that the Board of Supervisors direction at the Oct. 1<sup>st</sup> meeting was to specifically obtain input solely from agriculturalists on the definition of vested rights. This was due to claims that agriculturalists had not had enough time to comment. The stakeholder meeting, on Nov. 6, of agriculturalists was attended primarily by "vested rights" petitioners and only a minority of representatives of non-petitioning agriculturalists and rural residents thereby extremely skewing the input in favor of a loose definition of vested rights. This inequality of representation at the final stakeholder meeting should be considered in the final analysis.

In Summary: If we must consider a definition of vested rights that allows for more plantings after Aug. 27, 2013 it is vital that we maintain the original clear definition put forth on Oct. 1 (with the modification in Items # 4 & 5 above) in order to have no blurring of the line. A clear definition would remove the perception that some agriculturalists are being treated different than others and give the public more trust in the process. The question for any vested rights petition needs to be "Do they qualify under any good faith effort argument?"

In approximately two weeks we will have the results of the latest calculations of our annual safe yield and our storage deficit. If this report confirms, as many expect, that the Basin is in even worse shape than thought then approval of any vested rights requests is going to look like a terrible mistake. We know we are in overdraft – more water is being pumped than the safe annual yield. Where is this new water for these new plantings going to come from? Are you asking the existing 100% vested users (6400 households, small agriculturalists, the Public Trust, etc.) to forfeit their usage to accommodate these new plantings? Why would you allow these "Johnny Come Lately" speculators to profit off of other people's misery? Why pit neighbor against neighbor? Should rural residents, many who have lived here for generations, be penalized because

intensively irrigated agriculturist who have chosen to plant in a semi-arid climate and are pumping 80% of the annual safe yield from the main Basin want more? It is one thing to have to deal with drought which is beyond our control. It is another thing to deny the assistance that it is within your power.

Do we need this UO or not? If we do, we must do all that we can to make it work.

The members of the CAB and the attending public were in full agreement that the definition of vested rights needs to be clear and unambiguous. We believe "plants in the ground as of Aug. 27, 2013" is such a definition.

The CAB representatives voted unanimously (all 7 of the 10 elected members present) to recommend that the criteria for vested rights be "plants in the ground as of Aug. 27, 2013. However, if additional planting is to be allowed the definition of vested rights should remain as originally defined by the Planning and Building Department staff with the modifications suggested in Items # 4 & 5 (see Attachment B to this letter) requiring that the ground had been prepared as necessary and appropriate for the intended crop, and a deadline of Dec. 31, 2013 for filing should be established.

Sincerely,  
Sheila Lyons  
CAB Chairperson

Cc: Planning & Building Department, Kami Griffin, James Caruso, Nick Forester  
Ken Harris, Executive Officer Central Coast Regional Water Quality Control Board  
Caren Trgovcich, Chief Deputy Director State Water Board  
Eric Oppenheimer, Director, Office of Research, Planning and Performance, State Water Board

#### **Attachment A:**

##### **November 26<sup>th</sup>, B of S Meeting Stakeholders' Suggested Language Regarding Vested Rights Under Ordinance No. 3246**

County staff shall use the following procedure when presented with a request for an Ordinance 3246 vested right determination:

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 all of the following:
  - a. Evidence of a valid well permit applied for and issued pursuant to Chapter 8.40 of the County Code prior to August 27, 2013
  - b. Evidence that a well has been installed onsite pursuant to the valid well permit described above, or evidence that a contract was entered into with a licensed well driller prior to August 27, 2013 for installation of the well.
  - c. Evidence that the applicant owned the land prior to August 27, 2013 or had entered into an irrevocable lease for the specific purpose of agriculture prior to August 27, 2013.
  - d. For permanent crop types (i.e. vineyard, orchard, tree fruits, tree nuts) evidence shall be provided to show that at least three (3) of the following requirements have been met prior to August 27, 2013:
    - i. 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 including a deposit paid towards the full cost of the contract or the plants intended to be planted (i.e. rootstock, trees) were delivered to the applicant.
    - ii. The applicant has entered into a contract , including paying a deposit towards the full cost of the contract, for the design and installation of irrigation infrastructure (such as tanks, pumps, underground piping) required to supply water to the area intended to be planted or such infrastructure has been installed in the area intended to be planted.
    - iii. 100 percent of the area that is intended to be planted has been ripped, disked or tilled or other observable and evident site preparation for the intended crop has occurred.

- iv. If the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified or other observable work such as trellis installation has occurred.
  - v. Any fencing required to maintain the crop has been installed.
  - vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the timeframe the Ordinance 3246 is in effect.
- e. For annual crops (i.e. grains, field crops, vegetables, field fruits, flower fields and seed production, ornamental crops, irrigated pasture ) evidence shall be provided to show that at least two (2) of the following requirements have been met prior to August 27, 2013:
- i. The applicant was contractually obligated to accept future delivery of the plants intended to be planted (i.e. seeds, transplants, plugs) and all contractual conditions precedent to accepting future delivery of said plants were satisfied, including a deposit paid towards the full cost of the contract, or the plants intended to be planted were delivered to the applicant.
  - ii. The applicant has entered into a contract, including paying a deposit towards the full cost of the contract, for the rental of irrigation infrastructure (such as sprinklers, piping) required to supply water to the area intended to be planted, or the applicant owns such infrastructure.
  - iii. 100 percent of the area that is intended to be planted has been disked or tilled or other observable and evident site preparation for the intended crop has occurred.
  - iv. The area that is intended to be planted has had soil amendments appropriate for the intended crop applied.
  - v. If the crops are intended to grow in rows, the rows have been clearly identified
  - vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the timeframe Ordinance 3246 is in effect.
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. The decision of the Director of Planning and Building pursuant to Section 2 above is equivalent to issuance of a ministerial permit. At the discretion of the Director, any request for an Ordinance 3246 vested right determination that does not meet the evidence described in Section 1 above, may be referred to the Board of Supervisors who will review the evidence submitted and render a decision.

**Attachment B:**

**Suggested Language to B of S on October 1, 2013 Regarding Vested Rights Under Ordinance No. 3246 with proposed modifications by CAB**

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 **entirely prepared in a manner that is necessary and appropriate for the intended crop (tilled, disked, ripped, etc.)** , (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): **(1) were installed as of August 27, 2013, (2) applicants will declare in their application the intended annual water usage in number of acre feet for the entire area to be planted, and (3) wells will be required to install meters which will be monitored and recorded monthly by the users, with records available to the county upon request.**

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.



**Fw: Restriction on the " Pipeline " project and equal representation**

**Board of Supervisors** to: BOS\_Legislative Assistants,  
cr\_board\_clerk Clerk Recorder

11/21/2013 08:44 AM

Sent by: **Cytasha Campa**

----- Forwarded by Cytasha Campa/BOS/COSLO on 11/21/2013 08:44 AM -----

From: Mary Galvin <mrygalvin@me.com>  
To: "BoardofSup@co.slo.ca.us" <BoardofSup@co.slo.ca.us>  
Date: 11/20/2013 09:34 PM  
Subject: Restriction on the " Pipeline " project and equal representation

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I would like you to implement restriction to those landowners that already had projects "in the pipeline" when the Urgency Ordinance was enacted. The question is how much work or monetary investment must they already have expended in order to have the vested right to be exempt from the ordinance and allowed to complete planting.

I live in close proximity to a recently purchased property by X Line Farms from either Medesto or Fresno. They did not waste time in drilling a well ; planting grapes that looked like fully formed vines, and after the Urgency Ordinance passed have drilled another new well. Did they get multiple permits to drill? They are also going to re-drill next to an existing well, per the owner of the adjacent property. I believe that X Line Farms has 5 wells.

So for those individuals that received multiple permits to drill with out over site by the county, they should be restricted from using any permit not used after the passing of the Urgency Ordinance . No exemption... If you haven't used it you lose it for now. To those who have an investment started already...the exemption should be based on what is best to insure that the basin is protected ... Most rural family water use does not have the impact that the 1000 acre operation use ; large agriculture properties don't have the vested interested in our community, live somewhere else..so .....they came go somewhere else and exploit that community.

Until you get measures/systems and enforcement in place for monitoring use of all commercial water use , all project should stop regardless of any permits obtained prior the moratorium, or what has been spent.

Any governing body or decision making body pertaining to the use of the ground water basin should be representative of rural land owners equal to that of agriculture.

Please make the Urgency Ordinance, urgent and have some teeth... And not just be a political stage and lip service .

GREED IS NOT GOOD.....for anyone

Sincerely, Mary Galvin

Sent from my iPad