From: ndiamond1@gmail.com on behalf of Nancy Diamond
To: attorneys@capcoa.org
Cc: Matthew Maclear; Richard Stout; Peter, Ellen M. @ARB; Spiegelman, Nina; Annie Boyd
Subject: Re: [CAPCOA Attorneys] Draft agenda for CAPCOA attorneys meeting
Date: Tuesday, October 21, 2014 1:59:20 PM

Ray,

North Coast approved joining at the last round. Was that draft of the amicus filed back then? Are the issues the same?

Nancy

On Tue, Oct 21, 2014 at 1:44 PM, Raymond Biering <raybiering@yahoo.com> wrote:

> Dear CAPCOA Attorneys -
>
> Please see the e-mail below sent by Larry Allen from SLO APCD to the APCOs. Any help you can give us by joining the amicus brief being drafted by Bill Dillon would be most appreciated. The amicus brief will be due in the first week of December. I plan to discuss the case at our upcoming meeting and will provide you with copies of the Appellant's brief and our response.
>
> Best regards - Ray Biering
>
> From: lallen@co.slo.ca.us [mailto:lallen@co.slo.ca.us]
> Sent: Tuesday, October 21, 2014 12:49 PM
> To: membership@CAPCOA.org
> Cc: Raymond A. Biering; kenk@capcoa.org
> Subject: Request for assistance regarding lawsuit on SLOAPCD dust rule
>
> Dear Colleagues,
>
> I wrote to you all about 16 months ago (see email below) requesting your support in joining an Amicus brief to fight an lawsuit by State Parks and Friends of the Dunes lobby group. They were appealing a Superior Court decision upholding our Rule 1001 requiring control of PM emissions from the Oceano Dunes State Vehicular Recreation Area in our county (see

email below for details). The main issue in their appeal challenged the District's authority to require a permit for the facility, which would affect all of us if we lose. Several of you responded favorably, for which I am very grateful, and Barbara Baird from SCAQMD had actually started on outlining the amicus brief. In the meantime, however, the appeal was stayed by the court pending an attempt by APCD and State Parks to resolve the underlying issues of the appeal. We have been working w/Parks since January to resolve our issues, and now have a Consent Decree in place with them that establishes an implementation and enforcement process for the Rule, as well as a dispute resolution process. The rule stays in place as is, but we have agreed not to enforce our permit requirement and Parks agreed to withdraw their appeal, which they did.

Friends of the Dunes, however, has not dropped their appeal and recently served us with a 3rd lawsuit claiming the Consent Decree constitutes an illegal amendment to Rule 1001. We'll deal w/that later, but the decision on this appeal will affect us all, so I am reaching out to you once again to request you consider joining in an Amicus brief. As I recall, Santa Barbara, Great Basin, Monterey, Bay Area, N. Sonoma, Tehama, San Diego and N.Coast districts had all expressed a desire to join the amicus brief. I'm hoping you all still intend to provide that support, and that others who didn't before will also reconsider joining. I previously provided some background support info (attached) for those of you considering taking this issue to your Board for approval, and can provide additional info if needed. The amicus brief will need to be ready for submittal by December 1, so we'll need decisions from you all fairly quickly. Bill Dillon, Counsel for Santa Barbara APCD, has agreed to take on the task of drafting the brief, so the cost and effort for any district joining the amicus will be minimal.

I greatly appreciate your consideration of this request and look forward to hearing back from each of you soon. Ray Biering or I would be happy to discuss this personally with any of you if you have questions or concerns regarding this request, so please call either of us if you want to get more details or background info. Thank you in advance for any assistance you can offer on this.

Larry Ray Biering, District Counsel

805.781.5920 desk Adamski, Moroski, Madden, Cumberland & Green
805.471.8035 cell 805.543.0990

(See attached file: Closed Session Outline for SLO APCD Amicus Support.docx)

Larry Allen
Air Pollution Control Officer
San Luis Obispo County Air Pollution Control District
Phone: 805 781-5912
Fax: 805 781-1002
Web: http://www.slocleanair.org

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----- Forwarded by Larry Allen/APCD/COSLO on 10/20/2014 05:58 PM -----

From: Larry Allen/APCD/COSLO
To: membership@capcoa.org
Date: 06/13/2013 10:59 AM
Subject: Request for assistance regarding lawsuit on SLOAPCD dust rule

Dear Colleagues,

As most of you heard at the Spring Conference last month, SLOAPCD adopted a rule in Nov 2011 requiring State Parks to reduce dust emissions from the Oceano Dunes State Vehicular Recreation Area (ODSVRA). Friends of the Dunes (FOD), an offroad vehicle lobby group for the ODSVRA, sued us over the rule and named State Parks as a real party in interest. As a result, State Parks joined the lawsuit with them and challenged our authority to adopt the rule and to require a permit for the ODSVRA. The briefs from FOD and SP were quite lengthy and challenged us on a variety of regulatory and technical issues, including the viability of the air quality studies supporting the rule, whether the facility is a direct or indirect source, whether the facility could be considered a contrivance for permitting purposes, and a number of other

issues. The Superior Court judge issued a 20 page decision denying each of their challenges and supporting every point we made in our briefs; it was an excellent decision for defending against an appeal.

Both FOD and State Parks have now appealed that decision. Our Counsel, Ray Biering, discussed the appeal with the CAPCOA attorneys Tuesday on a conference call, and all 10 or so of those present, including all 5 large districts, agreed it was important to file amicus briefs in support of our case due to its precedent-setting nature. If we don't prevail, the ability of every air district in CA to regulate and permit fugitive dust sources like the ODSVRA, including mining operations and agriculture, will be thrown into question.

I'm writing all of you to personally ask that you consider signing on in support of the Amicus brief when it's in final form. Joining the amicus brief won't cost the participating districts, except the time spent by those actually writing the brief. SCAQMD's lead counsel, Barbara Baird, has already graciously volunteered to take the lead in writing the amicus brief for all the other districts to sign, pending Barry's agreement. I realize it will take a Board action for most of you to get authority to add your signature, but I strongly believe this case is crucial for all of us to retain the regulatory authority we currently have. Ray has already forwarded all pertinent legal briefs filed in this case to all attorneys on the CAPCOA attorneys list, so most of you should have them already. If not, please let me know and I will forward them to you. We are also requesting ARB to join the Amicus brief for this case.

We anticipate State Parks and FOD could file their opening appellant briefs as early as mid-July, with ours due in August and the appellant reply briefs due in September; amicus briefs would be due shortly after that. So if you are considering joining the amicus brief, it would be best if you could ask for the authority to do so at your next board meeting so Barbara Baird will know who is on-board. She will need to list the participants when she drafts the amicus brief, and the longer the list the better. We would be willing to draft a short list of talking points with the pertinent info needed for a closed session Board discussion and decision if that would be helpful; we could also draft sample language for a short staff report if you want to handle this in open session.

I ask that you please give this thoughtful consideration and let me know what you decide. Ray or I would be happy to discuss this personally with any of you if you have questions or concerns regarding this request, so please call either of us if you want to get more details or background info. Thank you in advance for any assistance you can offer on this.

Larry Ray Biering, District Counsel
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Larry Allen
Air Pollution Control Officer
San Luis Obispo County Air Pollution Control District
Phone: 805 781-5912
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Web: http://www.slocleanair.org

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[Scanned @co.slo.ca.us]

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- 1 Attachment

- Closed Session Outline for SLO APCD Amicus Support .docx
  Yahoo - login

Yahoo - login

Forgot password or username? Create Account OR SIGN IN WITH Facebook Google View desktop version

View on **us-mg6.mail.yahoo.com** Preview by Yahoo

Raymond A. Biering
(805) 543-0990 (office)
(805) 550-9953 (cell)

From: Barbara Baird <BBaird@aqmd.gov>
To: "attorneys@capcoa.org" <attorneys@capcoa.org>; Matthew Maclear <MCM@atalawgroup.com>; Richard Stout <RStout@co.sutter.ca.us>; "Peter, Ellen M. @ARB" <ellen.peter@arb.ca.gov>; "Spiegelman, Nina" <Spiegelman.Nina@epa.gov>
Cc: Annie Boyd <annieb@capcoa.org>
Sent: Tuesday, October 21, 2014 11:59 AM
Subject: [CAPCOA Attorneys] Draft agenda for CAPCOA attorneys meeting

Agenda for November 4 is attached. Annette asked that all her items be in the am as she has to leave at noon. The agenda currently is designed to start at 9 and end at 3:30., with a morning break but no afternoon break. If everyone wants an afternoon break we can reorganize to start at 8:30 instead. Let me know if you prefer this option. I have to end it at 3:30 since I need to report to the CAPCOA board at that time. CARB and EPA attorneys are invited guests.

Annie, did the CAPCOA Board assign me anything in particular to report on or just summarize our agenda?

Barbara Baird
District Counsel
SCAQMD
(909) 396-2302

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