



April 13, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Edward C. Starr, City Manager 

**SUBJECT:** CITY MANAGER'S WEEKLY REPORT: April 7-13, 2017

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## **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- In a lawsuit challenging California's ability to collect revenue from auctions it sponsored over the last five years, a state appeals court handed a major victory to the state's signature cap-and-trade climate-change program last week.

A [ruling by a panel of three judges upheld](#) the carbon trading system (cap-and-trade) California started in 2012, ruling it does not amount to an illegal tax, and that state regulators have the legal authority to operate the system until 2020 as provided by current law.

[AB 32](#), the California Global Warming Solutions Act of 2006, [authorizes the California Air Resources Board \(CARB\) to collect fees](#) from about 250 industrial sources of greenhouse gases, including oil refineries, electricity power plants (including imported electricity), cement plants, and other industrial sources.

California passed its cap-and-trade law in 2006 under former Governor Arnold Schwarzenegger. The law's objective is to reduce carbon dioxide emissions to 1990 levels by 2030. California is currently the only state requiring businesses to bid on permits to emit CO<sub>2</sub>.

CARB, which oversees the cap-and-trade program, hands out emissions permits and auctions off others. However, legal challenges and political uncertainty have bogged down the program, causing permit prices to tumble in the past year. California's cap-and-trade system raised \$1 billion from selling permits in 2015, but only \$500 million in 2016. There were also concerns over lawmakers and Governor Brown directing cap-and-trade funds to the high-speed rail project.

The 3rd District Court of Appeal upheld the CARB program in a 2-1 decision, ruling that the state's auction sales do not equate to an illegal tax because the purchase of pollution credits by businesses is voluntary and the credits they buy are "a thing of value." The CARB program was approved with a majority vote, and opponents believe a two-thirds vote was required to authorize a tax.

"These twin aspects of the auction system, voluntary participation and purchase of a specific thing of value, preclude a finding that the auction system has the hallmarks of a tax," wrote Justice Duarte for the majority.

In 2013, a coalition of business groups challenged California's system to reduce emissions blamed for global warming. Plaintiffs said the state's 2006 global warming law did not allow the auctioning of emissions permits and constituted an illegal tax.

The court disagreed and ruled requiring some companies to buy cap-and-trade permits did not constitute a tax. "First, the purchase of emissions allowances, whether directly from the Board at auction or on the secondary market, is a business-driven decision, not a governmentally compelled decision," the court ruled. The court also argued that "unlike any other tax to which we have been referred by the parties, the purchase of an emissions allowance conveys a valuable property interest—the privilege to pollute California's air—that may be freely sold or traded on the secondary market."

The dissenting Justice, in siding with the litigants (the California Chamber of Commerce and Morning Star—a tomato processing company located in Woodland, 15 miles north of Sacramento), concluded the program does amount to a tax. In his dissent, Justice Hull wrote, "Given that the auction program is, for Morning Star and businesses that are similarly situated, compulsory if they are to remain in business in California and that the auction program creates, in actual effect, general revenue, I can only conclude that the program is a tax in *something else* clothing and that the auction program, not having been passed by a 2/3 vote in the Legislature, violates Proposition 13."

Proposition 13, passed by California voters in 1978, requires new taxes to be approved by a two-thirds vote in both chambers of the state legislature. The global warming law was only passed by a majority vote, thus violating the state's Constitution, opponents argued. Opponents of cap-and-trade are mulling whether to appeal the court's ruling to the state Supreme Court.

State lawmakers must still consider legislation to reauthorize the program beyond 2020. If the program cannot be extended with a two-thirds majority vote, the cap-and-trade system could see future legal challenges brought under Proposition 26, which expands Proposition 13 to fees.

The Legislature has already introduced [AB 151](#) to extend the cap-and-trade system beyond 2020. In the meantime, lawmakers continue debating [whether to extend the program](#) because there are separate legal questions over whether it can keep operating after 2020.

The court's decision is expected to have a positive impact for extension of Gold Line light rail service to the Montclair Transcenter. Assembly Member Freddy Rodriguez, in his bill (AB 215), seeks to secure \$30 million in state construction funding for the Gold Line Montclair Segment—from the Los Angeles County-San Bernardino County line to the Montclair Transcenter. One of the funding sources identified in the bill is the cap-and-trade program. In addition, a coalition of agencies, including the Metropolitan Transportation Authority (Metro), Foothill Gold Line Construction Authority, San Bernardino County Transportation Authority (SBCTA), and Montclair are intending to submit an application to the California State Transportation Agency (CalSTA) for cap-and-trade funding for construction of the Montclair Segment.

- Last week, following unprecedented water conservation efforts and plentiful winter rain and heavy snow in 2017, Governor Brown ended the drought state of emergency in most of California, while maintaining water reporting requirements and prohibitions on wasteful practices, such as watering during or right after rainfall, cautioning that "the next drought could be around the corner."

As of February 28, 2017, statewide hydrologic conditions were as follows: precipitation, 190 percent of average to date; snow water content, 185 percent of average to date (165 percent of the April 1 index average); runoff, 270 percent of average to date; and reservoir storage, 120 percent of average to date.

While the Governor is celebrating, scientists at the Jet Propulsion Laboratory are less sanguine. Researchers say that when winter snows begin to melt later in the year, the runoff will help to replenish localized groundwater and aquifers along river channels and floodplains; however, other parts of the state hit hard by drought will not realize the same benefits. Aquifer recharge in these other areas will represent a small uptick in a century of declining groundwater storage, at least with respect to the once vast reserves in the Central Valley, suggesting California's chronic water scarcity is here to stay.



A plow removes snow in South Lake Tahoe in January. (Gary Coronado - Los Angeles Times)

Governor Brown's Executive Order B-40-17 lifts the drought emergency in all California counties except Fresno, Kings, Tulare, and Tuolumne, where emergency drinking water projects will continue to help address diminished groundwater supplies. The order also rescinds two emergency proclamations from [January](#) and [April 2014](#) and four [drought-related executive orders](#) issued in 2014 and 2015.

Executive Order B-40-17 builds on actions taken in [Executive Order B-37-16](#) which remains in effect to continue making water conservation a way of life in California:

- ✓ The State Water Resources Control Board will maintain urban water use reporting requirements and prohibitions on wasteful practices such as watering during or after rainfall, hosing off sidewalks, and irrigating ornamental turf on public street medians.
- ✓ The state will continue its work to [coordinate a statewide response](#) on the unprecedented bark beetle outbreak in drought-stressed forests that has killed millions of trees across California.

In a related action, state water agencies issued a plan that would continue the practice of making water conservation in California a way of life. The framework requires [new legislation](#) to establish long-term water conservation measures and improved planning for more frequent and severe droughts.

Although the severely dry conditions that afflicted much of the state starting in the winter of 2011-12 are [gone](#), damage from the drought will linger for years in many areas. The drought reduced farm production in some regions, killed an estimated 100 million trees, harmed wildlife, and disrupted drinking water supplies for many rural communities. The consequences of millions of dead trees and the diminished groundwater basins are expected to challenge areas of the state well into the future.

The full text of the Governor's executive order can be found [here](#).

### **California's Drought Response**

The drought that spanned water years 2012 through 2016 included the driest four-year statewide precipitation on record (2012-2015) and the smallest Sierra-Cascades snowpack on record (2015, with 5 percent of average). The drought years were also marked by record heat: 2014, 2015, and 2016 were California's first, second, and third warmest year in terms of statewide average temperatures.

The state [responded to emergency](#) drought conditions with actions and investments that advanced the *California Water Action Plan*—the Governor's five-year blueprint for more reliable, resilient water systems to prepare for climate change and population growth. To advance the priorities of the [Water Action Plan](#) and respond to drought, voters passed a comprehensive [water bond](#), the Legislature appropriated and accelerated funding, and state agencies accelerated grants and loans to water projects.

California also enacted the historic [Sustainable Groundwater Management Act](#), took action to improve measurement and management of water, [retrofitted](#) tens of thousands of inefficient toilets, replaced lawns with water-wise landscaping, and provided safe drinking water to impacted communities.

Californians responded to the drought with tremendous levels of water conservation, including a nearly 25 percent average reduction in urban water use across the state.

- Last week, the California Legislature approved Senate Bill 1 (SB 1), the *Road Repair and Accountability Act of 2017* that will generate an estimated \$5.2 billion annually to provide Californians with safe and reliable streets, roads, bridges, and an improved transportation and transit system. The Legislature also approved Assembly Constitutional Amendment 5 (ACA 5) which, upon voter approval in June 2018, would ensure revenues generated by SB 1 are to be used only for transportation purposes. Governor Brown has not yet signed the legislation.

Passage of SB 1 is the culmination of work sponsored, in part, by the League of California Cities—work that included (1) the biennial *Local Streets and Roads Needs Assessment Report*; (2) development and adoption of eight guiding principles for new transportation revenues; and (3) leadership in the state's Fix Our Roads Coalition, which formed in 2015 to advocate for increased transportation funding.

The biennial *Local Streets and Roads Needs Assessment Report* serves as a significant resource on local street and road conditions. According to the report, the average pavement condition statewide for local streets and roads has now dropped to the "at risk" category, which is precisely what SB 1 and ACA 5 are intended to address.

SB 1 will generate \$5.2 billion annually for transportation improvements. For cities and counties, this includes \$1.5 billion annually to fix local streets and roads—nearly double what is available today. The bill also includes \$750 million annually to improve transit operations and capital improvements. Inclusion of the transit funding component significantly improves the likelihood that AB 215, introduced earlier this year by Assembly Member Freddie Rodriguez, will be approved by the Legislature. The bill would allocate \$30 million for construction of the Montclair Segment of the Phase 2B extension of Gold Line light rail service from Claremont to Montclair.

In recent years, Montclair promoted a number of funding options to complete construction of the Montclair Segment of Phase 2B of the Gold Line Foothill extension, including encouraging local legislative leaders to introduce a budget bill that incorporates state funding for construction. The introduction of AB 215 fulfills that quest. The San Bernardino County Transportation Authority (SBCTA) has already developed approximately \$38 million of the \$70 million needed for construction of the Montclair Segment.

Over a 10-year period, SB 1 would generate approximately \$52 billion by introducing the following tax adjustments:

12 cents per gallon gasoline excise tax increase, effective November 2017

20 cents per gallon diesel excise tax increase, effective November 2017

4 percent diesel sales tax increase, effective November 2017

\$100 per year zero emission vehicle fee, effective July 2020

A "transportation improvement fee," (TIF) similar to the vehicle registration fee that owners already pay the DMV each year, which will be assessed at a progressive rate ranging from \$25 to \$175 per year based on each vehicle's market value, effective January 2018:

\$ 25 per year for vehicles with a market value \$0 - \$4,999

\$ 50 per year for vehicles with a market value \$5,000 - \$24,999

\$100 per year for vehicles with a market value \$25,000 - \$34,999

\$150 per year for vehicles with a market value \$35,000 - \$59,999

\$175 per year for vehicles with a market value \$60,000 and higher

Statewide, where would the transportation revenue go? Totals listed below are annual dollar averages across each of the first 10 years, although available funds will be smallest in the first year (fiscal year 2018-19) and grow each year over time.

\$1.5 billion for local road repairs

\$1.5 billion in state highway repairs

\$750 million for local public transit projects

\$400 million in bridge and culvert repairs

\$300 million to improve trade corridors

\$250 million to reduce congestion on major commute corridors

\$200 million in matching funds for "self-help" communities that have raised their own revenues for local transportation projects, such as through a city or county sales tax increase—San Bernardino County has Measure I, a half-cent sales tax for transportation and transit projects

\$100 million for infrastructure improvements that promote walking and bicycling

According to SBCTA, locally, SB 1 would provide the following revenue to San Bernardino County over 10 years:

\$54 million — STIP (State Transportation Improvement Program)

\$480 million — County Road Share

Funds designated for Regional Transit Operators in San Bernardino County, over ten years, include the following:

Morongo Basin transit Authority - \$224,619

Mountain Area Regional Transit Authority - \$184,854

Omnitrans - \$9,197,088

SBCTA - Corresponding to SCRRA - \$21,576,480

Victor Valley Transit Authority - \$1,283,347

Montclair's estimated 10-year share of SB 1 funds for local street and road investments is \$8.85 million. This total is in addition to current gas tax allocations. A complete list of investment funds to be allocated to San Bernardino County cities can be found [here](#).

## **COMMUNITY DEVELOPMENT DEPARTMENT/ ECONOMIC DEVELOPMENT**

- Montclair Housing Corporation (MHC) staff recently completed annual inspections of the MHC-operated apartments and single-family homes. The interior inspections are conducted annually by MHC staff and the on-site managers to ensure the properties and/or units are being maintained pursuant to the rental agreements and the Rules and Regulations Addendum. Also, the inspections allow MHC staff the opportunity to effectively address normal wear-and-tear issues and to become aware of immediate problems in the event a tenant has not yet notified the on-site manager of a pressing issue.

The proactive approach of annually inspecting each of the 98 residential units helps keep maintenance expenses in check and allows staff to effectively plan for long-term major improvements.

The annual inspections also provide staff the opportunity to develop a rapport with many of the tenants. "Catching up" with the tenants is one of the perks of the annual inspections!

- Retailers are filing for bankruptcy at an alarming rate that is quickly approaching recessionary levels. Payless ShoeSource, hhgregg, The Limited, RadioShack, BCBG, Wet Seal, Gormans, Eastern Outfitters, and Gander Mountain are among the retailers that have filed for bankruptcy so far this year, and most are closing hundreds of stores as a result.

On top of those closures, retailers that are staying in business, at least for now, are shutting down a record number of stores. More than 3,500 stores are expected to close over the next several months.

Annual retail bankruptcies peaked at a total of 20 in 2008, a level that the U.S. could reach by September if the current rate of filings continues. During the recession, private equity firms and banks came to the rescue of some retailers and brought them out of bankruptcy through restructuring. But there are not many firms willing to rescue dying retailers these days. Private equity firms seem less willing now to step in to save these failing retailers as the issues this time around are more structural rather than quick operational fixes.

In other words, shoppers' habits are fundamentally changing, and some retailers are not cut out to survive in the new retail environment.

Traditional retailers with large fleets of physical stores have been hit the hardest. Visits to shopping malls have been declining for years with the rise of e-commerce and titanic shifts in how shoppers spend their money. Visits declined by 50 percent between 2010 and 2013, according to the real estate research firm Cushman & Wakefield.

People are also now devoting bigger shares of their wallets to restaurants, travel, and technology, while spending less on apparel and accessories.

## **FIRE DEPARTMENT**

- This past weekend, Firefighter/Paramedic Christian Noboa attended Corona Fire Department's 39th Annual Auto Extrication class. Extrication has grown into one of the most important life-saving operations. In addition to equipment, the three days of training focused on the basics of extrication: stabilization; glass, door, and roof removal; and dash displacement.

The training will add to Fire Suppression personnel's knowledge of a car's anatomy, as well as tools and techniques involved in honing extrication skills and making the most of them in life or death situations.

Pictures taken at training are featured on Page 13.

## **HUMAN SERVICES DEPARTMENT**

- The City's Annual Easter Eggstravaganza and Pancake Breakfast will be held Saturday, April 15 from 9 a.m. to 11 a.m. at the Montclair Community Center and Alma Hofman Park.

Included will be games, activities, Easter eggs, and candy for children 10 years and younger. Children are invited to bring their own baskets to carry the candy-filled and prize eggs they win. There will also be a drawing to win special Easter-themed baskets.

The Easter Bunny will arrive on a fire engine and will pose for photos (\$3 per photo or \$1 to take your own).

The pancake breakfast, offered for \$3 per breakfast, will also include sausage, orange juice, and coffee.

This event is sponsored by the City of Montclair, Montclair Kiwanis Club, Montclair Fire Fighters Association, Montclair Police Officers Association, and Montclair-Ontario Junior Women's Club.

For additional information, call (909) 625-9479.

## **PUBLIC WORKS DEPARTMENT**

### **CONSTRUCTION TO START ON MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT THIS SUMMER**

- Earlier this week, the City was informed by Caltrans and San Bernardino County Transportation Authority (SBCTA) that Caltrans had approved SBCTA's request for authorization to advertise, award, and administer the construction of the Monte Vista Avenue Grade Separation Project at the Union Pacific railroad tracks. The proposed project, which was originally conceived back in 2000, will soon become a reality.

Originally intended to be funded by the state under the Traffic Congestion Relief Act of 2000, the project got off to a quick start in 2001, and just as quickly skidded to a halt in 2002 when the state withdrew the funding. Through a combination of the partial return of state funds in 2005, federal High Priority Funds acquired in 2006, new state funds provided by the California Public Utilities Commission under its grade separation program, former Redevelopment Agency funds, local City funds, and more federal funds administered by SBCTA, the City has managed to complete the federal National Environmental Protection Act process, acquire all the right-of-way necessary for the project, complete the design and preparation of bid documents, and enter into an agreement with SBCTA to advertise and administer the construction contract.

SBCTA received its authorization (known as a form E-76) from the state on Monday and issued its Notice Inviting Bids that afternoon. SBCTA has set a pre-bid meeting for prospective bidders/contractors for Thursday, April 20, and expects to open bids on Thursday, May 11 at SBCTA's offices. Assuming no issues arise delaying the bid opening, it is anticipated that the SBCTA Board of Directors will award the contract at its meeting on Wednesday, June 7.

Construction is anticipated to begin in late July or August and take approximately two years to complete. A groundbreaking celebration will be announced around the start of construction, and I invite all of you to attend, subject to your supervisor's approval.

ECS:spa

*Isn't it funny how day by day nothing  
changes but when you look back  
everything is different?*

**~ C. S. Lewis**

## APRIL 2017



14	<b>Good Friday</b>	
15	Coffee With CURT (Curt Hagman, 4th District Supervisor) Montclair Police Department Community Room 4870 Arrow Highway	8 a.m. - 10 a.m.
15	Easter Eggstravaganza and Pancake Breakfast Montclair Community Center	9 a.m. - 11 a.m.
16	<b>Easter</b>	
17	Real Estate Committee Meeting City Hall Conference Room	5:30 p.m.
17	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:15 p.m.
17	City Council Meeting Council Chambers	7:00 p.m.
19	Safety Committee Meeting City Hall Conference Room	10:30 a.m.
20	Public Works Committee Meeting City Hall Conference Room	4:00 p.m.
22	<b>Earth Day</b>	
24	Planning Commission Meeting Council Chambers	7:00 p.m.
25	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.

## MAY 2017

		
01	City Council Workshop – Police Department Update Council Chambers	5:45 p.m.
01	City Council Meeting Council Chambers	7:00 p.m.
03	Community Action Committee Meeting Council Chambers	7:00 p.m.
04	Mayor's Prayer Lunch Montclair Community Center	11:30 a.m.
08	Planning Commission Meeting Council Chambers	7:00 p.m.
09	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.
10	Police Department Recognition Luncheon, Sponsored by Montclair Chamber of Commerce Montclair Community Center	11:30 a.m.
<b>14</b>	<b>Mother's Day</b>	
15	Real Estate Committee Meeting City Hall Conference Room	5:30 p.m.
15	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:15 p.m.
15	City Council Meeting Council Chambers	7:00 p.m.
17	Safety Committee Meeting City Hall Conference Room	10:30 a.m.
18	Public Safety Committee Meeting City Hall Conference Room	4:00 p.m.
22	Planning Commission Meeting Council Chambers	7:00 p.m.
<b>29</b>	<b>Memorial Day – City Offices Closed</b>	
30	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.

**FF/PM Christian Noboa @  
Corona Fire Department's  
39th Annual Auto Extrication Class  
April 7-9 2017**

