

APPENDIX C PUBLIC INFORMATION AND OTHER NOTICES

**FIGURE C-1
NATIONAL WEATHER SERVICE PUBLIC ZONES**

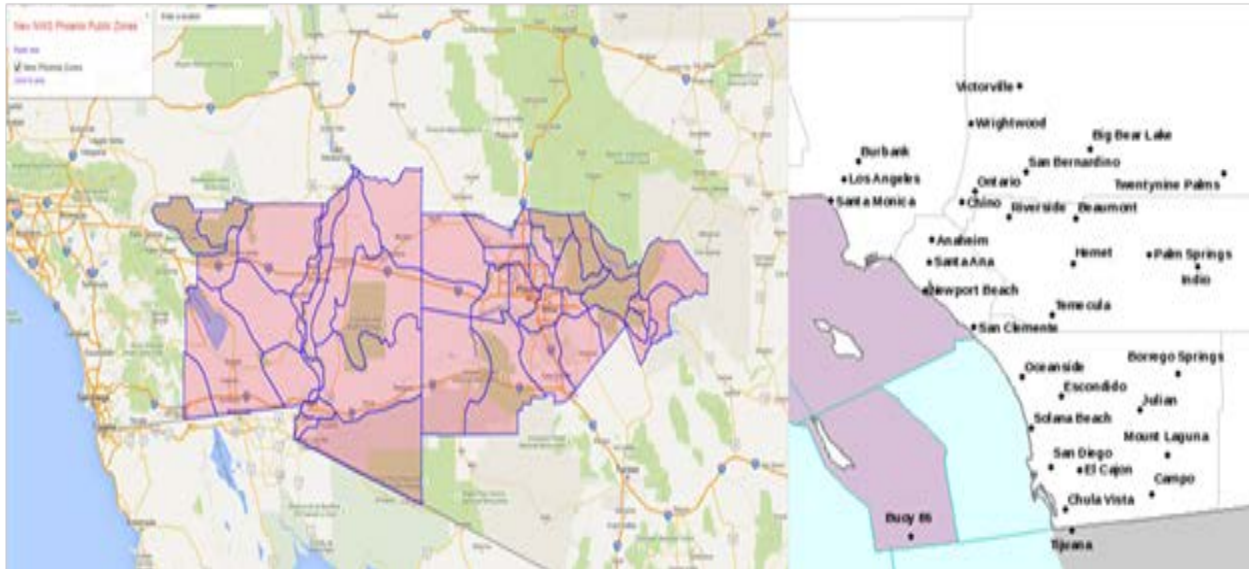


Fig C-1: Illustrates the public zones serviced by the National Weather Service Office in Phoenix and San Diego. Imperial County, including southeast sections of Riverside County are part of the reporting public zone areas from the Phoenix office

FIGURE C-2
IMPERIAL COUNTY WEB POSTING
OF POTENTIAL ELEVATED PM CONCENTRATIONS

Advisory Events

The information herein is NOT intended for use as a weather forecast. The Air District DOES NOT forecast but solely compiles information from both the Phoenix and San Diego National Weather Offices to relay information concerning potential changes in ambient air concentrations that may impact the public.

April 16 2018
Be Advised
<p>High wind levels have the potential to suspend particulate matter into the air. High levels of PM₁₀ may pose an impact to public health. It is recommended that active children and adults, and people with respiratory disease, such as asthma, limit their outdoor activities.</p> <p>Potential increases in PM₁₀ concentrations may increase to moderate or unhealthy level.</p>
Imperial County Weather Synopsis
<p>IMPERIAL COUNTY</p> <p>A WIND ADVISORY REMAINS IN PLACE ACROSS IMPERIAL COUNTY.</p> <p>The NWS Phoenix office has issued a Wind Advisory for Imperial County effective 2 p.m. Monday through 11 p.m. tonight. West winds will reach 25 to 35 mph in the afternoon with gusts up to 45 mph. Areas of blowing dust may result. Crosswinds may produce difficult driving conditions.</p> <p><u>SYNOPSIS FROM THE SAN DIEGO OFFICE</u></p> <p>HIGH WIND WARNING IN EFFECT for the San Diego County mountains and deserts northward to the Coachella Valley and the San Geronio Pass. The NWS San Diego office has issued a High Wind Warning for the aforementioned areas effective midnight April 16 through 5 am on Tuesday. Winds will increase on Monday to 20 to 30 mph with gusts up to 45 mph. Local gusts may reach 55 mph. Visibility will be limited due to blowing dust.</p> <p>Winds early Monday morning will be mostly confined to areas near the mountain ridge tops onto the upper desert slopes. The winds will gradually strengthen and spread into the deserts through this morning. The strongest and most widespread winds are expected for this afternoon and evening decreasing late tonight into early Tuesday.</p> <p>A low pressure system moving inland along the West Coast will bring much stronger onshore flow through tonight. This will bring cooling spread coastal clouds onto the coastal mountain slopes with a slight chance of light showers near the mountains for late this afternoon into tonight and bring strong gusty west winds in the mountains and deserts through late tonight. Dry with weaker winds and a warming trend for Tuesday and Wednesday. Another low pressure system moving inland through California will bring cooling with periods of strong gusty west winds for the mountains and deserts for Wednesday night into Thursday night. There is also a slight chance of light showers along and west of the mountains Thursday. Dry with a warming trend for Friday into next weekend with weaker winds.</p> <p><u>SYNOPSIS FROM THE PHOENIX OFFICE</u></p> <p>A weather system moving across the western U.S. will bring increasing breeziness, areas of blowing dust, and</p>

elevated to critical fire weather conditions to the region.

The most notable signal for strong winds remains across southeast California into the lower Colorado River Valley, where gusts in excess of 40 mph will be possible this afternoon. Breezy conditions are still expected across southwest/south-central Arizona, where gusts of 25-30 mph are forecast to occur. This will be enough to generate at least patchy blowing dust across the lower deserts this afternoon. Additionally, elevated to critical fire weather conditions remain a concern area-wide, with a Red Flag Warning in effect for southern Gila County today.

A significant but short-lived cooling trend will occur into Tuesday, before temperatures warm back to near seasonal normals mid-week. A second dry storm system will affect the Southwest Thursday and Friday, bringing another round of breeziness to the region along with a slight cool down.

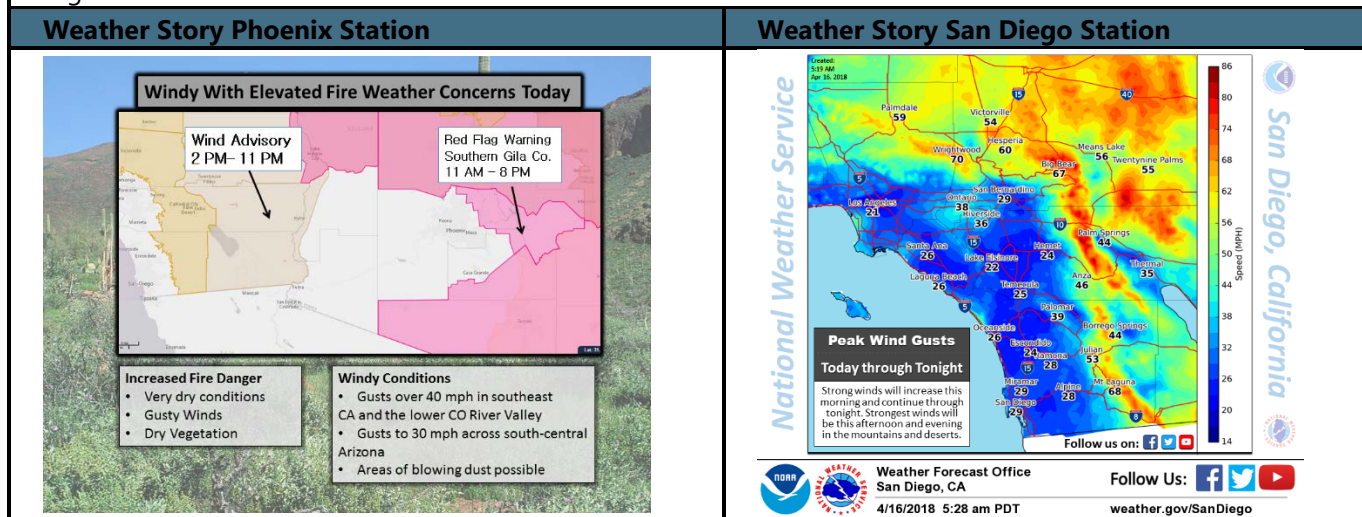


Fig C-2: Copy of the ICAPCD web-based advisory

FIGURE C-3
SAN DIEGO NWS OFFICE WEATHER STORY APRIL 14, 2018

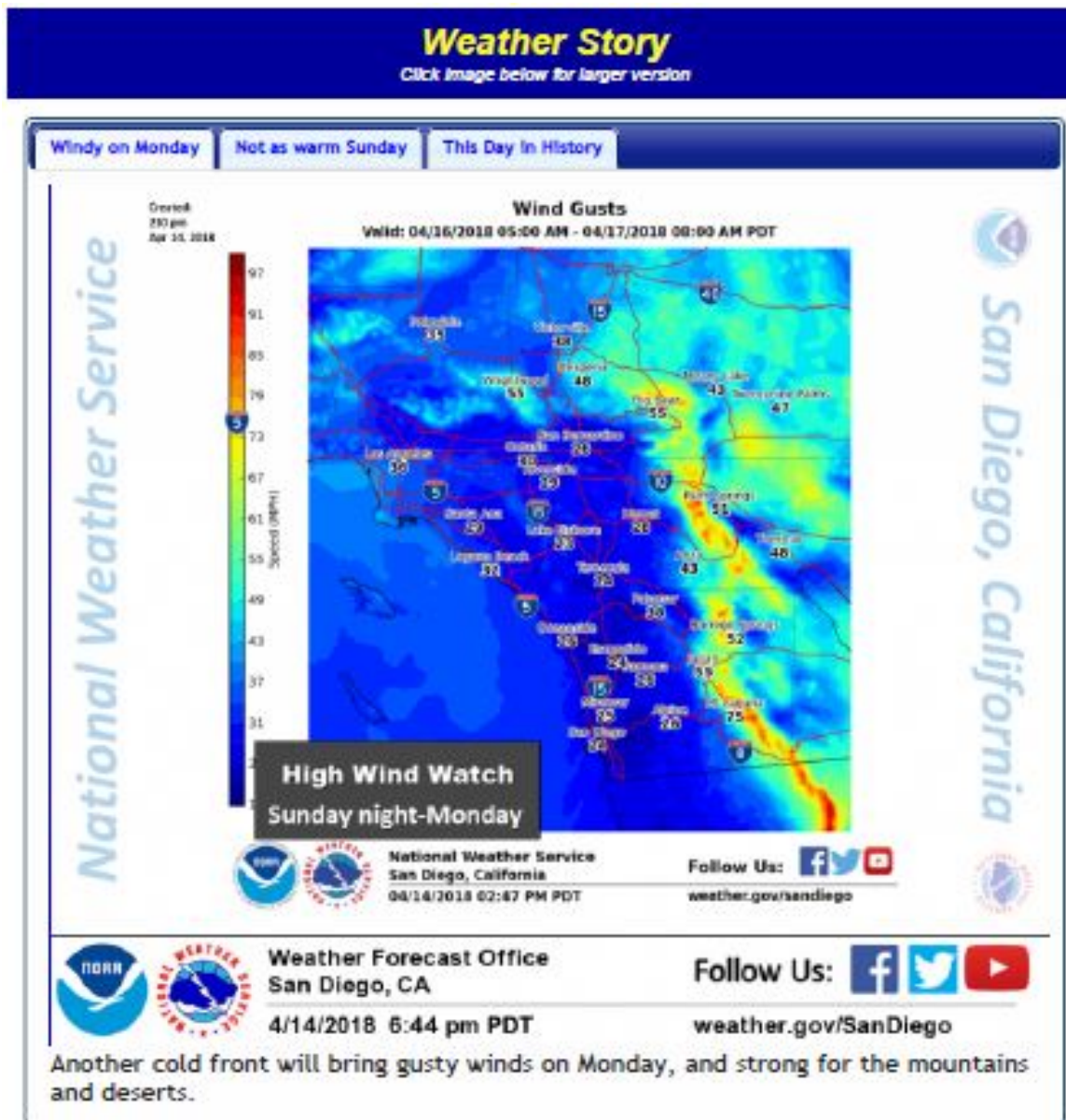


Fig C-3: Illustrates the High Wind Watch across the region

FIGURE C-4
PHOENIX NWS OFFICE WEATHER STORY APRIL 14, 2018



Fig C-4: Illustrates the high winds forecast for the region.

FIGURE C-5
SAN DIEGO NWS OFFICE WEATHER STORY APRIL 15, 2018

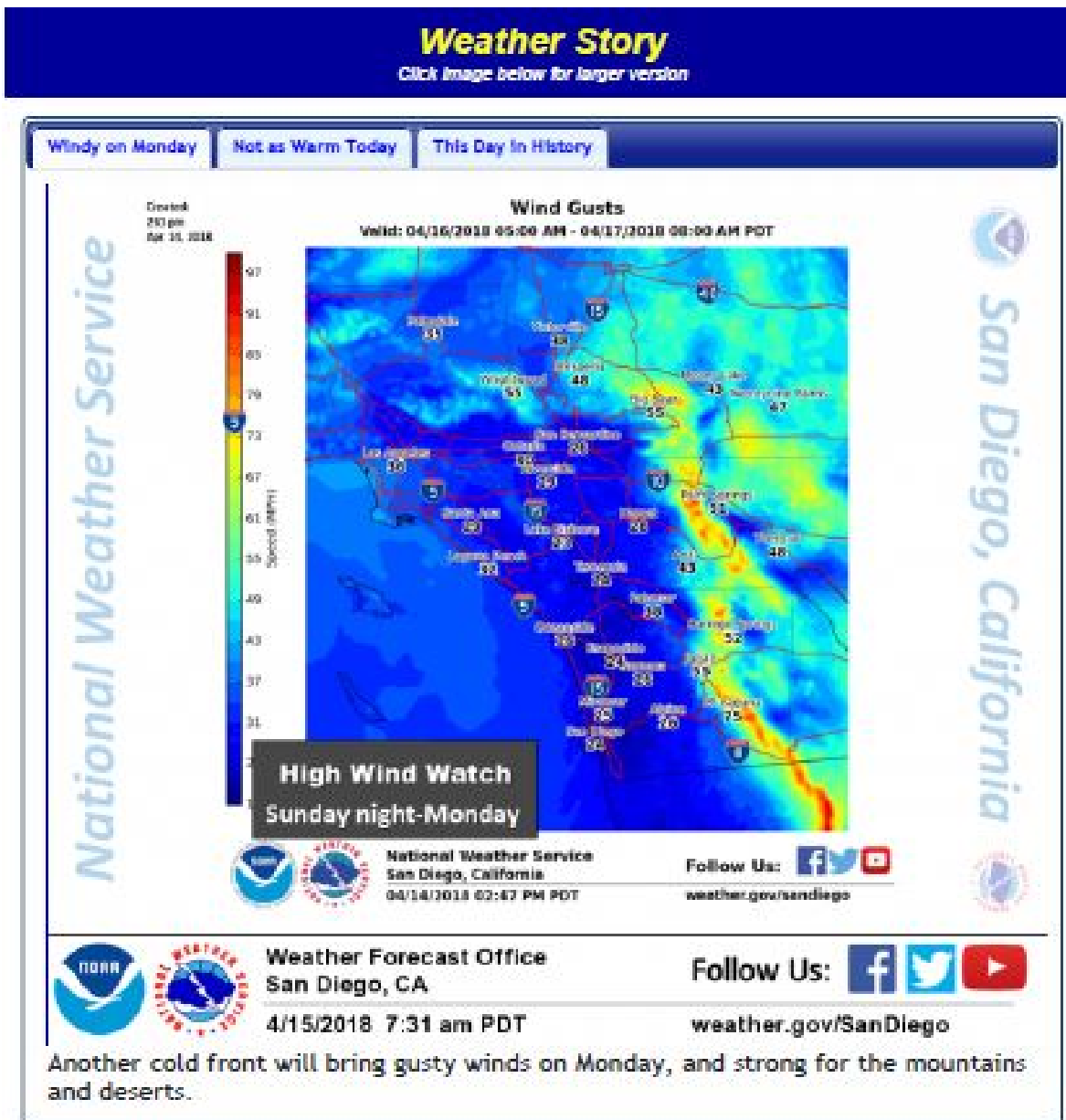


Fig C-5: Illustrates the high winds forecast for the region

FIGURE C-6
PHOENIX NWS OFFICE WEATHER STORY APRIL 16, 2018

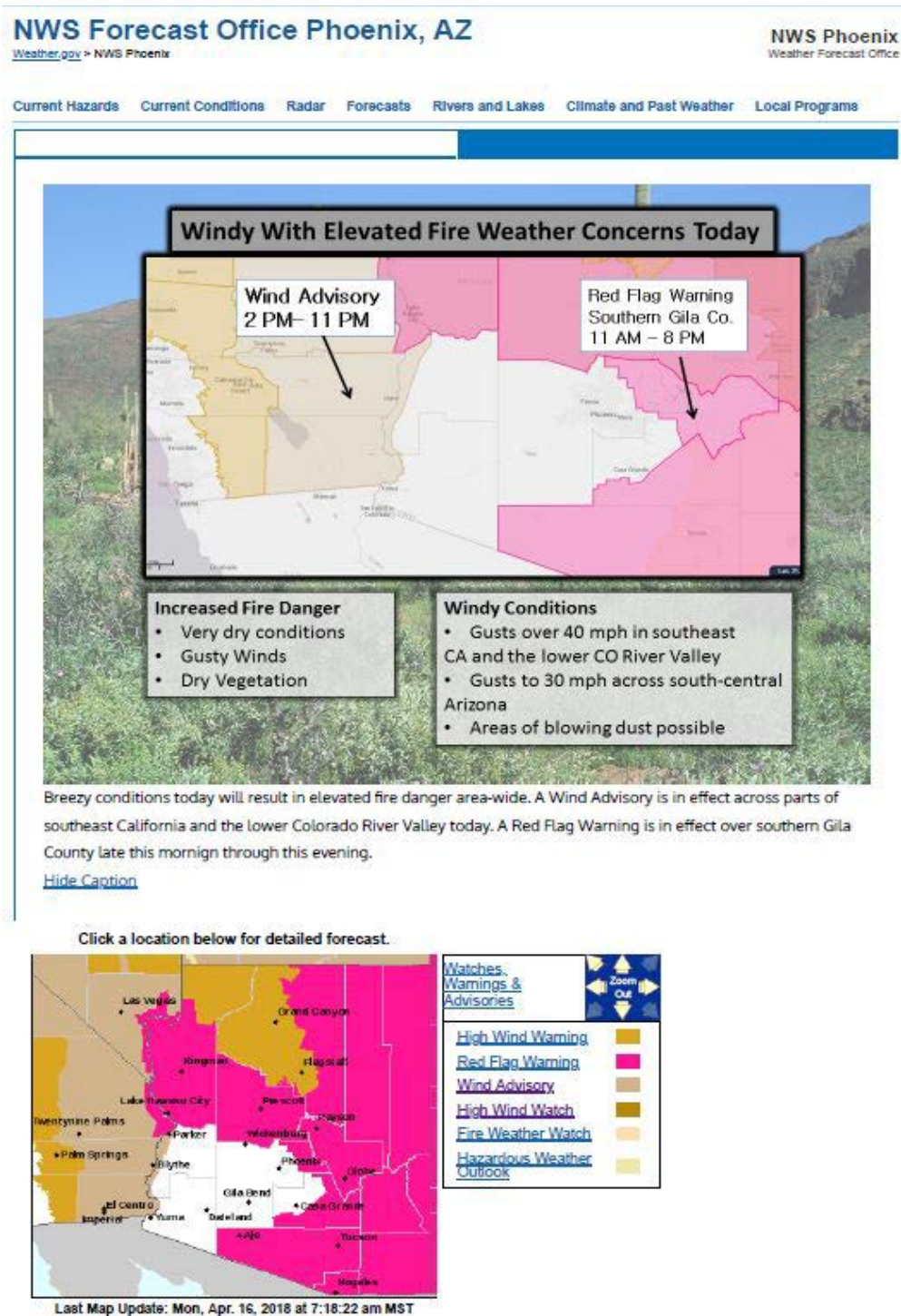


Fig C-6: Illustrates the extent of the wind advisories across the region

FIGURE C-7
SAN DIEGO NWS OFFICE WEATHER STORY APRIL 16, 2018

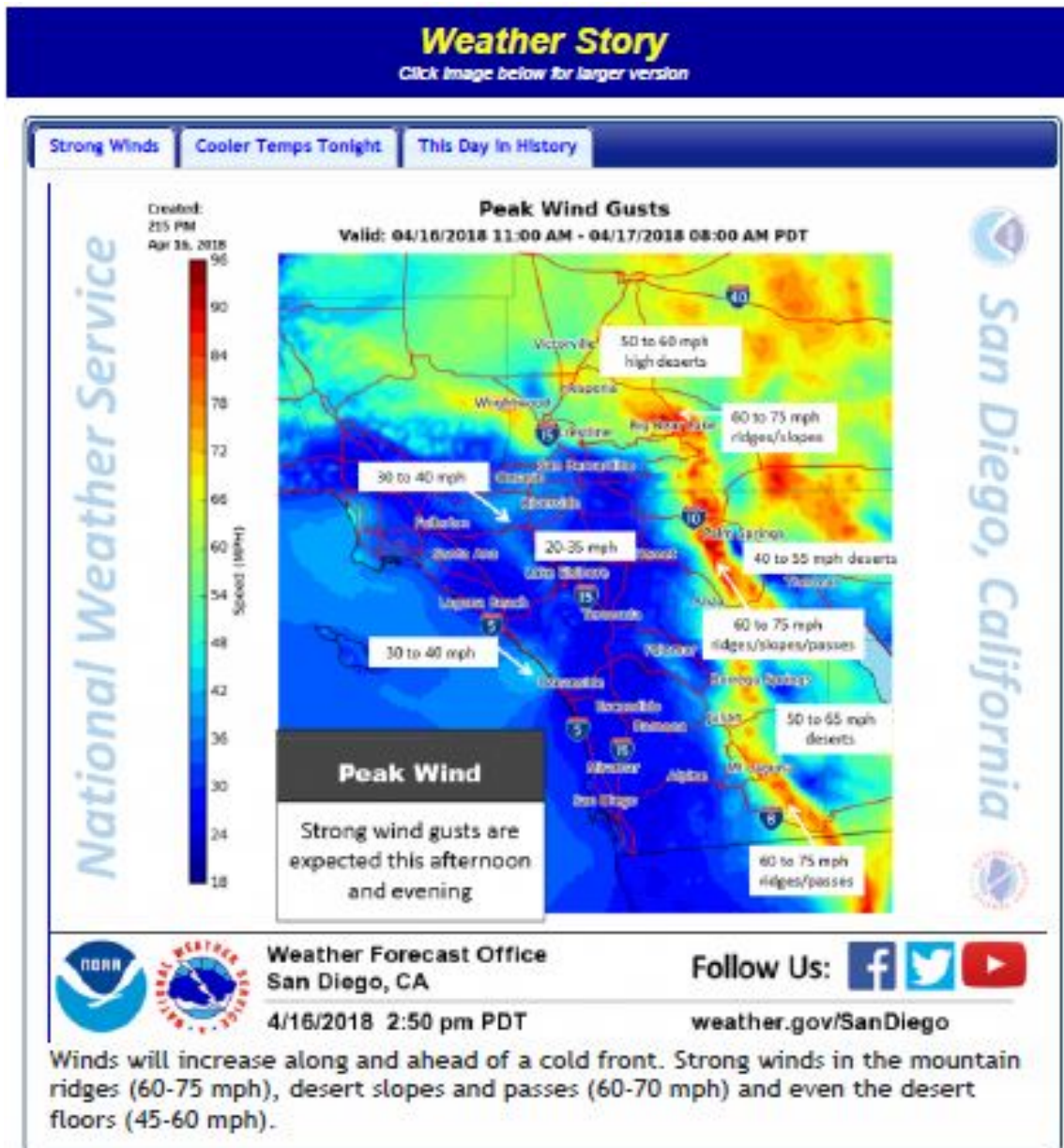


Fig C-7: Illustrates the extent of the wind advisories across the region

**FIGURE C-8
AIR QUALITY INDEX**

Air Quality Index Levels of Health Concern	Numerical Value	Meaning
Good	0 to 50	Air quality is considered satisfactory, and air pollution poses little or no risk.
Moderate	51 to 100	Air quality is acceptable; however, for some pollutants there may be a moderate health concern for a very small number of people who are unusually sensitive to air pollution.
Unhealthy for Sensitive Groups	101 to 150	Members of sensitive groups may experience health effects. The general public is not likely to be affected.
Unhealthy	151 to 200	Everyone may begin to experience health effects; members of sensitive groups may experience more serious health effects.
Very Unhealthy	201 to 300	Health alert: everyone may experience more serious health effects.
Hazardous	301 to 500	Health warnings of emergency conditions. The entire population is more likely to be affected.

Fig C-8: The Air Quality Index AQI is an index for reporting daily air quality. It tells you how clean or polluted your air is, and what associated health effects might be a concern for you. The AQI focuses on health affects you may experience within a few hours or days after breathing polluted air. EPA calculates the AQI for five major air pollutants regulated by the Clean Air Act: ground-level ozone, particle pollution (also known as particulate matter), carbon monoxide, sulfur dioxide, and nitrogen dioxide. For each of these pollutants, EPA has established national air quality standards to protect public health .Ground-level ozone and airborne particles are the two pollutants that pose the greatest threat to human health in this country. Source:

<https://airnow.gov/index.cfm?action=aqibasics.aqi>

FIGURE C-9 DAILY WEATHER AND AG BURNING INFORMATION

Imperial County Air Pollution Control District
Daily Weather and Ag. Burning Information

Date: Monday, April, 16, 2018

Yesterday's Weather Observations at Imperial Airport (ASOS) FAA/NWS

LOCAL TIME	TEMP °F	WINDS MILES PER HOUR	VISIBILITY MILES
7 AM	56	SW 3	10
8 AM	62	WSW 6	10
9 AM	70	WSW 3	10
10 AM	77	CALM	10
11 AM	83	-	10
NOON	85	-	10
1 PM	87	ENE 7	10
2 PM	88	ESE 6	10
3 PM	91	E 9	10
4 PM	91	ESE 9	10
5 PM	91	-	10
6 PM	87	W 16	10
7 PM	81	W 11	10

Max. Temperature yesterday was 93 degrees

Today's Mt. Signal Visibility at 7:30 AM Hazy NKX 12Z 500 MB Height -
 1Y7 12Z 500 MB Height -

Forecasts
High Today 80 to 85

	Local Forecast (Issued 8 AM Local)	Computer Forecast (RUC 40KM 12Z)
Est. Time Mixing Height reaches 3000 feet	<u>-</u>	<u>1:00 pm</u>
Forecast of Maximum Mixing Height	<u>-</u> feet	<u>4,396</u> feet
Forecast for Morning surface winds	<u>W 10-15</u> mph	<u>W 15-20</u> mph
Forecast for afternoon surface winds	<u>W 15-20/G 30</u> mph	<u>W 15-20</u> mph
Forecast for evening surface winds	<u>W 15-25/G 35</u> mph	
Forecast 10 AM - 3 PM transport winds	<u>WSW 15-25</u> mph	

Comments/Complaints: Windy, areas of blowing sand & dust. No Burn Day!!!

Burn Hours ARB No Burn Day District called No Burn Day XX

Total actually burned today acres Crops burned

IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT 2011 Int CM

Fig C-9: Is a copy of the Imperial County Air Pollution Control District official record of the conditions as they existed for a determination of a "No Burn" day on April 16, 2018

FIGURE C-10
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT COMPLAINT #7198
 17 page investigative letter attached at the end of this appendix

FIGURE C-11
IMPERIAL COUNTY AFFIDAVIT OF 30 DAY PUBLIC NOTICE



<p align="center">AFFIDAVIT OF PUBLICATION (2015.5 C.C.P.)</p> <p align="center">STATE OF CALIFORNIA</p> <p align="center">County of Imperial</p> <p>I am a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk* of the printer of the</p> <p align="center">Imperial Valley Press</p> <p>a newspaper of general circulation, printed and published daily in the City of El Centro, County of Imperial and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Imperial, State of California, under the date of October 9, 1951, Case Number 26775; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:</p> <p>09/20 _____</p> <p>all in the year <u>2019</u></p> <p>I certify (or declare) under penalty of perjury that the foregoing is true and correct.</p> <p align="center"></p> <p align="center">SIGNATURE</p> <p>Name of Account: I C AIR POLLUTION CONTROL Order Number: 11324959 Ad Number: 31574360</p> <p>* Printer, Foreman of the Printer, or Principal Clerk of the Printer Date: 21 st day of September, 2019. at El Centro, California.</p>	<p>This space is for the County Clerk's Filling Stamp:</p> <div style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p align="center">  IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT NOTICE OF AVAILABILITY OF THE DEMONSTRATION OF THE OCCURRENCE OF SEVEN EXCEPTIONAL EVENTS (EE) </p> <p>The Imperial County Air Pollution Control District (Air District) has prepared seven Draft Exceptional Event (EE) Demonstrations, which support the requested exclusion of measured 24-hour concentrations at the Air District air monitoring sites. Listed below by date, site and concentration as measured by a continuous Federal Equivalent Method monitor (FEM) are the seven Draft EE's.</p> <table border="0"> <tr> <td>April 11-12, 2018</td> <td>April 16, 2018</td> </tr> <tr> <td>Niland-181 µg/m3; Brawley-183 µg/m3; Calxico -182 µg/m3; El Centro-159 µg/m3;</td> <td>Brawley-407 µg/m3; Calxico-407 µg/m3 El Centro-173 µg/m3; Niland-222 µg/m3; Westmorland-351 µg/m3</td> </tr> <tr> <td>April 19, 2018</td> <td>April 20, 2018 to May 1, 2018</td> </tr> <tr> <td>Brawley-334 µg/m3; Calxico-178 µg/m3; Westmorland-186 µg/m3</td> <td>Brawley-310 µg/m3; Niland-243 µg/m3; Westmorland-208 µg/m3; Brawley-270 µg/m3; Niland-162 µg/m3; Westmorland-207 µg/m3; Brawley-157 µg/m3</td> </tr> <tr> <td>May 11, 2018</td> <td>June 17, 2018</td> </tr> <tr> <td>Brawley-335 µg/m3; El Centro-186 µg/m3; Niland-215 µg/m3; Westmorland-414 µg/m3</td> <td>Brawley-168 µg/m3</td> </tr> <tr> <td>May 25, 2018</td> <td></td> </tr> <tr> <td>Brawley-159 µg/m3; Calxico -158 µg/m3</td> <td></td> </tr> </table> <p>The public and all interested parties are encouraged to review and comment on the seven Draft EE listed above. These demonstrations provide the supporting evidence that on the days indicated 2018 Air District air monitors were affected by transported elevated levels of particulate matter of aerodynamic size less than 10 microns (PM10). Winds, associated with a weather event suspended and transported PM10 into the region affecting areas within San Diego, Riverside, Yuma and Imperial counties. The seven Draft EE's provide the scientific justification for the requested exclusion. The Air District is soliciting and accepting comments for 30 days commencing the date of the publication of this notice. The final closing date for submitting comments is October 20, 2019 by close business.</p> <p>The seven Draft EE's for the days listed above are available for download at the Air District web site at https://acd.imperialcounty.org/public-notice/ (under Public Notices; Exceptional Event). To view a hard copy of any of the seven Draft EE's, please visit the Air Pollution Control District office at 150 S. 9th Street, El Centro. Should you have any questions or concerns please feel free to call our office between 8am and 5pm at (442) 285-1800 and ask for Monica N. Soucier.</p> </div>	April 11-12, 2018	April 16, 2018	Niland-181 µg/m3; Brawley-183 µg/m3; Calxico -182 µg/m3; El Centro-159 µg/m3;	Brawley-407 µg/m3; Calxico-407 µg/m3 El Centro-173 µg/m3; Niland-222 µg/m3; Westmorland-351 µg/m3	April 19, 2018	April 20, 2018 to May 1, 2018	Brawley-334 µg/m3; Calxico-178 µg/m3; Westmorland-186 µg/m3	Brawley-310 µg/m3; Niland-243 µg/m3; Westmorland-208 µg/m3; Brawley-270 µg/m3; Niland-162 µg/m3; Westmorland-207 µg/m3; Brawley-157 µg/m3	May 11, 2018	June 17, 2018	Brawley-335 µg/m3; El Centro-186 µg/m3; Niland-215 µg/m3; Westmorland-414 µg/m3	Brawley-168 µg/m3	May 25, 2018		Brawley-159 µg/m3; Calxico -158 µg/m3	
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Fig C-11: Is a copy of the Imperial County Air Pollution Control District official record (affidavit) affirming the publication of the notice of availability of the Exceptional Events Demonstration for February 19, 2018. The date for closing comments was October 20, 2019

FIGURE C-12
IMPERIAL COUNTY COMMENTS REGARDING THE FEBRUARY 19, 2018 EE
DEMONSTRATION

Awaiting Final Comment Period

**IMPERIAL COUNTY
AIR POLLUTION CONTROL DISTRICT
COMPLAINT # 7198**

Via - US Mail

Date 4/16/18	Time 12:00 PM	Initial LP	Supplemental	
Complainant Name: Thomas A. Dartpath				
Complainant Address: 1425 York rd, Bard, CA 92222				
Phone: _____				
Smoke:	<u>Dust:</u>	Open Fire:	Ag Related:	Odors:
Other:				
See 8 page letter attached. / See memory card containing video evidence addressed in 8 page letter.				
To: Emmanuel				
From: APCO Matt Desert.				
APCO suggest both 8 page letter and memory card video be copied for APCD records and also sent to County Council for advice.				
Statement of Source (Inspector's Report):				
→ Documents & additional information was provided to County Counsel for review and advice. See attached response.				
→ AG Department will need to get involved.				

[illegible]

April, Friday 13th, 2018

To: Mr. Matt Dessert
Air Pollution Control Officer
Imperial Co. Air Pollution Control
150 South 9th St., El Centro, CA 92243

RECEIVED

APR 16 2018

AIR POLLUTION
CONTROL DISTRICT

From: Thomas A. Dartpath
1425 York Rd., Mail: PO Box 112
Bard, California 92222-0112
Email: tdartpath@outlook.com

Re: Nelson Brothers Farms
PO Box 787, Bard, CA 92222
(has also received this letter)

Greetings Mr. Dessert,

I really appreciated your stopping by to say hello while you were visiting in our area recently and I was very encouraged after I met you however If you remember when I was describing to you my "reading" of the Nelsons as they were talking to Armondo, (their long-time employee of 20 yrs. who operates their dust-producing, equipment) I said I believed the three had not seemed to be taking very seriously the recent visit by the APCD Inspector, Mr. Camargo, and I probably could have best described their "non-verbal" body-language as dismissive frankly, after I had thought more about it.

To be fair, the slower speed which Armondo drove after he received his "notice" did produce "less" dust however, as the date-grove grounds has been subjected to such "sifting" for literally decades, as preparation for flooding of the grove, the flour-fine soil can, and does, "travel" and including onto the property of Well Park and my own site, as you can observe from the recent videos found on the enclosed memory-card.

If I could ask your indulgence to view the 1st video shot on 12/1/2017 at 1:24 PM, this shows Armondo operating the Balzer orchard-grade shredder, which as you can see,

not only shreds frond-cuttings, it also "sucks" up the dirt and literally sends this in all directions, including into/onto Well Park property and also my own site. Please note the dirt rises well above the height of the date-palms - and all this *after* APCD's visit. (Incidentally, I earlier suggested frond-cuttings should be hauled off - not shredded.)

The 2nd video shot on 12/4/17 at 8:35 AM shows Armondo discing after the week-end (when the ground was left disturbed after shredding and during the windy conditions during that period) and after Armondo had disced another section of the grove, he is seen here taking a "swipe" along the western edge of Well Park as he's also headed to the equipment "yard" located next to my site (and with the "yard" also providing even more "opportunity" for Armondo to further dust me every time he passes by my site.)

In the 3rd video at 11:04 AM also on 12/4/2017, Armondo again disced the corner of the grove located immediately next to my site and again, Armondo dusted my site.

At 1:17 PM in the 4th video, Armondo was drag-smoothing in the southwest corner of the grove located diagonally opposite of my site and he was reversing course to turn back north but he was also briefly parallel to the (north) irrigation canal service-road that is elevated about 5' above the grove ground-level and still the dirt traveled over the north service-road, the canal, the south service-road and onto those residents, on the short street off York Rd. and, take note of the relatively slow speed of the tractor.

On video 5, 12 minutes later, Armondo returned to the corner to take another "drag" and you can see he apparently noticed me earlier; (I had "sneaked" onto the road for the previous shot) but, his speed was slower and apparently because I was observing him and honestly I've often wondered how many years that unthinking, buffoon of a "prodigy" of Nelsons, has "trashed" everyone and everything within his impact zone! Notice the dirt still reached the other residents even, as "slow" as he was dragging.

Now, on video #6, after Armondo reached the eastern section of the grove and he'd turned back north and began dragging towards me (I'm back in "my" corner) he was returning to the "yard" where as you will eventually hear in the video, he shuts-down but, not without first showing us that he apparently has a sense of humor as he must have enjoyed the second "Ace Ventura, Pet Detective" flick when he "did" Jim Carrey. But I, wasn't humored any while I watched the dirt continuing, to travel onto my site, and well after, Armondo had already shut-down the tractor in the equipment yard!

But wait, he's back at it again in "my" corner at 8:49 AM the next morning on 12/5/17 and as seen In the 7th video Armondo was now drag-smoothing in the east and west directions and he dusted my site again and, it ocured to me this was happening after the Nelsons received notice (but no warning?) *from at least one APCD Inspector* and I had thought then to state (voice) the current date for my camera's audio feature. But just to note: if you compared "pre-APCD" videos (not on card) with "post-APCD," the "evidence" are the missing ("post-APCD" removed) date-pups (shoots) from the base of the palms in the first row from my site (and a shame too; they were dust-barriers!) Also, there are obviously newly planted shoots, visible near my site - on later, videos.

The 8th, video shot 2 minutes later, was a repeat and again I voiced the current date. But I wanted to note at this point that I also have my phone's call-log to show when I first called APCD to register my complaint, and with the exception of the last day of the smoothing procedures which were completed on 12/5/2017, I had called each day that I recorded the above videos except 12/5/2017 when I could not get connected to APCD during the video period as apparently no one was available to take any calls. I have also saved the email I received from Mr. Sanchez, telling me an inspector would be following-up with me which, of course (Marcos) did who, had assured me: I didn't have to "eat" the dirt from the date-grove (that was planted) *after* Well was created.

But now, let's just look at the ninth, video and try to understand why all the fetishism for "upsetting" date-grove soil, as the Nelson Bros. (and others do in their "field") on date-farming operations particularly in the Imperial Valley and the Desert Southwest where, water doesn't grow on trees but mostly evaporates into the arid environment.

Flood-irrigating date-palm "trees" in the Desert, and especially next, to a *residential*, area where the filth (and noise) from the date-grove and the equipment, that is used to work the ground, all adversely impact the *human condition* never mind, the stupid thoughtlessness of the water-wasting, flood-irrigating procedures, which actually are used to (supplement) the palm's water-requirement (but forgetting the under-ground sources for the moment, but wait, the date-farmers are, forgetting the under-ground sources - and have for decades) because as I have explained in an earlier letter to the Nelsons (whom I have now had to assume have not actually read any of my stuff and this, is the reason I thought to write to a government agency leader such as yourself) but again, as described in the article I sent to the Nelsons (1 of 4) entitled: "California Dates Thrive On Israeli Methods," this informative manual demonstrates the Medjule Dates of the local kind could actually do better, with the use of the "drip-water" type

irrigation system; as date-palm "trees" are actually just tall plants, with root-systems of less than 5 times the width of their trunks meaning, most, of the water that floods the date-groves only supports the weeds, which, must routinely be DISCED to reduce the humidity, around these very unique plants which actually do not tolerate moisture (above ground) although, disease-transmitting mosquitos, flies, ticks and birds, surely appreciate this mindless, flooding ritual during the Summer, months (which reminds me I guess I will need to start calling the Imperial Co. Vector Control folks about this additional nuisance of a Nelson farm being located right next to our residential area) but, back to the issue of the humidity and moisture being created in an environment where date-palm plants are not, best served by the senseless flood-irrigating (to say nothing of the impacts to the human condition) but wait: the date plants themselves have originated from the Middle-East, where the dates were sufficiently, irrigated via under-ground, water which the groves were purposely located over and which never required flooding, a truly unnecessary situation and also *compromising* to the palm-plants, which again, do not tolerate humidity (a.k.a. above-ground water) but, before I finish here, I should offer additional qualification, for (my) suggestion of the "drip" irrigation method, discussed above and in more detail in the "Middle-East" article; I had also enclosed a second article for the Nelsons which described the "sub-surface" drip-irrigation method which, would confine moisture to the area of the roots of the palms and practically eliminate the standing, water which both creates the undesired humidity and weeds around the plants and also an environment which would "invite" mosquitos & ticks near our residential (non-farm) area and back, to the "sub-surface" drip-water irrigation system: this could potentially be the "rage" of the future esp (if I were to pursue a national "campaign" to ban indiscriminate opening of flood-gates (I might be getting ahead of myself) in areas where presently, date groves are being flooded with water which is better suited for supplying communities and agricultural interests (crop/produce etc.) that are located "down-stream" the Colorado River and All American Canal, both of which supply our immediate area and may (seem) to be lending to the idea that water here, is "unlimited" and humorously it's true, because abundant, water is so very close under our feet and to (supplement) this source with the above described newly incorporated (sub-surface) drip-water irrigation method this, would allow individual attention being provided to every, palm (date-pups and "matures" alike, both of which are found in that part of Nelson's grove west of Well.

Oh great, my paragraph key is working properly again. I appreciate your patience.

But I, have very much lost my own patience as I just turned 60 and I am damn well not well at Well Park next to Nelson's farm and after I've written them twice, I will commit I must continue with my work on this matter; I will request for a hearing, if necessary.

However Mr. Dessert, you may recall when we visited I explained I was also involved with fighting an eviction attempt after I had paid 42 consecutive months of never-late and, never-short rent payments to the Park owner who is also an attorney-at-law but, who unfortunately was not only dishonest, enough to attempt to evict a disabled and vulnerable neighbor of mine but, which I had prevented forcing him to request for a case-dismissal; this same attorney, also very incompetent, then tried to also evict me and that was after he attempted to raise my rent to \$250 per month (in legal terms he committed "Landlord Retaliation") but anyway, at my court trial for unlawful detainer last year on November 20 in the Superior Court in El Centro I raised a technical matter which Judge Anderholt, found "convenient" enough to halt, the trial with and, as the Court had ruled in my favor based on the attorney/landowner's defective notice, I had essentially reserved for later my own lawsuit against said (stupid) attorney/landowner.

So, as it's now been over 4 months since the Judge told the plaintiff his case could be re-filed in 30 days, I am in the process of pivoting to a more "offensive" posture, and I thought I may just as well also address the issues I have with a few farming-folks, as I am now "primed" to "litigate" the situation with Nelson as well. But lest we get lost in the swamp, like such which the Nelsons create several times yearly in their date-grove and notwithstanding any inferences to the concept that "work expands to fill the time available" which Armondo, should certainly be recognized (and maybe even cited-for) but, the DUST that is the ISSUE here, is in fact produced, as a result, of certain farming practices, that are also impacting the health and well-being of Well Park residents and these activities include all manner of soil-preparations preceeding the flood-irrigation such as soil-ripping, discing and also the drag-smoothing activities with basically, the Nelson "objective" being to open-up the soil (for water-absorp) after the compacting that occur during prior equipment-use and the discing and smoothing procedure that follow ripping (continually breaking down dirt) then gives the final appearance of the worked soil, a more smoother surface for facilitating water-flow across the grove and to provide for a flater, surface again for returning workers, after the ground has dried.

But, as you can observe from the enclosed videos (post-APCD visit) you will see how these pre-flood, dust-producing procedures (are still) impacting, the residents of Well.

I will mention now I have enclosed additional videos on the memory card as there has been additional work in the grove since Dec. 2017 (videos 1-9) and on March 14, 2018 at 7:10 AM, on video #10, Armondo was dragging with a blade over areas where their heavy Gradall personnel-handler (seen and heard in the distance) was recently driven between the rows of palms next to the Park (and for "historical" purposes, I will note the trees on my site were trimmed and the limbs were still on the ground in video 10) and, if it needed mentioning, all dirt-moving activities in the grove preceeds flooding and, if it also needed mentioning, you can see Armondo dust my site. The 11th video, shows the latest flooding on March 27 and note, 13 days passed before the loose soil was flooded (for Well Park if the wind blows, it usually comes from *Nelson's direction*.)

And also speaking of Nelson's direction, apparently they have not directed Armondo to do much different since they were visited by APCD in regard to his operating their dust-producing, equipment and the obvious disrespect, toward Well Park (and APCD) by Nelson's employee should also be seen as representative, of the Nelson Brothers.

You can recall Armondo's "Jim Carrey" antics and incidentally the enclosed 12th video shows Armondo recently burning something in a 55-gal. barrel in the equipment yard that may be just some trash-items but the direction the smoke is traveling is too close to me, and there has been times as I noted in the previous letter to APCD and Nelson, Armondo has burned items giving off toxic fumes that can penetrate residential walls.

And relating to my residence, I've informed little Johnny attorney, a newer and larger trailer will be required supplied and moved into my site and as I would then, certainly not, permit trash (dirt, etc.) coming from little Nelsons to enter my premises or impact myself or property (especially a newer, residential unit which must be maintained and protected from the "Nelson Elements.") Any offending "infractions" by said offenders will be resisted and the following includes my "talking points" for an APCD hearing.

People, must take preference over palms (even *trailer-trash*, speaking for *myself* only.)

Some residents in this area may be thought of as (potted) plants and just "putting up" with the lack of consideration, from the Nelsons (and for decades) but these folks are people, too and must be respected and apparently, also protected from the Nelsons.

I would like to see mandated a "Don't Disturb Dirt" policy which would appropriately enough prevent any ripping, discing and especially smoothing procedures at least, in

the section of Nelson's grove west of Well Park which has a direct impact on the Park. But, I'll also mention the residents on the street opposite the canal from the Nelson's.

Now, if the Nelsons insist on flooding, they could flood but must remember: "D.D.D." (But, if Nelsons still insist on flooding, I will address *that* matter appropriately as well.)

In fact, there're several other matters I will be addressing including the removal of the first row of palms next to Well that are too close to people/structures which Nelson's liability insurance(?) doesn't insure (only pays money) against an occurrence of injury, death or damage, from a falling palm that entered inside the boundary of Well Park.

I'll also mention if Nelsons wish to do the "white" thing as they begin to "rehabilitate" their image (after my intervention) they should consider donating, the affected palms to Ms. Michelle Robinson, for her small date-farm across from Well Park. Because of circumstances not of her choosing, she has recently had to sell up to 20 of her plants. (That is *another* matter of course, whether it is of any concern to the Nelsons, or not.)

But getting back to the "issues" with the Nelsons that I'll be addressing with APCD in a hearing (if needed) another issue I have is the proximity of Nelson's equipment yard to Well Park and especially my own site as the yard drive-way is all, that separates my site and the equipment that exit and enter the yard such as the handlers, tractors with attachments, back-hoes, shredder, etc., and THE DUSTING, OF MY SITE, NEVER ENDS, so: that part of the yard drive-way next to Well Park should be blocked and the other end of the drive (north part of the yard) should be used to exit and enter the yard but, better still: Nelson could block that drive-way too and treat the area as a GRAVE YARD because just as sure as the Nelson idiot-employee will continue to begin his day in the yard starting-up one or more diesel-powered vehicles before, a reasonable hour (that includes, 4:10 AM) Armondo (and others) could receive (Official) recognition, for their tireless, industry in their repair, maintenance and fabrication endeavors they conduct in the Nelson Farm equipment yard located (too) close to Well Park, a residential area.

Of course Mr. Dessert, I really appreciate your taking an interest in this situation also and I can only hope, someday, I can treat you and your family more properly and with (hopefully) cleaner, furniture on my site and also a safer, site (from any falling, palms) especially for any pets and grandchildren (in order of importance) that you may have with you when you are able to come and visit us again hopefully, very soon.

It is really ironic, but I actually "hate" this area that I have been a resident-of for five years (this week) and I thought when I moved here I was trading the two seniles that ran the Salamander Park (three miles from Well where I lived for three years) and, in place of them, I went for the two (shady) Mulberry trees here on this site at Well Park.

But, the dirt, and the noise, from Nelson's and the "aerial assaults" from crop-dusters that spray the surrounding farm-lands both private and corporate and if you can also throw in a "dirt-bag" landlord, who also happens to be an attorney-at-law, who must now obtain his own lawyer to defend himself, against me, in a civil-rights lawsuit well, I guess that's part of a life, too and I will just "dig, in." Plenty of dirt here, to do that!!

Thank you very much for your time, please let me know if you are unable to view the videos on the micro SDHC (w/ adaptor.) The video files have MOV extentions and for your "convenience" I have included a copy of this letter on the memory-card as well.

Most Respectfully,

A handwritten signature in dark ink, appearing to read "Thomas A. Dartpath", followed by the date "4/13/18". The signature is written in a cursive, somewhat stylized script.

Thomas A. Dartpath



Action Request Form to County Counsel's Office

Please electronically submit this form and all attachments to countycounsel@co.imperial.ca.us.

Requested Date: April 18, 2018

Requested Response Date: May 2, 2018

Source of Request

Department Name: **AIR POLLUTION CONTROL DISTRICT**

Person Requesting Action: Matt Dessert, Air Pollution Control Officer

Email: mattdessert@co.imperial.ca.us; emmanuelssanchez@co.imperial.ca.us

Telephone: 442-265-1800

Please describe in detail what you are requesting from County Counsel:

Review the attached complaints submitted by Mr. Thomas Dartpath as they relate to dust generation from agricultural activities adjacent to the property where he resides. Review of the APCD's Rules 401, 407 and Rule 806 as it pertains to Agricultural Operations, Opacity of Emissions and Nuisances and applicability under the current circumstances. Provide guidance as to how to proceed, if at all.

If you have any questions, please contact Emmanuel Sanchez by email at emmanuelssanchez@co.imperial.ca.us or call X1800.

Please attach all relevant documents (contracts, leases, letters, and emails) and list the attachments below:

- Complaint #7124 and Supporting Documents and Findings including I.C. Right to Farm Ordinance
- Complaint #7141 and Supporting Documents and Findings
- Complaint #7142 and Supporting Documents and Findings
- Complaint #7198 and Supporting Documents (Videos)
- APCD Rule 401 – Nuisances
- APCD Rule 407 – Opacity of Emissions
- APCD Rule 806 – Conservation Management Practices
- California Health & Safety Code Sections 41700 (Nuisance) & 41701 (Opacity of Emissions)

For County Counsel Office Use Only

Received By Initials AP

Completed By Age

AR # 18-0338

Assigned to AGC

Completed Date 5-15-18

SAS 5-15-18

RECEIVED
2018 APR 18 PM 3:16
OFFICE OF THE COUNTY COUNSEL
COUNTY OF IMPERIAL

IMPERIAL COUNTY

Office of County Counsel
Inter-Office Memorandum

CONFIDENTIAL – DO NOT CIRCULATEⁱ

DATE: 5/11/18
TO: Emmanuel Sanchez; Matt Dessert, APCD
FROM: Adam G. Crook, Deputy County Counsel
SUBJECT: Action Request 18-0338-APCD

On 4/18/2018, you submitted the following request:

“Review the attached complaints submitted by Mr. Thomas Dartpath as they relate to dust generation from agricultural activities adjacent to the property where he resides. Review of the APCD's Rules 401, 407, and Rule 806 as it pertains to Agricultural Operations, Opacity of Emissions and Nuisances and applicability under the current circumstances. Provide guidance as to how to proceed, if at all”

The response is as followsⁱⁱ:

SHORT ANSWER

Our Office has examined the relevant State and ICAPCD rules that govern and regulate the emission of dust and other pollutants, and it does not appear that the date farm's emissions resulting from its disking and weed abatement activities would constitute a violation of any of these rules. However, the County has developed an informal process to attempt to resolve disputes between the public and agricultural operations. It is recommended that ICAPCD refer Mr. Dartpath to the Agricultural Commissioner's Office to begin the resolution process.

FACTS

Since November of 2017, Thomas Dartpath has submitted a number of complaints to the Imperial County Air Pollution Control District (“ICAPCD”) regarding dust emissions from a neighboring property located to the west of his mobile home. The neighboring property is a 7.94 acre lot that is currently used for the farming and harvesting of dates. Specifically, Mr. Dartpath claims that disking and other weed removal activities generate a significant amount of dust that interferes with the use and enjoyment of his mobile home. According to ICAPCD, the property owners of the

date farm have taken a number of measures to mitigate their dust emissions, including voluntarily submitting a conservation management practices plan to ICAPCD, and reducing the speed of farm equipment when approaching the property boundary where Mr. Dartpath's mobile home is located. ICAPCD has stated that it has not received complaints from any other resident or property owner regarding the date farm's dust emissions.

While there are a number of State and ICAPCD rules that govern and regulate the emission of dust and other pollutants, ICAPCD is uncertain as to whether these rules would be applicable to the present situation. ICAPCD has asked the Office of County Counsel to examine the various State and local rules regarding emissions and provide an opinion. Our Office has analyzed the most relevant laws related to this matter, as further discussed below.

ANALYSIS

1. Applicability California Health and Safety Code § 41700 – Prohibited Discharges

Cal. Health & Saf. Code § 41700(a) states:

Except as otherwise provided in Section 41705, a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property. (emphasis added).

Whether a person has violated Cal. Health & Saf. Code § 41700 appears to be: (1) determined on a case-by-case basis; and (2) contingent upon the number of people affected by a discharge, and the degree to which such persons were negatively impacted. See People v. General Motors Corp., 116 Cal. App. 3d Supp. 6 (1980).

In the present case, it does not appear that the date farm has caused a discharge that would be considered a violation of Cal. Health & Saf. Code § 41700. While Mr. Darparth is clearly annoyed by the emissions emanating the from neighboring property, there is no evidence to suggest that other mobile home residents or neighboring property owners are also negatively impacted by such emissions. Further, there is no evidence that such emissions pose any risk of injury or damage to any surrounding businesses or property. While the statute does not state an exact number or range of people that must be impacted, the phrase "any considerable number of persons" implies that the number should be greater than one. Consequently, it is doubtful that the courts would uphold an enforcement action taken pursuant to Cal. Health & Saf. Code § 41700 based on the complaints of only one person.

2. Applicability California Health and Safety Code § 41701 – Restricted Discharges

Cal. Health & Saf. Code § 41701 states:

Except as otherwise provided in Section 41704, or Article 2 (commencing with Section 41800) of this chapter other than Section 41812, or Article 2 (commencing with Section 42350) of Chapter 4, no person shall discharge into the atmosphere from any source whatsoever any air contaminant, other than uncombined water vapor, for a period or periods aggregating more than three minutes in any one hour which is:

(a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines. or

(b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a). (emphasis added)

However, "Section 41701 does not apply to any of the following: ... (g) Agricultural operations necessary for the growing of crops or raising of fowl or animals." Cal. Health & Saf. Code § 41704. The activities being complained of are disking and other weed removal activities, and there is a very strong argument that such activities are necessary and proper for the continued operation of the date farm. Consequently, any emissions resulting in reduced opacity would likely be exempt under Cal. Health & Saf. Code § 41704.

3. Applicability of ICAPCD Rule 401 – Opacity of Emissions

Rule 401 is essentially a restatement of Cal. Health & Saf. Code § 41701. Rule 401(C) states, "Exemptions to this Rule are identified in California Health and Safety Code...Section 41704 (Exemptions, to Prohibitions in Section 41701)." Consequently, the same analysis and conclusion regarding the applicability of Cal. Health & Saf. Code § 41701 to this issue also apply to Rule 401.

4. Applicability of ICAPCD Rule 407 – Nuisances

Rule 407 is nearly identical to Cal. Health & Saf. Code § 41700(a), and includes the same phrase, "any considerable number of persons." Therefore, the same analysis and conclusion regarding the applicability of Cal. Health & Saf. Code § 41700 to this matter also apply to Rule 407.

5. Applicability of ICAPCD Rule 806 – Conservation Management Practices

Under Rule 806, a person who owns or operates an "Agricultural Operation" on a site of 40 acres or more must implement certain conservation management practices ("CMP") to minimize the amount of dust emitted from the site. An Agricultural Operation is defined as, "[t]he growing and harvesting of crops for the primary purpose of earning a living." *Id.* As part of this process, the owner/operator must prepare a CMP plan. *Id.* Failure to comply with Rule 806 or the CMP plan constitutes a violation of ICAPCD's Regulation VIII. *Id.*

Since the date farm is a commercial business whose primary purpose is to generate a profit for the owners, it likely qualifies as an Agricultural Operation as defined by Rule 806. However, the

property in question in only 7.94 acres. Since the CMP requirements only apply to sites of 40 acres or more, the date farm is exempt from these requirements.

6. Applicability of ICAPCD Rule 801 – Construction and Earth-Moving Activities

Under Rule 801, a person who performs any “Earthmoving Activity” shall limit visible dust emissions to 20% opacity. Earthmoving activity is defined as:

[t]he use of any equipment for an activity that may generate Fugitive Dust emissions, including, but not limited to, cutting and filling, grading, leveling, excavation, trenching, loading or unloading of Bulk Materials, demolishing, drilling, adding to or removing bulk materials from open storage piles, weed abatement through disking, and back filling. Rule 800(C)(17) (emphasis added).

While it can be argued that the date farm’s disking and other weed removal activities constitute Earthmoving Activities under Rule 806, such an interpretation appears to go against the legislative intent of Rules 801 and 806. The other activities listed as examples of Earthmoving Activities (grading, trenching, demolition, etc.) are commonly done in connection with construction. Therefore, there is a good argument that for the purposes of Rule 801, disking would only be considered an Earthmoving Activity if it was performed in connection with or furtherance of a construction, and not for agricultural purposes. This is supported by the fact that ICAPCD adopted Rule 806, which deals exclusively with dust emissions from Agricultural Operations, as discussed above.

CONCLUSION

Our Office has examined the relevant State and ICAPCD rules that govern and regulate the emission of dust and other pollutants, and it does not appear that the date farm’s emissions resulting from its disking and weed abatement activities would constitute a violation of any of these rules. However, the County has developed an informal process to attempt to resolve disputes between the public and agricultural operations. See County of Imperial Codified Ordinances § 5.56.050. It is recommended that ICAPCD refer Mr. Dartpath to the Agricultural Commissioner’s Office to begin the resolution process. If you have any questions or require any further assistance, please do not hesitate to contact me.

¹ This memorandum (including any attachments hereto) contains privileged and confidential information intended to be conveyed only to the named or designated recipient(s) within the memorandum. If you are not an intended recipient, or the agent responsible to deliver it to the intended recipient(s), you are hereby notified that any review, dissemination or copying of this communication is strictly prohibited, not authorized, and may be unlawful. If this communication was received in error, please promptly notify the Office of County Counsel and destroy this memorandum.

² This memorandum, and the recommendation(s) contained herein, are based solely on the facts and other relevant information provided by the person(s) requesting legal advice on behalf of their department. The legal advice provided herein is case-specific at the time such advice is rendered, and the addition or omission of certain facts or other relevant

information, including the passage of time, may alter the analysis, conclusions, and/or recommendation(s). If any information contained within this memorandum is incorrect, or if there is additional relevant information that was not identified herein as having been considered, please promptly notify the Office of County Counsel to ensure that the recommendation(s) remain unchanged.

5.56.050 - Resolution of disputes.

- A. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations, including, but not limited to, noises, odors, fumes, light, dust, the operation of machinery of any kind during any twenty-four-hour period (including aircraft), the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides, the parties may submit the controversy to a grievance committee ("county agricultural grievance committee") as set forth below in an attempt to resolve the matter prior to the filing of any court action.
- B. Any controversy between the parties may be submitted in writing to the Imperial County Agricultural Commissioner within fifteen (15) calendar days of the occurrence of the particular activity giving rise to the dispute. The agricultural commissioner, within fifteen (15) calendar days, will review the written complaint and attempt to mediate the dispute. If mediation is not achieved, the agricultural commissioner shall notify the county agricultural grievance committee within fifteen (15) days of his determination. The county agricultural grievance committee, whose decision shall be advisory only, shall meet within thirty (30) days of the date the committee receives the notice of determination by the agricultural commissioner.
- C. The county agricultural grievance committee shall be composed of three members selected from the community by the Imperial County Board of Supervisors, and may include representatives from the county agricultural commissioner's office, a local real estate association, a local pest control operator's association and/or representatives of other county offices.
- D. The effectiveness of the county agricultural grievance committee as a forum for resolution of disputes is dependent upon a full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- E. The controversy shall be presented to the committee by written request of one of the parties or the county agricultural commissioner within the time limits specified. Thereafter, the committee may investigate the facts of the controversy, but must, within thirty (30) days from receipt of the request, hold a meeting to consider the merits of the matter. At the time of the meeting, both parties shall have an opportunity to present what each considers to be pertinent facts. Within twenty (20) days of the meeting, the committee shall render a written decision to the parties.
- F. Any costs of the grievance, including the investigative costs, shall be borne by the losing party or in such proportion as the county agricultural grievance committee shall decide.

(Prior code § 62954)