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The Weekly Wrap



January 25, 2013

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TO: CWA Member Companies
FROM: Jack Hawks, Executive Director
SUBJECT: Highlights for the Week Ending January 25, 2013

Gov. Brown Ranks Water With Education, Jobs, Healthcare in Speech—

Right after he waxed proudly on the budget, education, jobs and healthcare in his State-of-the-State speech on Jan. 24th, Governor Jerry Brown turned his attention to water and launched into a spirited plea to move forward with the Bay Delta Conservation Plan (BDCP). Without actually saying BDCP, he nonetheless expounded on the supply, reliability, economic and safety benefits of the plan, concentrating mostly on the risks of doing nothing.

Brown said California's water supply is at risk because of fragile levees, earthquake, flooding and ongoing environmental concerns, and the BDCP aims to address these risks. "Central to the life of our state is water," he said, "and one-sixth of that water flows through the San Joaquin Delta. Silicon Valley, the Livermore Valley, farmers on the East side of the San Joaquin Valley between Fresno and Kern County and farmers on the West side between Tracy and Los Banos, urban Southern California and Northern Contra Costa, all are critically dependent on the Delta for Water," he noted.

"If because of an earthquake, a hundred year storm or sea level rise, the Delta fails, the disaster would be comparable to Hurricane Katrina or Superstorm Sandy: losses of at least \$100 billion and 40,000 jobs," he continued. "I am going to do whatever I can to make sure that does not happen."

"My proposed plan," he said, "is two tunnels 30 miles long and 40 feet wide, designed to improve the ecology of the Delta, with almost 100 square miles of habitat restoration. Yes, that is big, but so is the problem." Brown told the legislators that the proposed conveyance tunnels would protect the state's economy through both improved flood protection and increased water reliability.

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Brown ended his remarks with an interesting metaphor: “The London Olympics lasted a short while and cost \$14 billion, about the same cost as this project,” he said. “But this project will protect Californians for hundreds of years.” The battle has been joined.

Rep. Garamendi Slams Gov. Brown’s Delta Plan at Water Symposium—

Less than two days after the State-of-the-State speech, fellow Democrat John Garamendi (D-Davis/Yuba City) lambasted the Governor’s plan for the Delta at a law symposium. Speaking at the 9th Annual California Water Law Symposium on Jan. 26th, hosted by the University of California-Davis School of Law, Rep. Garamendi said the BDCP and the twin conveyance tunnels were a waste of money that would do more harm than good.

Despite the fact that Garamendi’s constituency is largely rural and agricultural communities that are very much against doing anything to the Delta that would increase the potential for exports out of the Delta, it was a bit surprising to see Garamendi so vehemently critical of the Governor. Here were the points he made (the validity of which will no doubt be questioned by the State Water Contractors, the Metropolitan Water District, ACWA and others):

- The 15,000 cubic feet per second (cfs) delivery flow under the BDCP will provide “zero new water” to Southern California.
- A smaller, 3,000 cfs system will do the job, without destroying the Delta community and habitat.
- The solution to supply reliability in Southern California is (get this) desalination, more surface storage south of the Delta (e.g. the Temperance Flats site), recycling and conservation.
- The BDCP ignores the real problem in the Delta – its plumbing system, i.e. the levees, which is and should be the number one priority.

Needless to say, the large percentage of the 300+ people in the audience who were from Southern California were somewhat taken aback. It was quite a performance.

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The rest of the Symposium, whose theme this year was “Beyond the Water Wars,” was a blend of 90-minute concurrent panels. I attended four of them, and I was able to sit and engage with the following staff members from the California PUC: Charlotte TerKuerst, Chief of Staff for Commissioner Mark Ferron; Marcelo Poirer, Legal Advisor to Commissioner Mike Florio; Michael Colvin, Energy & Water Advisor to Commissioner Florio; Allison Brown, Water Advisor to Commissioner Catherine Sandoval; and Diana Brooks, Interim DRA Deputy Director for Communications and Water.

The four panels were all provocative and interesting for water attorneys and policy geeks like me. The first one featured three judges and two attorneys, and it was titled “Water Courts: Are They Right for California?” One of the judges, Gregory Hobbs, was from Colorado, which has had seven formal Water Courts separate from Superior Courts since 1969, and he made the case for his state. Speaking for California were Justice Ronald Robie of the Court of Appeal (3rd Appellate District) and Judge Jack Komar of Santa Clara County Superior Court. The two attorneys, John Leshy of the UC Hastings College of the Law and Stephanie Hastings of Brownstein Hyatt Farber Schreck, LLP agreed that it would be difficult to impose the Colorado system on California, largely because most water rights litigation in California takes place in the State Water Resources Control Board (SWRCB), not in Superior Court.

The next panel, “Stopping Groundwater Overdraft in California,” was equally provocative. Here, Kennedy Jenks consultant Art Baggett, Santa Ana Watershed Project Authority head Celeste Cantu, Northern California Water Association head David Guy, and The Nature Conservancy’s Maurice Hall all argued for “proactive management,” “managing for safe yield,” and “workable solutions for “people and nature” as the keys to sound groundwater management. Easier said than done, of course.

Following lunch was a panel titled “Water-Energy Nexus: Opportunities and Challenges,” which included SWRCB Vice-Chair Fran Spivey-Weber (who has asked CWA for an endorsement for a new term on the State Board), Stanford Woods Institute for the Environment Director Cynthia Truelove, GEI Consultant Lorraine White and Ellison, Schneider & Harris Attorney and Partner Jeffery Harris.

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Cindy argued for an integrated regulatory approach to water and energy (which Pacific Institute President Peter Gleick called for in 1994) and expressed her dismay that such integration at the state level is still lacking. Fran demurred on this assertion, but she cited examples at the local level (notably, the City of Burbank) of good integrated water-energy managers. Lorraine did a terrific job of summarizing energy production's impact on water, and lamented the fact that the energy "loading order" (except for conservation) does not include water. Jeff, whose firm accounts for about 40 percent of all megawatts in California that are approved by the California Energy Commission, explained how his firm handles water issues during development of natural gas-fueled and solar-thermal power plants.

The final panel was "California's Water Markets: Encouraging Cooperation, Protecting Third Parties," and Thadd Bettner (Glenn-Colusa Irrigation District), Ellen Hanak (Public Policy Institute of California), Steven Hirsch (Metropolitan Water District) and Peter Prows (Briscoe Ivester & Bazel LLP) all gave their views on the most effective ways to encourage and manage water transfers and markets in California, and restrict them, as necessary.

Some of the presentations are on the Symposium's website, which you can access at www.waterlawsymposium.com.

CPUC Approves CAW Acquisition of Garrapata Water Company—At its January 24th Open Meeting, the California PUC approved, in **Decision 13-01-033**, California American Water's (CAW) application to acquire the Garrapata Water System, which is located south of Carmel in Monterey County on California's Central Coast. The purchase of the system adds approximately 50 new service connections to the company's customer base. CAW now serves more than 100,000 people through nearly 43,000 service connections on the Monterey Peninsula.

CAW's application consisted of four requests of the Commission:

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1. relieve Garrapata of its public utility obligations;
2. expand CAW's certificate of public convenience and necessity (CPCN), and its service territory in Monterey County to permit it to provide utility water service to the current customers in Garrapata's service territory;
3. establish Garrapata's current rates (and revenue requirements) for water service as CAW's rates until its next general rate case (GRC); and
4. establish a rate base for the acquired assets consisting of the cash price paid for the assets plus the transactional costs associated with CAW's acquisition (the precise amount of which will be determined in CAW's next general rate case (GRC) for the Test Year beginning in January 2015).

CAW had previously assumed control over operations and maintenance of the Garrapata system in June 2011, in an agreement with the system's owner that enabled Garrapata to overcome its difficulties in complying with all county, state and federal regulations.

"This acquisition is a natural fit to our operations in Monterey and one that will benefit the customers of this system," said CAW President Rob MacLean in a news release. "Through this purchase, Garrapata customers will soon have access to the many convenient services we offer, including a 24-hour customer service center and our water conservation program."

In other actions taken at the Open Meeting, the Commission:

- **Held Res W-4940**, which involves a Division of Water and Audits disposition of two CAW Advice Letters (Nos. 923 and 932) that concerned rate base treatment of Allowance for Funds Used During Construction (AFUDC), among other things.
- **Held Res W-4941**, Cold Springs Water Co.'s GRC for Test Year 2012.
- **Approved D13-01-027**, which extends the statutory deadline to March 25, 2013 for resolving California Water Service Co.'s application for an order confirming its discontinuance of the ESP program.
- **Held Res L-436**; which involves the new regulations regarding disclosure of records and requests of confidential treatment of records.

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- **Approved** an Office of Governmental Affairs (OGA) recommendation that the Commission **Support as Sponsor** a bill that would revise the statutory cap on fees necessary to obtain a certificate of public convenience and necessity from the CPUC to adjust for inflation.
- **Approved** an OGA recommendation that the Commission **Support as Sponsor** a bill that would authorize the CPUC to directly appoint a receiver in cases where a water or sewer corporation is unable or unwilling to adequately serve its ratepayers.
- **Approved D.13-01-041**, which modifies D.11-03-035, but denies a rehearing request from the Monterey Peninsula Water Management District (MPWMD). The original decision involved an application from CAW and a settlement that proposed approval of a User Fee set at 8.325% of CAW's total revenues in Monterey, or approximately \$3.5 million, but which D.11-03-035 had rejected.
- **Approved** President Peevey's nomination of Commissioner Catherine Sandoval to the California PUC's Low Income Oversight Board.

Also on Jan. 24th, the Commission announced in a news release that it has started notifying mobile home park (MHP) owners, managers, and other stakeholders about new requirements involving their tenants. Specifically, the Commission is now implementing Assembly Bill 1830 (V.M. Perez), signed by Gov. Brown last September, which states that if the CPUC receives a complaint that is signed by 10 percent or more of the tenants of a MHP that provides water service only to its tenants from water supplies and facilities it owns, then the CPUC has the authority to determine whether the rates are just and reasonable and whether the service is adequate.

AB 1830 allows former tenants who have lived at the MHP within the last five years to file a complaint along with current tenants. The bill also requires MHPs to notify tenants of their complaint rights through the CPUC. The notice must be provided in the tenant's language. MHP managers and owners who fail to provide the required notice to their tenants are subject to a penalty of \$500 to \$50,000 for each offense.

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In order to assist MHP tenants, managers, and owners, the CPUC posted on its website information about the new requirements, including approved notices that MHP managers and owners must provide to their tenants. Notices are available in English and Spanish. The CPUC will post notices in other languages based on requests from MHP managers and owners. The information is available at www.cpuc.ca.gov/MHPWaterNotice.

Bills Introduced to Move Drinking Water Programs to State Board—

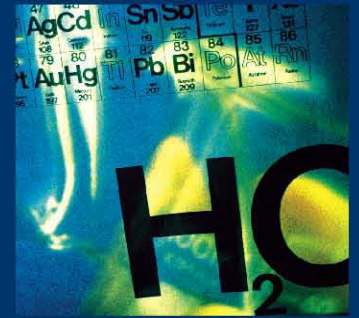
Assembly Member Henry Perea (D-Fresno) and Sen. Michael Rubio (D-Bakersfield) have introduced separate bills that would move responsibility for the state's drinking water programs from the Department of Public Health (DPH) to the State Water Resources Control Board (SWRCB).

AB 145 (Perea) would vest authority, responsibility and jurisdiction for drinking water programs with a new Division of Drinking Water Quality at the State Water Resources Control Board. The existing Division of Drinking Water and Environmental Health housed within the Department of Public Health would become the Division of Drinking Water Quality within the State Board.

In a news release, Perea said, "The State Water Board is the one state agency whose primary mission is to oversee water quality. Moving our drinking water programs will mean greater efficiency and organization and will give our rural communities access to safe drinking water faster."

SB 117 (Rubio) is more succinct. It would move the state's drinking water program from DPH to the State Board. CWA's Legislative Committee is deliberating on these bills, but because the earliest date for hearings on the bills would be the first week of March, CWA likely won't take a position on them until the end of February. It's possible that the drinking water programs could end up in a new office within the California Environmental Protection Agency.

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As reported in the Jan. 18th issue of the Weekly Wrap, Assemblymember Alejo (D-Salinas) has introduced two bills, **AB 1 and AB 21** that (1) would appropriate \$2 million from the State Board's Waste Discharge Permit Fund to help address safe drinking water needs in the Salinas Valley, and (2) would authorize DPH to assess an annual charge in lieu of interest on loans from the Safe Drinking Water State Revolving Fund. Proceeds from the charge would be used to fund grants for specified water projects that serve disadvantaged communities.

CWA's Legislative Committee has decided to support both bills, and the Association will be testifying in support on Feb. 12th. If necessary, CWA will request an amendment to **AB 21** to make sure that CPUC-regulated water utilities are eligible for the funds envisioned for the disadvantaged communities.

CPUC Publishes Staff Paper on Water Energy Nexus—The California PUC's Policy and Planning Division issued a staff paper Jan. 16th titled, *Rethinking the Water Energy Nexus: Moving Toward Portfolio Management of the Nexus*. The paper, whose principal author is Richard White, clarifies and further defines the energy-water nexus and identifies the key issue for improving the overall efficiency of the nexus, both technical and economic efficiency.

The paper defines the Water Energy Nexus as the interaction between water services and energy services where energy services rely on reliable access to water and water delivery services depend on access to energy. This co-dependency is referred to as the Water Energy Nexus.

The paper discusses how the challenge is more closely defined as managing the water-energy portfolio – that is, balancing the technical constraints with the economic value of water and energy services. The paper advocates a portfolio management approach to the nexus. Such an approach does not strictly rank potential opportunities, but rather balances the risks and opportunities of water and energy systems in order to achieve a broad set of objectives, such as preserving and extending the water supply, leveraging energy services to mitigate water scarcity, and reducing overall emissions.

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The paper discusses embedded metrics. It also discusses the economic incentives of end-users, energy and water utilities, and how water utilities trade off energy for water and how energy utilities trade water for energy. The paper concludes that, from a policy perspective, the embedded metrics by themselves have several shortcomings that make them weak policy tools. For instance, they invite industry participants to conclude that saving water will result in the savings of some specific and measurable quantity of energy, and vice-versa for saving energy. While such inferences may be useful generally, analysts cannot count on them in any specific application, at any specific location, or at any specific point in time.

The main goal of the white paper is to rethink the evaluation of the Nexus and to develop a roadmap that prepares for the challenges that might be faced. It has found that a simple characterization of the Nexus with embedded metrics neither reflects the regional differences and constraints on water nor the economic value of tradeoffs between water and energy. It also found that water sector institutions and energy sector institutions operate under different incentive structures and use different criteria to make judgments about the tradeoffs between using water and using energy.

It is clear that while tradeoffs between water and energy can be beneficial, there is no clear or consistent assessment or metric of the value of those tradeoffs. More robust management of the Nexus should be mindful of these shortcomings and promote a technically efficient and resilient infrastructure given regional constraints while also recognizing that water and energy services are essential and should be available across the state.

To develop this type of cross sector and long-term Nexus management, the paper has three recommendations:

1. Develop Guidelines for Managing the Portfolio of Water Energy Nexus
2. Develop a consistent water and energy data reporting standards
3. Develop energy water partnerships between electric utilities and water utilities

You can access the full paper at: <http://www.cpuc.ca.gov/puc/emergingissues>.

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State Board Approves Amendment to Recycled Water Policy—The State Water Resources Control Board (SWRCB) approved an amendment to its Recycled Water Policy Jan. 22nd that adds monitoring requirements for constituents of emerging concern (CECs, including pharmaceuticals and personal care products that can be present in minute amounts in wastewater) in recycled water that is used for groundwater recharge. The State Board's approval culminates an effort that began in May 2012 when its staff circulated the proposed amendment for public review and written comment.

The SWRCB brought scientific peer reviewers into the picture in June for review, and then made revisions from the comments received. One revision that made the final cut was language saying that if monitoring results indicate the need for additional monitoring treatment has been employed, the Regional Water Board shall consult with the Dept. of Public Health and "revise the Monitoring and Reporting Program as appropriate."

In October, the State Board received a report a report from a science advisory panel that had been formed in 2009 to provide guidance on possible action regarding CECs. While the panel did not recommend monitoring CECs in recycled water that is used for landscape irrigation, it did recommend monitoring of some surrogates in recycled water. Another change from the original draft resulting from the public comments received involved a clarification ensuring that the amendment applied only to recycled water, not groundwater in general.

The approved amendment to the Recycled Water Policy, previous versions, and other documents are available on the State Water Board's Web site www.waterboards.ca.gov/waterissues/programs/water_recycling_policy/draft_a_mendment_to_policy.shmtl.

PPIC Labels Water as Top Priority for California—California's biggest water challenge is instability in the Delta, according to the 2013 update of the Public Policy Institute of California's (PPIC) state policy report titled *California 2025*:

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Planning for a Better Future. Further, the report states that “the network [of water conveyance facilities] is now threatened by the physical and biological fragility of the system’s hub in the Sacramento-San Joaquin Delta.”

PPIC released the 52-page document released in late January, and it includes a policy brief on water management as a top priority for the state, along with eight other briefs on issues ranging from climate change to the budget and the economy, to health care and education.

In the six-page section on water, PPIC notes a litany of water management challenges, including:

- A variable climate that swings back and forth between droughts and floods;
- “Stark” regional differences in water availability and demand;
- The “vast” network of storage and conveyance facilities;
- The fragility of the network, as noted above;
- Population growth will increase urban demand despite per capita declines;
- Conflicts between urban, agricultural and environmental uses and needs;
- Rising air temperatures and declining Sierra Nevada snowpack;
- Rising water temperatures increase difficulty of maintaining aquatic habitats;

PPIC is somewhat upbeat in assessing the potential of meeting these challenges, noting that California has many tools to cope with water scarcity, despite the problems associated with expanding traditional sources – surface reservoirs and groundwater supplies. Among the nontraditional sources are:

- Recycled wastewater;
- Water use efficiency;
- Water marketing – either the sale or lease of water rights;
- Underground storage and groundwater banking;

Oddly, PPIC didn’t mention desalination, even while noting that the proposed tunnels in the Delta have the potential to safeguard the Delta environment while

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maintaining water reliability, although it conditioned this conclusion with the statement that the approach “requires solid policies on governance, finance, and mitigation for Delta landowners and residents.”

PPIC did speak favorably of surface storage, saying that increased surface storage could help offset the loss of snowpack, and provide more flexibility in managing floodwaters and environmental flows. But the issue is contentious, the reports states, citing a 2012 public opinion poll that found that 50 percent of adults (surveyed) in California believe the state should focus on improving water use efficiency while 47 percent prefer building new storage facilities.

The report devoted significant attention to flood management and protection of aquatic ecosystems, as well as the need to determine how to fill the finding gaps. PPIC said the public “appetite” for bonds may be “waning” and “California may need to rely more heavily on the ‘user pays’ principle to fund ecosystem programs.”

You can access the report at: www.ppic.org/content/pubs/report/r_113bkr.pdf.

ASCE Publishes Final Report in “Failure to Act” Series—Every four years, the American Society of Civil Engineers (ASCE) publishes *The Report Card for America’s Infrastructure*, which grades the current state of the nation’s infrastructure categories on a scale of A through F. In 2009, the U.S. infrastructure earned just a D average. When the next Report Card is released in 2013, it will provide an updated look at the state of U.S. infrastructure conditions. In the meantime, ASCE released its fifth and final *Failure to Act* report in mid-January, which focuses on how the infrastructure conditions affect the nation’s economic performance.

The purpose of the *Failure to Act* report series is to provide an analysis of the economic implications for the United States of continuing its current investment trends in infrastructure. The *Failure to Act* series analyzes two types of infrastructure needs:

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- Building new infrastructure to service increasing populations and expanded economic activity; and
- Maintaining or rebuilding existing infrastructure that needs repair or replacement.

The four preceding reports assessed the implications of present trends in infrastructure investment for the productivity of industries, for national competitiveness, and for costs to households. This report analyzes the effect of investment gaps in the infrastructure sectors addressed in each of the preceding studies. It summarized the national economic opportunities associated with infrastructure investment and the consequences of failing to fill the investment gap.

With respect to water, the report notes that delivery of water and wastewater services “is decentralized and strained” throughout the 54,000 drinking water and 15,000 wastewater systems in the country. It also notes that more than half the nation’s public drinking water systems serve fewer than 500 people. It says that the condition of many of these systems is also poor, with aging pipes and inadequate capacity leading to the discharge of an estimated 900 billion gallons of untreated sewage each year.

Even though new water lines are being added continuously, drinking-water systems degrade over time, and the useful life of component parts ranges from 15 to 95 years. So, failures in drinking-water infrastructure all have significant economic impacts: water disruptions result in unsanitary conditions, which increase the likelihood of public health issues. Other failures result in impediments to emergency response and damage to other types of essential infrastructure, etc.

The U.S. EPA estimated the cost of the capital investment required to maintain and upgrade drinking water and wastewater treatment systems across the U.S. in 2010 alone was \$91 billion. However, only \$36 billion of this \$91 billion was funded, leaving a capital funding gap of nearly \$55 billion. If current trends continue, the investment required will amount to \$126 billion by 2020, and the anticipated capital funding gap will be \$84 billion.

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The report projects that this \$84 billion deficit in 2020 could lead to \$206 billion in increased costs for businesses and households between now and 2020. The impacts on jobs are a result of costs to businesses and households managing unreliable water delivery and wastewater treatment services, and will be spread throughout the economy. Moreover, the situation is expected to worsen as the gap between needs and investment continues to grow over time. In 2020, almost 700,000 jobs will be threatened, which will grow to 1.4 million jobs by 2040. By 2020, the nation will have lost over \$400 billion in Gross Domestic Product, while the cumulative impact through 2040 is expected to be almost \$4 trillion.

Failure to Act is available on the ASCE website and you can access it at: www.asce.org/uploadedFiles/Infrastructure/Failure_to_Act/Failure_to_Act_Report.pdf.

Upcoming Industry Meetings/Conferences/Events:

- January 30, 2013 – Department of Water Resources – Urban Stakeholder Committee Meeting (9:30a – 3:30p; ACWA HQ; 901 K. St., Sacramento); J. Hawks will attend.
- February 1, 2013 – CWA Public Information Committee Monthly Conference Call (1:30p – 2:30p; 1.888.398.2342; 6868916#)
- February 3-6, 2013 – National Association of Regulatory Utility Commissioners Winter Committee Meetings (9:00a – 5:00p, Feb. 3-6; Renaissance Washington Hotel; 999 9th St., N.W., Washington, DC 20001); J. Hawks will attend.
- February 7, 2013 – CWA Legislative Committee Monthly Conference Call (3:30p – 4:30p; 1.800.250.2600; 86936245#).
- February 12, 2013 – CWA Directors and Executive Committee Meeting (9:30a – 3:30p; California Water Association; 601 Van Ness Ave., Suite 2047, San Francisco 94102).
- February 13, 2013 (Wednesday)– California PUC Open Meeting (9:00a–12:00p; 505 Van Ness Ave., San Francisco 94102)

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- February 13, 2013 – California Urban Water Conservation Council Board of Directors Meeting (9:30a – 3:00p; MWD of Orange County - 18700 Ward St., Fountain Valley, CA 92708); J. Hawks will attend.
- February 14, 2012 – California Water Plan Update 2013 Advisory Committee Meeting (8:45a – 4:30p; Department of Public Health, East End Complex Training Rooms, 1500 Capitol Avenue, Sacramento 95814); J. Hawks will attend.
- February 20, 2013 – California PUC Low-Income Oversight Board Water Subcommittee Meeting (10:00a 12:00 noon; Hearing Room D; California PUC; 505 Van Ness Ave., San Francisco 94102); J. Hawks will attend.
- February 20-22, 2013 – Urban Water Institute Spring Conference (Hilton Hotel, 400 East Tahquitz Canyon Way, Palm Springs 92262)
- February 27, 2013 – California PUC Low Income Oversight Board Meeting (10:00a – 4:00p; City of Burbank City Council Chambers; 275 East Olive Ave., 2nd Floor, Burbank 91502); J. Hawks will attend.
- February 28, 2013 – California PUC Open Meeting (9:00a–12 :00p; 505 Van Ness Ave., San Francisco 94102)
- March 7, 2013 – CWA Legislative Committee (In-person) Meeting – Review of Introduced Legislation (10:00a-3:00p; Nossaman Office; 621 Capitol Mall, 25th Floor, Sacramento 95814)

—CWA—