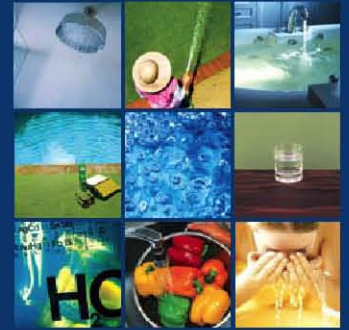


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The Weekly Wrap



May 11, 2012

No. 2012-19

TO: CWA Member Companies
FROM: Jack Hawks, Executive Director
SUBJECT: Highlights for the Week Ending May 11, 2012

California Supreme Court Affirms Appellate Decision in WRD v. CBMWD—The California State Supreme Court on May 9th rejected an appeal by the Central Basin Municipal Water District (CBMWD) and the cities of Downey, Signal Hill, Cerritos, and Tesoro Oil Company that challenged a trial court’s jurisdiction to rule on a proposed amendment to the original 1965 judgment (and subsequent 1991 Second Amended Judgment, which appointed the Dept. of Water Resources as Central Basin Watermaster) that adjudicated groundwater extraction in the Central Basin. The Supreme Court’s ruling affirms a Second Appellate District Court of Appeal’s decision that the trial court does have jurisdiction to rule on the merits of a proposed Water Replenishment District (WRD) groundwater storage plan.

WRD and other parties, including Cal Water and Golden State Water, had appealed the trial court’s July 2010 decision that it did not have jurisdiction to rule on the merits of the WRD plan. Among other things, the plan includes provisions governing the storage and extraction of stored water and proposes significant substantive revisions to the Second Amended Judgment. Among the provisions challenged on appeal are (1) the transfer of stored water between the Central and West Coast Basins through contractual agreements “without physically importing the water,” and (2) the appointment of three Watermaster bodies, which include WRD. The trial court had concluded that it was statutorily precluded from appointing WRD as Watermaster.

Earlier, the Court of Appeal had ruled that a 2001 proposed amendment to the Second Amended Judgment by a different group of pumpers, which sought to allocate the underground storage space in the Central Basin to entities with the adjudicated right to extract water from the Central Basin, was inconsistent with the California Constitution’s “beneficial use of water” mandate.

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In May 2009, CBMWD, Tesoro and the three cities filed a suit opposing the WRD plan, which also seeks to utilize between 330,000 and 450,000 acre-feet of storage capacity for groundwater, and it was this case that the trial court concluded it did not have jurisdiction to hear. WRD and several other cities, (including Los Angeles, Long Beach, Lakewood, Torrance and Inglewood) and water companies, appealed that determination to the Court of Appeal, which the court reversed, finding the trial court did have jurisdiction. Then, in February, Downey, Signal Hill, Cerritos and CBMWD filed the petition for Supreme Court review. The Court of Appeal's decisions that the lower court has (1) jurisdiction over groundwater storage, including the allocation and governance of storage; (2) jurisdiction to authorize the transfer of water from one Basin to the other; (3) jurisdiction to appoint WRD as a member of the Watermaster body; and (4) that the provisions of the California Environmental Quality Act do not apply to the petitions to amend the Judgments.

The cases now return to the Superior Court for trial on their merits. Of course, it's still an open question as to whether the four issues above will be decided in CBMWD's or WRD's favor. Stay tuned.

CPUC Applies Commission Affiliate Rules to Alco-Adcock Family— At its May 10th Open Meeting in Fresno, the California PUC approved Decision (D.) 12-05-003, which agreed to an Alco Water Service request to eliminate a previous decision's requirement that a Tier 3 Advice Letter be approved for every transaction between the Adcock family and the water company. Instead, the CPUC agreed to handle the review of cost recovery and reasonableness of such transactions by applying the existing Affiliate Transaction Rules (ATRs) to Adcock family transactions with Alco.

In so doing, D.12-05-003 modifies several of the ATRs to treat Adcock family members as affiliates of Alco, including making financial records and reports available. Unfortunately, the Decision, while emphasizing that it had no implications for any other company, discussed modifications to the ATRs repeatedly throughout, thus creating procedural problems because the modifications were made without notice or without an opportunity for the parties in the ATRs rulemaking to be heard.

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CWA Regulatory Attorney attempted to have the Decision's conclusions of law and ordering paragraphs changed to accommodate Alco's needs, but without actually modifying the ATRs. Not only did CWA file comments to that effect, but Marty had several ex-parte communications with Commission advisors prior to the Open Meeting. Alas, the advisors had little sympathy for CWA's position, with all of them saying that the Commission's intention is to apply the ATRs solely to the Alco/Adcock family situation and not to any other individual utility owners. Annoyingly, Administrative Law Judge Doug Long, in his final revisions to the Decision, mischaracterized CWA's comments as being repetitive to previous comments and again "accorded no weight" to CWA's comments.

The CWA Directors will discuss whether to file an application for rehearing at their May 15th Board meeting. Marty did speak with Helen Yee, CPUC Assistant General Counsel in charge of appellate matters, including applications for rehearing, and she adopted the Commission's party line, also suggesting CWA might not like the result of a rehearing application.

In other action at the Open Meeting, the Commission:

- **Approved Resolution W-4914**, which rescinded an earlier resolution involving Yermo Water Company, and now orders the CPUC's Legal Division to file a petition for the appointment of a receiver with the Superior Court of San Bernardino County to assume possession of and operate Yermo's water system.
- **Held** the decision on California American Water's application to (1) authorize an Aquifer Storage and Recovery Project Phase 2 memorandum account and (2) enter into an agreement with the Monterey Peninsula Water Management District to fund Carmel River mitigation measures required by the State Water Resources Control Board.
- **Held** the approval of the Proposed Decision on California American Water's Carmel River Reroute and San Clemente Dam Removal Project, as well as Commissioner Catherine Sandoval's Alternate Proposed Decision, which approves recovery of CAW's historical costs associated with the project.

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- **Approved D.12-05-018**, which denies the Highway 68 Coalition's application for rehearing of D.11-09-001, where the Commission denied the Coalition's complaint against California American Water and its previously approved advice letters involving CAW's proposal to annex certain subdivisions to the Ambler Park Water Utility.

CWA Files Opening Comments on CPUC's Proposed Financing Rule—CWA filed comments May 17th on Commissioner Timothy Simon's Proposed Decision (PD) on a new Commission Financing Rule. In its comments, which generally supported the new rule, CWA proposed changes to the exemptions section of the proposed Rule, proposed a few clarifying revisions to the four key paragraphs of the new Rule and proposed changes to General Order 24-C to implement the intentions indicated in the Summary introduction to the PD and to clarify when GO 24-C's reporting requirements will apply. Specifically, CWA proposed that (changes in italics) the Rule state that:

- utility long-term debt issues be conducted with the goal of achieving the lowest long-term cost of capital *for the utility and its ratepayers*.
- public utilities shall *to the best of their ability* determine the financing terms of their debt issues with due regard for their financial condition and requirements, and current and anticipated market conditions.
- consistent with Section 6 of GO 156, utilities shall retain the authority to use their *legitimate* business judgment in selecting firms for a particular debt securities offering.
- the listed exemptions apply to *debt issues for which competitive bidding is not viable or available, or due to the size of the issue*.
- bond issues of \$42 million or less, adjusted each year for the CPI, are exempt from the Financing Rule. Therefore, the current baseline of \$42 million in 2012 must be increased each year by the most recent CPI.
- on or before 60 days following each calendar *year during which one or more reportable issuance, receipt, or disbursement has occurred*, the information required by Sections A and B in the preceding periods, certified by an authorized representative of the corporation issuing stocks, bonds or other evidences of indebtedness, or by the partnership or individual authorized to A-3 issue bonds or other evidences of indebtedness shall be filed with the PUC.

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With respect to the new General Order 24-C, CWA requested that the GO require no more than annual reporting of financial transactions, and that no reports are necessary when no financial transactions occurred. Also, CWA requested elimination of the “unjustified and inefficient requirement” that financing proceeds be sequestered in a separate bank account.

CWA Sends Legislative Support Letter on AB 467 (Eng)—CWA sent a letter May 8th to California Senate Environmental Quality Committee Chair Joe Simitian (D-Palo Alto) and the rest of the committee expressing CWA’s support for AB 467 (Eng), which would amend Public Resources Code Sec. 75101, involving repayment of loans or grants from bond proceeds used to prevent or remediate contamination of drinking water.

As you may know, existing law requires the Department of Public Health (DPH), in collaboration with the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB), to develop and adopt guidelines governing the repayment of costs that are subsequently recovered from parties responsible for contamination of drinking water.

Among other things, AB 467 would allow CDPH to enter funding agreements that would allow the recipients of bond proceeds for groundwater cleanup to retain repayments from responsible parties to fund ongoing or additional groundwater cleanup activities. CWA’s letter noted the obvious financial benefits to water utilities’ customers – ongoing funding for additional cleanup of contaminated water supplies – and requested the members’ support for the bill when it came before them (the hearing is scheduled for May 14th).

Commission Announces June 19-20 Workshops on Draft Resolution L-436—In response to all the critical comments received on Draft Resolution L-436 (including CWA’s), the California PUC’s Legal Division announced May 9th that it was postponing issuance of a revised draft of the resolution until July 6th, and that the Commission would host workshops on the draft resolution on June 19-20 in the Golden Gate Room.

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You'll recall that Draft Res L-436 and the accompanying proposed revisions to General Order 66-C call for the Commission to abandon its confidentiality presumption for documents received. Instead, the CPUC will treat documents as public unless the company can show why its documents are subject to a California Public Records Act exemption or other provision of law prohibiting or limiting disclosure.

The effect of the workshops will be to allow an additional round of comments beyond those received on April 25th. Specifically, comments on the revised July 6th draft will be due on July 18th, and they will be posted on the Commission's website. The revised Draft Resolution L-436 and the new GO 66-D will be considered at the Commission's August 2nd Open Meeting.

ACWA Spring Conference Focuses on Infrastructure Needs, Rate Increases—

I was able to attend part of the Association of California Water Agencies' Spring Conference in Monterey on May 8-9, and the theme, "A Strong Foundation for Rebuilding California," focused on infrastructure investment and financing those investments. Following the ACWA Committee Meetings on May 8th, I participated in a May 9th panel titled "Getting the Skinny on Water Rates: Why Have They Increased So Much?" Among the panelists were representatives from the Vallecitos Water District, Metropolitan Water District and the San Francisco PUC, all of whom graphically detailed how their costs and rates have risen in recent years.

Although not a panelist, I was drafted into a discussion on the California Urban Water Conservation Council's Best Management Practice 1.4, which seeks to have water utilities derive 70 percent of their total revenues from the quantity charges in their rate schedules. Indeed, for the fourth consecutive industry conference I've attended, a general manager from a public water agency has questioned the difficulty in complying with the BMP in an era of declining sales and revenues generally. As the only CUWCC board member in the room, I was asked about the Council's plans to revise the BMP. I noted that it was on the agenda for discussion at the Council's May 16th Board meeting, and that there were plans to re-examine it later in the year.

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That afternoon, Chad Seidel of Jacobs Engineering Group gave an excellent tutorial titled “Hexavalent Chromium: Implications of the Pending California DPH MCL.” He reviewed the current occurrence data in drinking water, the current health effects research, the treatment alternatives and the regulatory status of chromium 6, both at the state and federal levels, including the pre-MCL activities and the development of the forthcoming draft regulatory package. He noted that it will take at least 3-4 years to complete an MCL for hexavalent chromium.

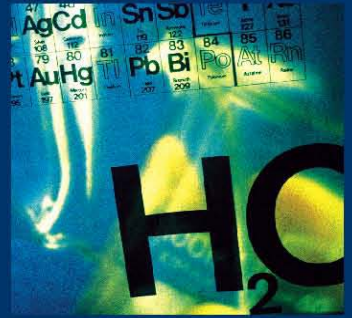
During the Q&A, Chad ventured his opinion that DPH would likely end up with an MCL of 10 micrograms per liter, and it could be higher. Even at this level, he said, the total annual costs of treatment will be at least \$1.1 billion per year. He lamented the fact that there was a great deal of uncertainty in the occurrence estimates, particularly at lower concentrations, and that capital and O&M costs were limited to a few demonstration installations. It was an eye-opening presentation.

Natural Resources Agency Says BDCP Public Review Draft Will Be Delayed—

Although he took credit for the Brown Administration’s “significant headway in formulating a proposed project for the Bay Delta Conservation Plan (BDCP) that will meet the dual goals of water supply reliability and Delta ecosystem restoration,” Natural Resources Secretary John Laird wrote in a May 3rd letter to the U.S. Dept. of the Interior that there will be “some workable delays” in the release of the environmental review documents, which were originally scheduled for the end of June.

“From the outset, we have all agreed that science should drive the design of the project and our plans for its implementation,” Laird wrote to Deputy Interior Secretary David Hayes. “The fish and wildlife agencies are currently reviewing and responding to a substantially improved scientific analysis of habitat restoration, water flows, and other ecological measures to achieve regulatory standards of the federal Endangered Species Act and Natural Community Conservation Planning Act. As a result, we anticipate that we will soon be able to announce some significant adjustments in the overall program that will reflect our commitment to using the best science.”

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Laird emphasized that the delay should not interfere with preparations for a public announcement of the key elements of a framework for the proposed project with the Governor and Secretary Salazar in mid-to-late July. But, he wrote that “it does mean we will not be ready to release public review drafts of BDCP and its environmental impact report/statement at the end of June.”

Governor Brown Appoints Felicia Marcus and Steven Moore to SWRCB—Gov. Jerry Brown announced May 10th the appointments of Felicia Marcus and Steven Moore to the State Water Resources Control Board (SWRCB), which as you know, oversees both water allocation and water quality protection in California.

Marcus, 56, of Emeryville, has been western director at the Natural Resources Defense Council since 2008 and was executive vice president and chief operating officer at the Trust for Public Land from 2001 to 2008. She served as regional administrator for the U.S. Environmental Protection Agency for the western U.S. from 1993 to 2001. Marcus has been a member of the Delta Stewardship Council since 2010.

Moore, 45, of Sausalito, has been a civil and sanitary engineer at Nute Engineering since 2006 and has been a member of the San Francisco Bay Regional Water Quality Control Board since 2008. He served in multiple positions at the San Francisco Bay Regional Water Quality Control Board from 1999 to 2006 and 1992 to 1996, including resources control engineer. Earlier, he was a senior engineer at Montgomery Watson Consulting Engineers from 1997 to 1998. Mr. Moore was an environmental analyst and biologist for Earth Metrics Inc. from 1989 to 1991.

Both positions require Senate confirmation and the compensation for the job is \$128,109 per year. Marcus and Moore are both Democrats. In addition to the new members, Gov. Brown announced that Charles Hoppin of Yuba City will remain chairman of the SWRCB. Mr. Hoppin was appointed to the Board in 2006 and has served as chairman since 2009. He is a partner in a family farm operation in Sutter and Yolo counties.

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California Gets High Marks on National Water Efficiency Scorecard—The Alliance for Water Efficiency and the Environmental Law Institute have released a draft report titled *The Water Efficiency and Conservation State Scorecard: An Assessment of Laws and Policies*. The research effort identified state level water efficiency and conservation policies and laws throughout the 50 states via a 20-question survey.

Water efficiency and conservation laws and policies encompassed in the survey included plumbing fixture standards, water conservation requirements related to water rights, water loss control rules, conservation planning and program implementation, volumetric billing for water, funding sources for water efficiency and conservation programs, and technical assistance and other informational resources.

In addition to collecting data on individual state level water efficiency and conservation policies, the project team graded the states based on its findings. Overall, the 50 states as a group average a "C" grade. California and Texas ranked first on the scorecard, with each receiving 29 points and a grade of A-. A full breakdown of the scores can be viewed in the report.

The report's authors note that the results show where there are opportunities to establish water efficiency policies where they are currently lacking and strengthen those already in existence. "Much can be learned from existing policies, regulations, and initiatives. While many robust water efficiency and conservation policies are in place, the results also indicate that there is great opportunity for improvement. Not only can polices be put in place where they are currently lacking, but existing policies and laws can be strengthened to increase their overall effectiveness," the executive summary says.

Due to the abundance of information that was gathered for this project and the difficulty in finding legal citations to support survey answers, the project team wished to release the report for public comment and review to determine if any errors need correcting. The public comment period is open until June 15, 2012. Directions for comment submittal can be found in the report.

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You can access the draft report at <http://www.allianceforwaterefficiency.org/draft-scorecard.aspx>.

Upcoming Industry Meetings/Conferences/Events:

- May 13-18, 2012 – Center for Public Utilities Advanced Regulatory Training for Water and Wastewater Utilities (8:00a – 5:00p each day; Sheraton Uptown Hotel; 2600 Louisiana NE, Albuquerque, NM).
- May 15, 2012 – CWA Directors Meeting (9:30a-2:30p; Valencia Water; 24631 Avenue Rockefeller, Valencia, CA 91355); J. Hawks will attend.
- May 16, 2012 – California Urban Water Conservation Council Board of Directors Meeting (9:30a – 3:00p; Kennedy Jenks, 2775 Ventura Blvd., Suite 100, Oxnard, CA 93036; J. Hawks will attend.
- May 16, 2012 – CWA Utility Supplier Diversity Committee Meeting (10:00a – 2:00p; Park Water Co., 9750 Washburn Rd., Downey, CA 90241).
- May 24, 2012 – California PUC Open Meeting (9:00a – 12:00p; 505 Van Ness Ave., San Francisco 94102)
- May 24, 2012 – California Water Association “Water Awareness Day” at the California PUC. CWA members will have exhibits in the Commission Courtyard focusing on customer service, infrastructure investment, water quality, the value of water, etc. (11:00a-3:00p; 505 Van Ness Ave., San Francisco 94102)
- May 30-31, 2012 – CUWCC NorCal Water Conservation Coordinator I/Water Use Efficiency I Workshop (9:00a–3:00p; San Francisco PUC; 1000 El Camino Real, Millbrae 94030); <http://www.cuwcc.org/WorkArea/showcontent.aspx?id=18714>.
- June 6-8, 2012 – CWA Annual Spring Conference/Regulatory, Small Company Seminar/Directors Meeting (1:00p on June 6; adjourns at 11:00a on June 8; Citizen Hotel; 926 J St., Sacramento 95814)
- June 11-13, 2012 – Western Conference of Public Service Commissioners Annual Meeting (8:00a – 5:00p; Sunriver Resort; 17600 Center Dr., Sunriver, OR 97707); J. Hawks will attend.

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- June 18, 2012 – National Association of Water Companies Government Relations Committee Meeting (9:30a – 3:30p; Hyatt Regency Capitol Hill; 400 New Jersey Ave., N.W. Washington, DC 20001).
- June 19-20, 2012 – National Association of Water Companies Annual Report to Congress/Two-Day Fly-In (9:00a – 5:00p; Hyatt Regency Capitol Hill; 400 New Jersey Ave., N.W. Washington, DC 20001).
- June 19, 2012 – California Urban Water Conservation Council Advanced Metering Infrastructure Symposium (8:30a – 4:30p; LA Dept. of Water & Power; 1350 S. Wall St., Los Angeles, CA 90021); J. Hawks may attend.
- June 20, 2012 – CUWCC Plenary Meeting (9:30a – 3:00p; LA Dept. of Water & Power; 1350 S. Wall St., Los Angeles, CA 90021); J. Hawks will attend.
- June 28, 2012 – California Water Association Annual Northern California Contractors-Vendors Meeting (7:30a – 11:30a; location TBD).

—CWA—