



SANTA CLARA VALLEY WATER DISTRICT

NON-AGENDA

April 17, 2020

Board Policy EL-7 Communication and Support to the Board
The BAOs shall inform and support the Board in its work.

Page	<u>CEO BULLETIN & NEWSLETTERS</u>
	None.
	<u>BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS</u>
5	BMR/IBMR Weekly Reports: 04/16/20
6	Memo from Nina Hawk, COO, Water Utility Enterprise, to the Board of Directors, dated 4/14/20, regarding Update on 2020 Urban Water Management Plan Cycle.
14	Memo from Rachael Gibson, DAO, Government Relations to Rick Callender, CEA, dated 4/14/20, regarding State and Federal Legislators Submit Letters to Governor Newsom Urging Reconsideration of New Incidental Take Permit for Long-Term Operations of the State Water Project.
19	Memo from Nina Hawk, COO, Water Utility Enterprise, to the Board of Directors, dated 4/13/20, regarding Annual Sustainable Groundwater Management Act Report.
20	Memo from Nina Hawk, COO, Water Utility Enterprise, to the Board of Directors, dated 4/15/20, regarding Court of Appeal Decision in Consolidated Delta Stewardship Council/Delta Plan Cases.
	<u>INCOMING BOARD CORRESPONDENCE</u>
23	Board Correspondence Weekly Report: 04/16/20
24	Email from Jon Gibson, to Director Kremen, dated 4/10/20, regarding Valley Water Cutting the Grass during Shelter in Place Order (C-20-0052).
25	Email from Christina Pilson, President, Employees Association, to the Board of Directors, dated 4/13/20, regarding Employee's Association's Expression of Gratitude for the Boards Support (C-20-0053).
27	Email from Doug Muirhead, to Chair Hsueh and Director Varela, dated 4/14/20, regarding the Community Survey (C-20-0054).
	<u>OUTGOING BOARD CORRESPONDENCE</u>
29	Email from Director Varela and Mike Potter, to Amy McElroy, dated 4/10/20, regarding Coronavirus & Drinking Water (C-20-0047).
35	Email from Chair Hsueh and Director Varela to Doug Muirhead, dated 4/15/20, regarding the Community Survey (C-20-0054).

37	Email from Chair Hsueh, to Gary Wong, dated 4/15/20, regarding Regnart Creek Trail (C-20-0050).
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Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.

CEO BULLETIN

BOARD MEMBER REQUESTS and Informational Items

Report Name: Board Member Requests

Request	Request Date	Director	BAO/Chief	Staff	Description	20 Days Due Date	Expected Completion Date	Disposition
I-20-0007	03/06/20	Kremen	Hawk	Hall	Provide information on voting thresholds required at typical water JPAs for cost allocation, general resolutions within South of Delta Central Valley. Include a couple of GSA, canal sharing agreements, flood control, etc. Focus on when is a super-majority required rather than a quorum.	03/26/20		
I-20-0008	04/06/20	Hsueh	Callender	Gibson	Create a joint resolution from Our Board, County of Santa Clara, City of Gilroy and the SLDMWA in recognition of Sig Sanchez 100 year birthday and service to the county.	04/26/20		

TO: Board of Directors**FROM:** Nina Hawk**SUBJECT:** Update on 2020 Urban Water
Management Plan Cycle**DATE:** April 14, 2020

On March 9 and 10, 2020, the Santa Clara Valley Water District (Valley Water) attended two workshops held by the California Department of Water Resources (DWR) to discuss 2020 Urban Water Management Plan (UWMP) requirements and the development of DWR's new Plan Development Guidebook (Guidebook). Every urban water supplier that either provides over 3,000 acre-feet of water annually or serves more than 3,000 urban connections is required to submit an updated UWMP to DWR every five years. Valley Water last updated its UWMP during the 2015 UWMP cycle, which was submitted to DWR on June 20, 2016. The current 2020 UWMP cycle will require updates to address 2018 California Water Code legislative changes, with plan submissions to DWR due on July 1, 2021.

As with prior UWMP updates, Valley Water will need to update water supply and use data contained in the UWMP and will be expected to revise water shortage contingency and supply reliability scenarios to include information from the last five years. The DWR workshops focused primarily on new additional requirements for the 2020 UWMP, including adoption of a complimentary Water Shortage Contingency Plan based on standardized drought and water shortage analysis, and the development of procedures for new Water Supply and Demand Assessments (WSDAs) submitted annually to DWR between UWMP update cycles. The workshops also highlighted a shift in UWMP emphases towards water supply risks (e.g., supply source uncertainty, infrastructure assessments) and projected water/land use changes. Details regarding these changes and a schedule of expected deliverables are shown in Attachment 1, adapted from materials presented at the workshops.

Valley Water staff is preparing the materials and analysis needed for the submission of its 2020 UWMP by the July 2021 deadline. As additional requirements and the Guidebook are made available, Valley Water will continue to work with its local retailers and municipalities to update projections and provide support, as applicable. Once developed, the UWMP must be approved by Valley Water's Board of Directors before being submitted to DWR.

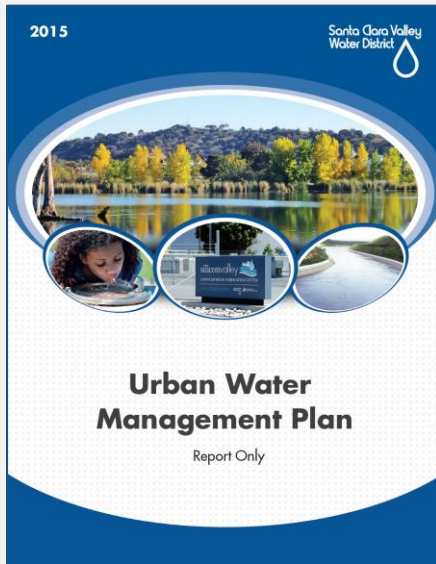


Nina Hawk
Chief Operating Officer
Water Utility Enterprise

Attachment 1: UWMP Details from DWR Workshops

Urban Water Management Plan (UWMP)

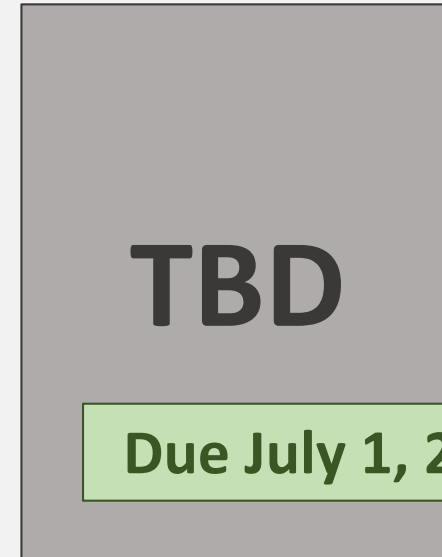
SBx7-7 Water Conservation Act
2015 UWMP Cycle



Information on water supply, water use, recycled water, water conservation programs, water shortage contingency planning, and water supply reliability in Santa Clara County under different scenarios (submitted 6/20/2016).

2018 Legislation (CA Water Code)
2020 UWMP Cycle

*Update Scenarios
and Data Sets*



New (Additional) Requirements:

- **Water Shortage Contingency Plan**
- **Water Supply and Demand Assessments (Annual)**
- *Additional analyses and review.*

Legislative Changes to 2020 UWMP Cycle

- Include lay person's **description of reliability**.
- Include long-term **forecast of each water supply source**, including climate change and supporting information.
- Incorporation of **projected land use changes** in demand forecasting.
- Include **Seismic risk assessment and mitigation plan**.
- **Energy analysis** now required.
- **Water savings from codes/standards/etc.** now required.
- Include 5 previous years of system water losses (*not much different from previous code but different from 2015 plans*).
- **Include Groundwater Sustainability Plan (GSP)**.

Water Supply Reliability Changes

SBx7-7 (2015 Cycle)

Water Shortage Contingency Analysis

- In 2015 UWMP:
 - Project next 20 years at 5 year increments.
 - Normal and single dry year analysis.
 - Multiple dry year (drought) analysis.

2018 Legislation (2020 Cycle)

Water Shortage Contingency Plan (Adopted)

- Supply & Demand Assessment for each source.
- Project next 20 years at 5 year increments (*same*).
- Normal and single dry year analysis (*same*).
- 5-year drought analysis (**Drought Risk Assessment**).

UWMP Assessment and Stages

SBx7-7 (2015 Cycle)

Water Shortage Contingency Analysis

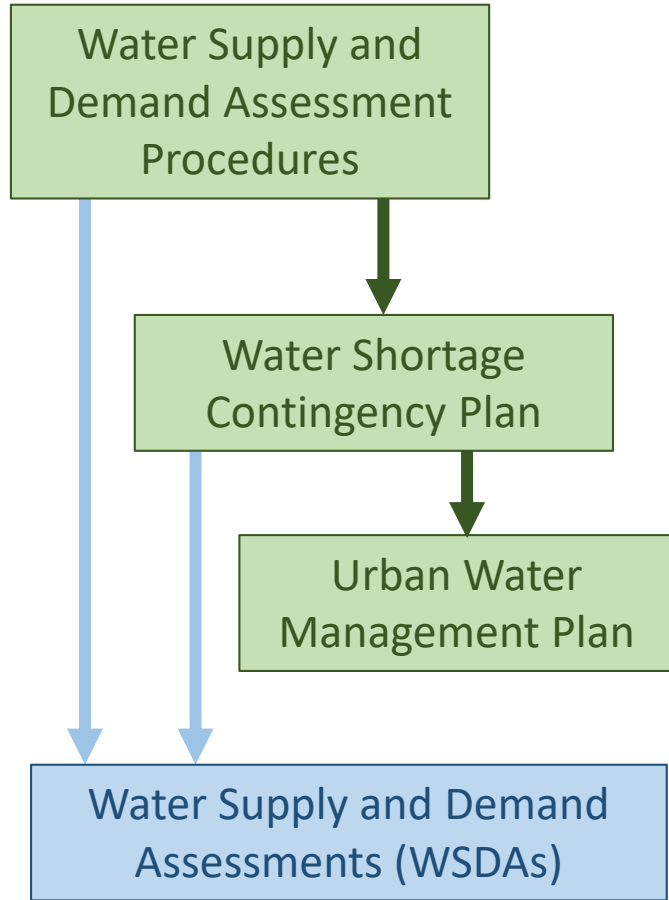
- Minimum available for next 3 years.
- Variable management stages for $\leq 50\%$ supply (UWMP-defined).
- Mgmt actions: catastrophic, power outages, earthquakes, or other.

2018 Legislation (2020 Cycle)

Water Shortage Contingency Plan (Adopted)

- Procedures for annual Water Supply and Demand Assessments (WSDAs).
- Six pre-defined water shortage levels.
- Shortage levels apply to catastrophic power outages, earthquakes, and others.

UWMP Water Supply and Demand Assessment (WSDA) Objectives



1. Improve water supply reliability in the urban sector.
2. Assist in drought water supply planning for urban water suppliers.
3. In coordination with urban stakeholders and the WSDA Workgroup, DWR will develop:
 - Water Supply and Demand Assessment Guidance
 - Water Shortage Assessment Report Guidance

Annual WSDA Submissions to DWR

Water Supply and Demand Assessment Procedures

Water Shortage Contingency Plan

Urban Water Management Plan

Drought Risk Assessment

Annual Water Supply Demand Assessment
[Shortage Levels]

Water Shortage Response Actions

Annual Water Shortage Assessment Report

WSDAs

PLANNING

IMPLEMENTATION

UWMP Schedule and Deliverables

March 10, 2020	UWMP Guidebook Kickoff Workshop
May 2020	Preliminary Draft Guidebook Workshop
June 2020	Public Draft Guidebook and Workshop
July 2020	<u>Optional</u> WSDA submission (DWR initial review)
Fall 2020	Final UWMP Guidebook and Workshops
May 2021	WUEData Portal Updated
July 1, 2021	2020 UWMPs due to DWR
July 2022	First annual WSDA submission due to DWR

TO: Rick Callender
FROM: Rachael Gibson
SUBJECT: State and Federal Legislators Submit Letters to Governor Newsom Urging Reconsideration of New Incidental Take Permit for Long-Term Operations of the State Water Project
DATE: 4/13/2020

On April 3, seven State Legislators, and on April 7, six Congressional members authored a letter to Governor Newsom urging him not to pursue litigation against the 2019 biological opinions and reconsider the newly issued Incidental Take Permit to the Department of Water Resources (DWR) for operation of the State Water Project (SWP) under the California Endangered Species Act (CESA). None of the legislators are members of our Santa Clara County delegation. The letters to the Governor are provided in Attachment 1 and 2.

Historically, the state operates the SWP under a consistency determination that looks to the federal biological opinions for operating procedures and protection measures. However, after the release of the new federal biological opinions, the California Natural Resources Agency and the California Environmental Protection Agency, amongst others, filed a lawsuit in February challenging the actions of the federal government. The lawsuit claims that the federal government failed to provide adequate protection for listed species. As an alternative to a consistency determination, the California Department of Fish and Wildlife (CDFW) issued an Incidental Take Permit for operation of the SWP that went into effect on April 1, 2020.

The proposed corrective action in both letters in the face of the new Incidental Take Permit is to recommend that the administration reconsider use of the Incidental Take Permit, cease the litigation against the 2019 biological opinions, and issue a consistency determination for the operations of the SWP.

We will keep the Board updated on any developments on this issue.



Rachael Gibson
Deputy Administrative Officer
Office of Government Relations

Attachment 1: State Legislators' Letter to Gov Newsom
Attachment 2: Congressmembers' Letter to Gov Newsom

April 3, 2020

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Newsom:

We are writing to raise serious concerns with your administration's unprecedented Incidental Take Permit for the Long-Term Operation of the State Water Project. This action will no doubt overly complicate operation of California's water infrastructure by reducing overall water supplies and further intensifying the discord between the State Water Project and the Central Valley Project. To avoid escalating this needless water war and forcing the state to face costly litigation, we ask that you reconsider this decision.

Nothing is more vital to ensuring that California families, farms, and communities receive a reliable source of water than the successful collaboration of the state's two water projects. Responsible for delivering water throughout Southern California and the Bay Area, these two water systems are crucial for providing safe drinking water to millions of families and for helping farmers fill shelves at local grocery stores. Yet, the state's reduction of available water directly limits access to safe drinking water in urban and suburban communities and the ability of farmers to produce needed food.

Historically, California has managed the State Water Project in compliance with the operation and wildlife protection measures required by the biological opinions produced by federal agencies. As these recommendations were produced implementing the most up-to-date data and science that preserved a necessary balance between the needs of people and the environment, your administration's decision to ignore these biological opinions flies in the face of reason.


As our nation deals with and responds to COVID-19, it is important that we consider ways to help, not hinder, those who need it. At this time, we should not ignore the needs of California families nor those of essential agricultural producers. Now is not the time to issue further restrictions on access to desperately needed water.

We strongly urge you to reconsider this potentially devastating action. To ensure that Californians have access to the water they need, we recommend that your administration not pursue litigation against the 2019 biological opinions and that the State of California issue a consistency determination. Both of these actions will help move California in the right direction

by allowing the State Water Project and Central Valley Project to resume coordinated operations. We cannot emphasize enough that at this critical juncture for California, failure to act prudently will further jeopardize the welfare of Californians that depend on this stable supply of water.

Thank you for your time and attention to this issue.

Respectfully,



Assemblymember Vince Fong
34th Assembly District



Senator Melissa Hurtado
14th Senate District



Senator Shannon Grove
16th Senate District



Assemblymember Jordan Cunningham
35th Assembly District



Assemblymember James Gallagher
3rd Assembly District



Assemblymember Jim Patterson
23rd Assembly District



Assemblymember Devon Mathis
26th Assembly District

Congress of the United States
Washington, DC 20515

April 7, 2020

The Honorable Gavin Newsom
Governor
State of California
1303 10th Street, Suite 1173
Sacramento, California 95814

Dear Governor Newsom:

We write to express our disappointment and serious concerns with the new Incidental Take Permit (ITP) for the Long-Term Operation of the State Water Project that your administration recently issued. This unprecedented action threatens to send the operations of the State Water Project (SWP) and the Federal Central Valley Project (CVP) into a downward spiral of conflict, confusion, and litigation. It also virtually eliminates the possibility of finding a lasting peace to California's never-ending water wars and effectively kills negotiations on Voluntary Agreements

We need cooperative and coordinated operations of the SWP and CVP to ensure that the cities, communities, and farms that depend on a reliable water supply receive the water they need and can grow the food that feeds our nation and the world. During the current COVID-19 pandemic, urban water districts are working hard to make sure Californians know their water supplies are plentiful and safe to drink, and agricultural producers are doing the same to ensure people know their food supply is safe and available at their local grocery store. Your decision to reduce water supplies through the State's new ITP for urban water providers and agricultural producers in the Central Valley, southern California, and the Silicon Valley undercuts those efforts.

For decades the State of California agreed to operate the SWP consistent with the CVP based on Federal operations plans and environmental protections issued by the U.S. Department of the Interior and the U.S. Department of Commerce. Given the serious health, safety, and economic concerns our constituents are facing due to the pandemic, and the fact that the 2019 Federal Biological Opinions were developed using the best available science and latest data to ensure both the CVP and SWP could be adaptively managed to meet the needs of people and the environment, the timing and judgement of the State's decision on the new ITP is even more baffling.

We believe State Water Contractors summarized the concerns well in their statement of opposition to the ITP. Among other things, they stated the ITP "fails to incorporate the best available science, burdens ratepayers with obligations far exceeding the impacts of water operations and will make compliance with the Sustainable Groundwater Management Act and climate change adaptation more difficult." The burdens they described mirror our constituents' concerns and fears about the State's new ITP.

We strongly believe that actions taken to protect both State and Federally listed species in the Sacramento-San Joaquin River Delta and surrounding ecosystem must be based on the best science. However, on November 21, 2019, the California Department of Water Resources (DWR) stated its intent to refrain from seeking "to increase SWP exports" in its application to

the California Department of Fish and Wildlife (DFW) for an incidental take permit. This demonstrates that DWR, DFW, and your administration never intended to follow the best science if it ultimately allowed increased exports on the SWP. Notably, the State's new ITP goes even further than the status quo by limiting SWP exports to an arbitrary amount of water.

To ensure the State's long-term water resilience and ecosystem health and with the best interests of our constituents in mind, we request that the State of California drop its recently filed litigation against the 2019 Federal Biological Opinions and issue a consistency determination under the California Endangered Species Act so the SWP and CVP can operate in a coordinated manner, as they have for decades. Without these actions, finalizing the Voluntary Agreements will likely be impossible and precludes the coordinated operation of the SWP and CVP in a way that would ensure the people of California have access to the water they need.

Thank you for your attention to this important issue. We look forward to your response.

Sincerely,



KEVIN McCARTHY
House Republican Leader



DEVIN NUNES
Member of Congress



KEN CALVERT
Member of Congress



TOM McCLINTOCK
Member of Congress



DOUG LAMALFA
Member of Congress



PAUL COOK
Member of Congress

TO: Board of Directors**FROM:** Nina Hawk**SUBJECT:** Annual Sustainable Groundwater
Management Act Report**DATE:** April 13, 2020

Per the Sustainable Groundwater Management Act (SGMA), all basins assigned as medium or high priority by the CA Department of Water Resources (DWR) must comply with SGMA. In December 2016, Valley Water submitted the Board-adopted Groundwater Management Plan for the Santa Clara and Llagas Subbasins to DWR as a Groundwater Sustainability Plan (GSP) Alternative, as allowed by SGMA. On July 17, 2019, DWR approved Valley Water's GSP Alternative.

SGMA regulations require submittal of an annual report on groundwater conditions for the preceding water year (WY) by April 1. Valley Water has submitted the WY 2019 report for the Santa Clara and Llagas Subbasins, which is publicly available at <https://sgma.water.ca.gov/portal/alternative/all>. Valley Water will also notify interested parties of the report availability.

The WY 2019 report documents continued sustainable groundwater conditions in the Santa Clara and Llagas Subbasins. Having previously fully recovered to pre-drought conditions, groundwater levels and storage remained in healthy condition through WY 2019. Valley Water will continue to sustainably manage the Santa Clara and Llagas Subbasins as a central part of our mission to provide Silicon Valley safe, clean water for a healthy life, environment, and economy.



Nina Hawk
Chief Operating Officer
Water Utility Enterprise

cc: N. Camacho, G. Hall

TO: Board of Directors**FROM:** Nina Hawk**SUBJECT:** Court of Appeal Decision in Consolidated
Delta Stewardship Council/Delta Plan Cases**DATE:** April 15, 2020

On Friday, April 10, 2020, the Court of Appeal (Third Circuit) issued its decision in the consolidated *State Water Contractors v. Delta Stewardship Council* litigation, in which Federal and State water contractors, including Valley Water, and environmental groups challenged the Delta Stewardship Council's ("DSC") Delta Plan (the water contractors arguing that the DSC exceeded its regulatory authority, the environmental groups arguing that it failed to exercise its regulatory authority). The water contractors challenged the Delta Plan on the grounds that the DSC exceeded its jurisdiction under the Delta Reform Act by, among other things, requiring water contractors that engage in "covered actions" involving water being exported from, transferred through, or used in the Delta to show adoption of local measures to reduce reliance on Delta water – such as improved water efficiency, conservation or water recycling, or projects to capture and store more local water.

The Delta Reform Act defines covered actions subject to DSC review as those actions that "occur, in whole, or in part, within the boundaries of the Delta or Suisun Marsh." The water contractors also challenged the DSC's appeal procedures which can result in an endless loop of reviews with no opportunity for judicial relief until the DSC has determined that the covered action is consistent with the Delta Plan. On the other hand, several environmental groups alleged that the Delta Plan did not go far enough in protecting the Delta because it did not set forth enforceable, quantified minimum water flows or other measurable objectives. The trial court agreed with the environmental plaintiffs, holding that the Delta Plan violated the Delta Reform Act because it did not set forth quantified water flow objectives or other measurable limits; it rejected the water contractors' arguments. Both sides appealed to the Third Circuit.

In its decision, the Third Circuit rejected the arguments of both the water contractors and environmental groups and ruled that Delta Plan did not violate the Delta Reform Act. Specifically, the Court rejected the water contractors' arguments that the Delta Plan exceeded the DSC's jurisdiction by regulating local water use to demonstrate reduced reliance on the Delta, as well as arguments that it unlawfully regulated water rights and frustrated the legislative goal of increasing the reliability of the Delta water conveyances. The Third Circuit also found that the Delta Reform Act requires local water agencies to reduce their reliance on the Delta, and thus the DSC may reject covered actions involving water exported from, transferred through, or used in the Delta if (1) local agencies do not demonstrate such reduced reliance; (2) such failure causes the need for the export, transfer, or use; and (3) the project would have a significant adverse impact on the Delta. The Third Circuit also rejected the water contractors' claim regarding the adequacy of the DSC's appeal process, finding that it is an issue created by and resolvable by the Legislature.

However, as noted, the decision is not altogether unfavorable to the water contractors. The Third Circuit rejected the arguments of environmental groups (and the trial court's holding) that the Delta Plan violates the Delta Reform Act because it does not contain quantified or measurable water flow limits or targets for the Sacramento or San Joaquin rivers or Bay-Delta estuary. Instead, the Third Circuit found that the Delta Reform Act authorizes the DSC to implement an "adaptive-management" framework for regulating these waters, and that while the DSC can adopt quantified limits or objectives, it may also promulgate a more flexible, adaptive framework for water management.

The Third Circuit's decision could impact Valley Water's ability to participate in multi-year water transfers if Valley Water is unable to demonstrate reduced reliance on the Delta to the satisfaction of the DSC. Single-year water transfers are not impacted since the Delta Reform Act expressly exempts such transfers by recognizing them as "non-covered actions". The decision could also have implications for projects such as Delta Conveyance, Sites Reservoir, and Los Vaqueros Expansion if all participating water contractors (and perhaps their member agencies) cannot satisfactorily demonstrate reduced Delta reliance or if any person challenges the projects' consistency with the Delta Plan and the DSC agrees. The latter could cause significant delays to the projects and potentially result in an endless review process until the DSC determines that the projects are consistent with the Delta Plan.

As for next steps, the water contractors' attorneys, including attorneys from the District Counsel's office, will evaluate whether to proceed with the case, including whether to petition the Court of Appeal for rehearing and/or whether to petition the California Supreme Court to review the case.



Nina Hawk
Chief Operating Officer
Water Utility Enterprise