

URBAN WATER INSTITUTE NEWSLETTER



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Legal Update

Records Retention Policies and CEQA Compliance

A California appellate court recently issued an opinion that all water agencies should consider in connection with their existing records retention policies.

In *Golden Door Properties, LLC v. Superior Court*, a lengthy legal battle ensued under the California Environmental Quality Act regarding a mixed-use project consisting of 2,135 residential units and 81,000 sq. ft. of commercial space in unincorporated San Diego County.

Prior to the litigation, the petitioner submitted a request under the Public Records Act for all County records related to the project, including emails.

In response, the County revealed that it had destroyed approximately 2.5 years of emails related to the project pursuant to its 60-day email retention policy.

After the litigation was filed, the plaintiffs submitted discovery requests for documents from the County and applicant, along with subpoenas to the consultants ... (see page two for more)

California Fires

Extreme Conditions And Wildfires *Fall Outlook 2020 And Recap Of Past Years In California*

By Alex Tardy, NOAA NWS

The winter of 2019-20 was very wet across southern California with most regions receiving 150 percent of average precipitation during the rainy season.



Across northern California it was a much different outcome with 50 to 80 percent of average precipitation. The jet stream high level winds or storm track was very amplified leading to the extremes across the state. This weather pattern has also produced unprecedented warming to ocean temperatures across the northern and eastern Pacific Ocean. This warming was observed the past 3 summers in Southern California at Scripps Pier (all-time high sea surface temperatures of 80F) and also in May 2020 with intense damaging harmful red tide development.

Across southern California the 2019-20 season, following critical fire weather in October, was made up of very wet storms in late November through December and again in March into early April. During the mid of the winter it was unusually dry, specifically the month of February, was record dry across parts of central and northern California with some locations receiving no precipitation.

On average, February is the wettest month and close to December and January normal precipitation. The wet winter in southern California produced abundant vegetation and green up during the spring season. In northern California, a drought developed and became severe due to the large precipitation deficits in the valleys and critical mountain areas.

The storage of water (water supply) remained average due to the prior wet winter of 2018-19. ... (see page three for more)

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Legal Update (*continued*)

(*from page one*) ... who assisted in preparing the Environmental Impact Report.

On appeal, the court invalidated the County's 60-day records retention policy, on the basis that it was unlawful to delete emails that constitute the administrative record in CEQA litigation. The court noted that CEQA specifically lists the documents that are to be included in the administrative record (which includes emails) and it would defeat the purposes of CEQA for informed self-government and meaningful judicial review to allow agencies to delete emails after 60 days and then exclude them from the record because they no longer exist.



In light of this opinion, water agencies should evaluate their records retention policies, especially with regard to email correspondence during a CEQA review. Retention policies should include provisions to retain all documents and communications that form the basis of the administrative record under CEQA, as set forth in Public Resources Code section 21167.6.

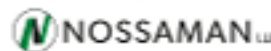
Although *Golden Door* involved CEQA litigation, similar rules for records retention could apply more broadly in any litigation where an agency's action is at issue. The State Water Board, however, recently argued against producing emails and other documents listed in Public Resources Code section 21167.6, in the coordinated cases challenging the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, arguing that the same rules do not apply to the State Water Board's adoption of a Substitute Environmental Document (SED), as opposed to an EIR. The scope of the *Golden Door* ruling will therefore continue to be refined in subsequent cases.

To reduce the record-keeping burden on agencies, the court provided two considerations. First, public agencies are not required to retain non-substantive emails; logistical emails such as meeting requests ... (*see page four for more*)

UWI Webinar: October 21, 2020

Urban Water Institute invites you to their next webinar - "Discussion with Jeff Kightlinger, General Manager of Metropolitan Water District" on Wednesday, October, 21, 2020 beginning at 9:30am. For more information, please visit www.urbanwater.com/webinar.

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California Fires (continued)



(from page one) ... The ENSO equatorial Pacific region was slightly above average or warm, during 2019-20, and observed consecutive months of low end El Nino warm conditions. The past several years have seen ENSO influence to be insignificant. This includes the super El Nino of 2015-16, strongest on record, when southern California experienced below average rainfall and continued severe drought conditions.

In the 2016-17 season, a weak La Nina (cold phase along the Pacific equator), very wet conditions occurred across most of California. This included southern California which ended the 2012-16 drought and brought significant runoff for water storage in the state.

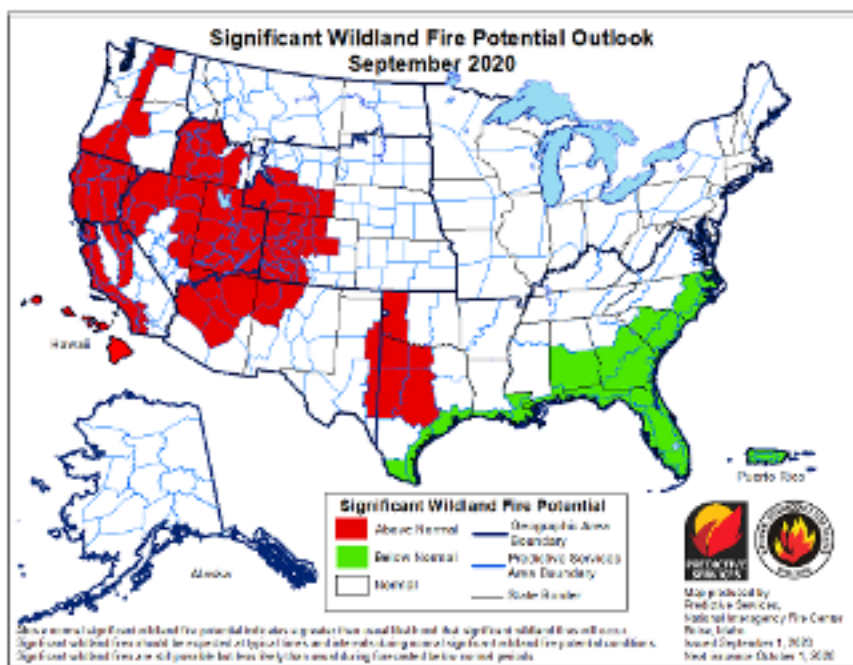
The period November to February 2016-17 was the top 3 wettest on record for California. The following season, 2017-18, the ENSO La Nina conditions continued along the equatorial Pacific region. This winter ended up being the top 3 driest in southern California, with only 3.34 inches of total rainfall in San Diego. Lack of precipitation and a very warm winter led to short-term drought conditions returning to much of California. Then in 2018-19, strong atmospheric river events across southern California in February 2019 caused flooding, debris flows and landslides, and were followed by intense cold Pacific storms with low snow levels.

The extreme precipitation differences from season to season, despite similar ENSO conditions, demonstrated the limited influence of El Nino and La Nina.

The prior seasons set the stage for the record breaking fire season in 2020, with near 4 million acres burned in California. The summer of 2020 was much above average in July and heat waves began as early as late April in southern California. The month of August was the hottest on record for the entire state with a focus on Southern California. The area most abnormally dry were the deserts and mountains, where at least 13 heat waves have occurred in 2020. A rare Santa Ana in June 2020 started rapid drying in southern California. Fuel moisture by late August plummeted to all-time low levels across parts of the state including southern California. Despite the wet 2019-20, the live fuel moisture (green up) dropped to critically low levels by mid summer leading to abundant fuel for rapid and significant fire growth.

In early September, a very rare all-time record breaking heat wave (e.g, 115F at Escondido and 121F at Chino) occurred in southern California and was followed by an unusual early season Santa Ana wind. In mid August, a historical lightning outbreak, on the west side of a massive upper level ridge bringing high heat to southern California, resulted in over 10,000 cloud to ground lightning strikes in 2 days. Moisture for this event came from remnants of tropical cyclones in the Pacific. This began the widespread wildfires in northern California which expanded into southern California in August and September.

Entering fall 2020, the fire weather conditions are extreme. The outlook predicts warmer than average temperatures through November and little precipitation. The Santa Ana season is expected to be average or slightly above in October and November due to the amplified Pacific jet stream that continues across the East Pacific. Cold air over the Great Basin is required for Santa Ana winds that blow dry air across Southern California during the transition from summer to winter. The conditions remain critically dry and sensitive to any wildfire starting at the time of this summary.



More information including graphics can be found on NWS YouTube channel: <https://www.youtube.com/watch?v=k6kJUPBUOrY&t=5s>

Meet Our Sponsors

Meet Our October 21st Webinar Legacy Sponsor Metropolitan Water District of Southern California

The Metropolitan Water District of Southern California is a regional wholesaler that provides water for 26 member public agencies to deliver to 19 million people in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties. The district imports water from the Colorado River and Northern California to supplement local supplies, and helps local water agencies plan, develop and realize water conservation, recycling, storage and other resource-management programs.

To supply the service area with reliable and safe water, Metropolitan owns and operates an extensive water system, including the Colorado River Aqueduct, 16 hydroelectric facilities, nine reservoirs, nearly 820 miles of large-scale pipes and canals as well as five water treatment plants. As the largest distributor of treated drinking water in the United States, Metropolitan is invested in finding new ways to drought-proof a reliable water supply for the future. Innovations in water-saving devices, technologies and strategies are central to Metropolitan's local resource programs. Whether Southern California is in a drought or a wet period, plans to manage water resources today are essential for a dependable water supply tomorrow.



In Focus: Bringing Water Full Circle



Closing the Sustainability Loop by Bringing Water Full Circle

The Las Virgenes-Triunfo Joint Powers Authority (JPA), a partnership of Las Virgenes Municipal Water District (LVMWD) and Triunfo Water and Sanitation District, recently unveiled its new Pure Water Demonstration Facility.

About five years ago, the JPA had to make a tough decision. How would it respond to a new reality where a regulation for its Tapia Water Reclamation Facility (Tapia) requires the effluent be treated to higher than drinking water standards?

"Our first reaction was a defensive one; we didn't believe the regulation was scientifically or economically justified," says Dave Pedersen, Administering Agent of the JPA, and General Manager of LVMWD. "We initially focused on challenging and repealing the regulation, but over time we came to recognize this as an opportunity to develop a project that would benefit both our customers and the environment. It's a win-win." ... (see page five for more)

Legal Update (*continued*)

(from page two) ... may therefore be deleted.

Second, CEQA's short statute of limitations period (ranging from 30 to 180 days) may serve as a reasonable basis for agencies to delete emails and other records, but only after the statute of limitations has clearly passed – which, for large projects, may require several years of CEQA processing.

In other portions of the ruling, the court held that certain discovery requests may be available under CEQA, especially if the purpose of the discovery is to seek portions of the administrative record.

Also, agencies should be cautious when communicating with project applicants during a CEQA review, as those communications may be required to be disclosed under the Public Records Act or in the CEQA litigation.

This article was provided by Robin Baral, Of Counsel, and Greg Newmark, Principal at Meyers Nave.

In Focus: Bringing Water Full Circle *(continued)*

(from page four) ... “We knew that this project would change the region’s water supply portfolio, so we embarked on a robust stakeholder driven process where all entities were represented – communities, businesses, academia, non-profits, environmental groups and residents,” says Jay Lewitt, Chair of the JPA and President of the LVMWD Board of Directors. “Embracing diverse opinions and input ensured that the project was well-thought-out and supported by our communities.”



Water is easily taken for granted. You turn on a faucet and it is always there. But what if it stopped flowing? What would that do to the economy and how would it impact the lives of our customers? What those of us living in the Western United States do know is that, more than anything else, water is life. Competing demands for water, conflict over its allocation, risk of natural disasters and an ever-changing climate have underscored the need to minimize our reliance on imported water and develop new local sources of supply.

Treating all water as a resource rather than a waste product is a shift in thinking that many water agencies are now embracing. As early as 1972, the JPA built a comprehensive “purple pipe” system that currently meets 20% of the region’s overall water demands.

And water isn’t the only product the JPA recycles. In 1994, we opened the Rancho Las Virgenes Composting Facility to transform biosolids from Tapia into Class A compost that we then give away free of charge to residents.

Now, with the Pure Water project, we will purify the remaining recycled water that would normally be discharged to Malibu Creek during the winter months to satisfy up to 15% of the region’s water demands.

The Pure Water Demonstration Facility is the latest example of the JPA’s investment in technology to provide reliable, cost-effective service, while upholding the region’s environmental integrity. The facility will be open for tours, virtually as of now, to allow residents to learn about the process.

Meanwhile, LVMWD staff will develop expertise on the proven technology used to treat the water and test different equipment to optimize the design of a future full-scale facility so we are ready to let our tour guests taste the purified water once they can visit the demonstration facility.

With the planned Pure Water Project Las Virgenes-Triunfo, the JPA can confidently say that it is closing the sustainability loop and “Bringing Water Full Circle”.

For more information on the Pure Water Demonstration Facility, please visit www.ourpureh2o.com.



Contributing author, Dave Pedersen is General Manager of Las Virgenes Municipal Water District, Administering Agent of the JPA, and a member of the UWI Board of Directors