

DIRECTOR REPORT AB 1234

Director Name: Jeff Ford

Conference/Seminar Name: Spring 2021 ACWA Virtual Event

Date: 5/12-5/13/2021

To Be Presented at Next Regularly Scheduled Board Meeting on: 6/15/2021

Subject Matter of Conference/Seminar: ACWA Conference

Speakers and Persons of Interest in Attendance: Water professionals, government representatives, consultants, and others, from numerous entities in California.

Points of Interest: ACWA had some technical issues which interfered with the opening session. The Federal Issues Forum addressed a number of facility improvements including the raising of Sisk, Shasta and Folsom dams. The Bureau of Reclamation is also assisting with state storage programs, including San Luis Reservoir expansion and Sites Reservoir. Colorado River System is at 40% in storage and inflows to Lake Powell will be about 40%. Level 1 shortage provisions will be invoked resulting in reductions in supply in order to maintain lake levels in Mead and Powell in order to continue power generation. There could be a Level 2 provision in 2022 which would reduce supplies further. New operating guidelines for the system are due in 2026 and work is underway to update them. The Army Corps of Engineers doesn't think that the CWA regulatory rules will

be changed (much). 90 Percent of their permits are nationwide permits and they just reauthorized them.

Attorney Forum: Developments in Proposition 218 and the Law of Water Rates. One of the presenters was Lutfi Kharuf of Best, Best and Krieger.

Proposition 218 was designed to make changing rates complicated, expensive and make it easier to sue water agencies according to the panel.

It makes rate structure change fertile ground for litigation and lawsuits can be filed years after adoption, so agencies need to be diligent about the administrative record and keep counsel involved in the process.

Given the technical issues with the Virtual Conference, here is a hope that the Fall Conference will allow everyone to meet in person once more.

5-12-21
11AM

Prop 218 and water Law - Developments in Proposition 218 and the Law of Water Rates

This panel was especially helpful with our water rate case coming up. Water rates are under continuing legal attack throughout the state. Retail water suppliers must collect and fairly allocate the costs of service among their ratepayers. Even well-designed plans may come under attack from disgruntled users and attorneys who take the cases on contingency and bet on being able to collect their fees from the retailer. For instance, a class action case was filed against 81 water retailers last year and brought the threat of these suits and their financial impact to everyone's attention. And recent case law proves to be a mixed bag for water agencies. This program will examine the impact of recent legal decisions, the threats posed by certain current cases, recent and proposed legislation affecting rate setting and collections, and propose some practical steps retailers might consider to reduce the risks of Prop. 218 challenges.

Panel - Moderator: Claire Collins who serves as General Counsel to Irvine Ranch Water District.

Panelists: Kristopher Anderson Legislative Advocate, ACWA, Adam Hofmann Partner Hanson Bridgett, Lutfi Kharuf is a partner in the Special Districts and Public Finance practice groups of Best Best & Krieger

Adam Hofmann | **Certified Appellate Specialist** at Hanson Bridgett, LLP. His practice focuses on representing cities, counties, and special districts in litigation relating to public finance and revenue measures, and advising those agencies on how to avoid related liability. He has worked on some of the leading recent public finance cases, including the California Supreme Court's decisions in *Jacks v. City of Santa Barbara* and *City of San Buenaventura v. United Water Conservation District*.

He talked about the Prop 218 required procedures, Procedural Limits: 45-day notice and protest procedure, Substantive Limits: Recover costs of service, allocate costs reasonably, account for rate revenue and talked about the Kessner class action case against water agencies over how they assessed fire hydrant costs. Each sued by a (nominal) customer or two, on behalf of a class of all customers. All were part of a class action against a "defendant class" of all public agencies in the State where the core legal issue was - are fire hydrants, and the cost to operate, maintain, and serve water to fire hydrants, part of the *cost of property-related water service* or a *general governmental fire service*?

Glendale Coalition for Better Gov't, Inc. v. City of Glendale

Fire hydrant costs can be included, tiered rates can only be used if it is established that higher water users incur more costs than lower use customers.

Decision - "We reverse the portion of the judgment issued in favor of the Coalition that challenged the inclusion of the public fire protection fee in the fixed rates. We affirm the portion of the judgment issued in favor of the Coalition that challenged the City's variable rates for residential customers. We note, however, that those variable rates violate article XIII D, section 6, only because they incorporate a cost for base services that is not proportional to the cost of service. The variable rates for residential customers do not run afoul of section 6 insofar as they were developed with different peaking factors applied to different tiers of consumption. Nor do the variable rates run afoul of section 6 because the resulting rates for residential customers are higher than for irrigation customers."

Kris Anderson (ACWA) **Association of California Water Agencies | Legislative Advocate** discussed legislation to address these issues.

SB1386 Bill by Moorlock, passed last year to address Kessner case– Amended the Prop 218 to clarify that hydrants are part of the water system, defined why they are property related SB323 Hurtado, Cabbellero, must bring litigation in 120 days by validation action, would provide quick resolution. Sponsored by ACWA

Interesting post in the Chat

A small residential water district board decided to challenge a commercial project to be built in the area which housed the district's wells. The board spent \$300,000 in legal fees bringing a CEQA action challenging the commercial project which the district lost. Now the district wants to "spread" the cost of those legal fees among the 50 residential properties in the district. Rather than do a 218 election, the District "sold" all of the districts wells, pumps, pipelines, valves and infrastructure to a local bank for \$300,000 to pay the attorney who lost the CEQA case and then entered into a installment repurchase agreement with the bank to purchase back 100% of the assets of the district just sold to the bank and is now trying to have the 40 residents pay for the repurchase of the infrastructure the district sold without the permission of the residents. What can the residents do to challenge both the sale of 100% of the assets that was not voted on and the imposition of water bills to spread \$300,000 repurchase obligation among the 40 residents. jboswell@fresnoirrigation.com

Jeffrey Boswell

.1:30 PM–2:30 PM

Diversity, Equity and Inclusion: Why It Matters for Leaders Presenter:

Jenine Jenkins, Diversity, Equity and Inclusion Strategist and Trainer, CPS HR Consulting

The aim of this session was to help participants gain a deeper understanding of their role in promoting a diverse and inclusive work environment. This session presented the foundational understanding and importance of diversity, equity and inclusion. She discussed unconscious bias and conscious bias and how it impacts the work environment and work relationships with colleagues and staff.

I was especially interested in unconscious bias because it is all too easy to see and process information through our own past experiences that may affect our relationship with others. This is not all about race and gender, it can be cultural too. She gave some great examples such as:

1. Confirmation bias. This exists not only at work, but in everyday life as well. Confirmation bias occurs when we make a decision about something, then actively look for information that supports that decision, while also overlooking any opposing facts and viewpoints. This can be detrimental to a company as evidence that something should be done in a certain way could be ignored.
 2. Similarity bias essentially states that we like working with people similar to us. This could be graduates from specific schools, people who have worked at certain companies, and more. Organizations that are influenced by the similarity bias run the risk of having no diversity among their ideas and perspectives, which could lead to less-than-ideal solutions to problems.
 3. “Bropropriating” – this occurs when a female member of the team makes a point about something, and there isn’t much interest in it. Then, a short time later, a male member of the team makes the same point, and everyone supports it. This bias can lead to female workers not wanting to share their ideas and can be an incredibly frustrating and demotivating factor.
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May 13th

9:30 AM–10:30 AM

CARB Advanced Clean Fleet Rule Implications for Water Agencies

Moderator: *Charley Wilson*, Executive Director, Southern California Water Coalition

Panelists: Niki Oku, Program Manager, CalStart, David Pedersen, General Manager, Las Virgines Municipal Water District, Eva Plajzer, Assistant General Manager, Rancho Water

To meet California's transition to electric cars by 2035, the California Air Resources Board (CARB) is developing a proposed Advanced Clean Fleet Rule that will require all California Fleets (including all public fleets) to start purchasing medium/heavy duty Zero Emission Vehicles (ZEVs) as soon as 2023 with the goal of a statewide zero emission fleet by 2045 where feasible. Panelists gave their perspectives on how public water agencies will approach this proposed rule.

10:30 – 11:30AM

Statewide Issue Forum - Water Rights and Preparing for the Next Drought

Due to another dry winter, drought and the possibility of curtailments are on everyone's' minds. Representatives from the State Water Resources Control Board talked about how they are approaching drought this year and what the water community can expect.

Dorene D'Adamo State Water Resources Control Board | Vice-Chair, appointed by Governor Brown. She holds a Bachelor of Arts degree from the University of California at Davis and a Juris Doctor from the University of the Pacific, McGeorge School of Law.

Voluntary Compliance is encouraged, voluntary discussions help to bring communities along, but the State Board may still need to take action on curtailments because of the dire situation. It's important to have the water rights system work or it WILL be revamped.

Erik Ekdahl - is the Deputy Director for the State Water Board's Division of Water Rights. The Division is responsible for establishing and maintaining a stable system of water rights to develop, conserve, and use the water resources of the State, while protecting vested rights, water quality, and the environment.

He talked about the need better data, but not necessarily more data. Problems in the Russian River watershed are worse than 76-77 drought, but there is more good conservation

Alan Lilly, State Water Resources Control Board | Presiding Hearing Officer, Administrative Hearings Office. He received his B.A. degree in physics and biology (with highest honors) from the University of California, Santa Cruz, and his M.A. degree in physics and J. D. degree from the University of California, Berkeley. He first began working for the State Water Resources Control Board as its first Presiding Hearing Officer in Nov 2019, heading the Board's new Administrative Hearings Office ("AHO"). Assembly Bill 747 of the 2018 Legislative Session enacted Water Code sections 1110-1114, effective July 1, 2019. Under these new statutes, most water-rights enforcement matters are assigned to the AHO for hearings and proposed orders. This new law also authorizes the State Water Board to assign other matters to hearing officers in this new office. For most matters, the AHO hearing officers prepare proposed orders, which the State Water Board then considers for adoption.

He discussed the hearing officer role and said that **sometimes the threat of water rights hearings force good negotiations that result in solutions**

Michael Patrick George State Water Resources Control Board | Delta Watermaster As the Watermaster has statutory responsibility for administering water rights within the Sacramento/San Joaquin River Delta and the Suisun Marsh. Additionally, the Delta Watermaster advises the Board and the Council on related water rights, water quality and water operations in

and affecting the Delta, which is, simultaneously, a critical estuarine habitat, a vital agricultural area, and the hub of California's water infrastructure.

He discussed the effects of the drought on the Delta and said it is "head snapping" how quickly we got into trouble this year due to insufficient snow melt. Situation is so dire that there will be pain for everyone. Another bad year will be mean major trouble.

Friday May 14th

Due to Technical problems, the many of the conference presentations had to be put over until Friday

Keynote

Secretary Wade Crowfoot

California's Natural Resources Secretary

Worst wildfire season ever last year, with highest acreage burned, now very dry. The snowpack did not result in the snowpack that was predicted due rapid melting and dry soils.

How to solve the issues:

Principal of Collaboration – must be more adaptive to resolve new issues. Discussed "Voluntary Agreements". We have to get this done in the face worsening drought. Will be submitted to a blind peer review, CEQA, etc.. We don't have a water regime that is adaptive.

Principle of Investment – we need a new generation of government investment in water infrastructure. Gov Newsome announced over 5 billion of investment in water infrastructure. Good funding from capital gain taxes. He outlined some of the funding to build resilience.