
ECOUPDATE

BY CLIF MCFARLAND



**MONTHLY
CALIFORNIA
ENVIRONMENTAL
LAW & POLICY
UPDATE**

WATER — LA TIMES ARTICLE

On September 27, the LA Times ran a feature article on the issue: “Why California can’t provide safe drinking water to its residents.” Focusing on the three most common MCL exceedances (arsenic, nitrate and TCP), the article gently placed blame at the feet of the State Water Board. A State Board spokesperson blamed resource constraints for its lack of progress, but the article indicated that adequate funding has been provided. The State Board pointed to system consolidation as the best long-term solution, but the article stated that consolidation is impossible for more remote systems and very expensive for others. Finally, the State Board complained that county officials have not provided sufficient assistance, but the article pointed out that drinking water is regulated at the state level and not at the county level.

CLIMATE — REVISED EU TARGETS

In September, the European Parliament voted to update the EU’s renewable energy target in the power generation sector for 2030 from 32% renewables to 42.5% renewables. The global energy think tank Ember estimated that in 2022, renewables accounted for 22% of the EU’s electricity supply (followed by natural gas at 20% and coal at 16%). The action is intended to achieve the twin goals of reducing the EU’s dependence on Russian energy supplies and meeting a 2030 target of reducing GHG emissions by 55%. Emergency regulations have been adopted to speed up permitting processes to aid in achieving the target. The EU and China continue to set the pace in the clean energy transition.



ENERGY — HYDROGEN

On October 13, the White House and DOE announced the awarding of \$7 billion in grants from the Bipartisan Infrastructure Law of 2021 to seven regional hydrogen projects. Collectively, the seven projects plan to produce more than 3 million metric tons of hydrogen annually—about 30% of the 2030 national hydrogen goal. Hydrogen is important for hard-to-decarbonize sectors, such as chemical, steel and cement manufacturing. One of the grants was awarded to the California Hydrogen Hub, operated by ARCHES, a public-private non-profit LLC established by the Governor’s Office Business and Economic Development (GO-Biz). ARCHES plans to produce hydrogen from renewable energy and biomass.

WATER — PASSIVE DESALINATION

On September 27, researchers at MIT and Shanghai Jiao Tong University published a paper in the journal *Joule* describing the design of a passive solar desalination system that can produce drinking water at a price similar to US tap water. The device relies on the heat from sunlight to evaporate water and induced convection to clear salt out the bottom of the device. The device has a higher water production rate and higher salt rejection rate than other passive systems currently being tested. The researchers estimate that a system scaled up to the size of a large suitcase could produce about 5 liters of drinking water per hour.



CLIMATE — PAPAL ANNOUNCEMENT



On October 4, Pope Francis issued an apostolic exhortation, entitled “Laudate Deum,” in which he made his strongest statements yet about climate change. The 13-page document is a mixture of advocacy, status report, anti-corporate lament and spiritual meditation. The Pope said that “the necessary transition towards clean energy sources such as wind and solar energy, and the abandonment of fossil fuels, is not progressing at the necessary speed.” The exhortation follows up on Francis’s groundbreaking 2015 encyclical “Laudato Si” which resonated well beyond the Catholic world and was quoted by ten world leaders at the 2015 Paris Climate Conference. The Pope was critical of toothless international organizations, Western irresponsibility, and corporate interests.



HAZARDOUS SUBSTANCES — ETHYLENE OXIDE

The United States EPA has embarked on a series of public meetings in communities where ethylene oxide (EtO) sterilization facilities are located. EtO is used to sterilize medical devices and small amounts of EtO are released from facilities where the sterilization process takes place. The type of public outreach and risk communication being conducted are unprecedented in scope. It is unclear whether EPA intends to conduct similar outreach activities for other hazardous air pollutants. The effectiveness of the risk communication exercise is also unclear.



CARB — CLEAN TRUCK RULES

On October 16, the California Trucking Association (CTA) filed suit against CARB to halt implementation of the Advanced Clean Fleet (ACF) regulation that would require truck fleet operators transition to zero-emission vehicles as soon as 2024 and would impose a 100% zero-emission vehicle sales mandate by 2036. The lawsuit claims that CARB lacks authority to implement the ACF because it is preempted by the Federal Clean Air Act and the Federal Aviation Administration Authorization Act. The trucking industry is concerned that the technology for battery and fuel-cell-powered trucks will not be available in time to meet ACF deadlines and that the state has not made sufficient progress in building the necessary charging infrastructure.



CLIMATE — SATELLITE IMAGING

A UK-developed satellite has returned its first images of heat variations across the surface of the Earth. The satellite, dubbed "HotSat-1," uses a mid-wave infrared camera and has a resolution of about 10 feet on the Earth's surface. The satellite was launched in June on a SpaceX rocket from California. Six additional satellites will be launched to complete the network. The project had pre-launch commitments of about \$100 million from 60 entities who plan to use the data. The data will be able to identify urban heat islands, poorly insulated buildings and other features with temperature gradients and is expected to have insurance, agricultural, urban planning, and military applications.

CLIMATE — GHG REPORTING REQUIREMENTS

. In a September 27 hearing of the House Financial Services Committee, SEC Chair Gensler testified that a potential rulemaking package which would require public companies to report their greenhouse gas emissions, including Scope 3 (supply chain) emissions, will entail lower net compliance costs now that companies must produce this information to comply with similar reporting laws just enacted in California (SB 253; SB 261). However, industry analysts have observed that these California measures could soon face legal challenges from companies that have a minimal physical footprint in the state and will themselves lead to increased costs given the anticipated complexity of the reporting regulations that will be developed by CARB and the difficulty of calculating Scope 3 emissions.



CLIMATE — CHINA

On October 12, the LA Times published an opinion piece by Prof. Alex Wang of UCLA regarding Governor Newsom’s upcoming trip to China. Wang points out that China has made tremendous strides on clean energy—China generates enough clean energy to power Germany six times over and 30% of vehicle sales in China are EVs.

Wang says China has a strong industrial policy, provides fiscal support for renewable energy, and is a leader in offshore wind energy. California plans to move ahead with methane mitigation, energy efficiency measures and industrial decarbonization. Wang urges greater collaboration between California and China on climate issues.

WATER — BAY/DELTA PLAN

On September 27, the State Water Board released its staff report for the long-awaited update to the Water Quality Control Plan for the Sacramento River watershed, Delta eastside tributaries, Delta and Interior Delta. The staff report assesses several alternatives, principally including: (1) an alternative based on 55% unimpaired flows (the amount of water the affected rivers would have carried if water was not diverted or dammed); and (2) proposed voluntary agreements among major stakeholders involving voluntary water contributions and habitat restoration on major rivers. The voluntary-agreement alternative would build on a memorandum of understanding reached in March 2022 between Governor Newsom and major water suppliers in the region.





WATER — CALIFORNIA GROUNDWATER

On October 12, the Department of Water Resources released its semi-annual update on California groundwater conditions. The report found that: (1) last winter was the eighth wettest year in the last 50 years; (2) this allowed almost complete recovery of reservoir levels; (3) groundwater levels have begun to recover, but only partially; (4) several more wet winters would be required to recover from decades-long groundwater depletion; (5) the one-year trend shows generally increasing groundwater levels statewide; (6) the 20-year trend shows generally decreasing groundwater levels; (7) fewer new wells were installed this year than in any year in the past decade; and (8) time delays in groundwater response make it difficult to draw conclusions until after April 2024, when local water agencies provide more comprehensive groundwater data.



HAZARDOUS SUBSTANCES — PFAS

Governor Newsom recently vetoed three bills to ban the use of PFAS in household cleaners, menstrual products, and artificial turf (Assembly Bills 246, 727, and 1423), citing a lack of regulatory oversight and enforcement mechanisms. Newsom wrote in his veto messages that single-chemical bans are confusing for manufacturers to comply with and difficult for the state to enforce. These vetoes come on the heels of Newsom signing similar bills that ban the use of PFAS in food packaging, juvenile products, textiles and other consumer applications. According to legislative sources, Newsom prefers to address the presence of PFAS in consumer goods through regulatory approaches involving DTSC.

AIR QUALITY— ANTELOPE VALLEY AIR QUALITY ATTAINMENT PLAN

On July 28, the Antelope Valley Air Quality Management District (AVAQMD) filed a petition for review in the Ninth Circuit challenging EPA's limited disapproval of AVAQMD's new source review program. Lockheed Martin has intervened in the matter. Local governments are concerned that EPA's decision will essentially prevent the area's two major aerospace facilities from installing new equipment, jeopardizing their continued operations and the thousands of jobs they support. The matter is on an expedited schedule, with briefing to be completed by February 2024.



ABOUT THE AUTHOR —



Clif McFarland has extensive experience in environmental law with a strong science background. As an MIT-trained engineer, Clif helps his clients to resolve difficult legal problems that are intertwined with complex scientific issues.