



Keeping Current on COVID-19 Challenges for the Water Industry

April 16, 2020

California CLE Credit

- During the webinar:
 - CLE credit will be given to participants that attend the full presentation (time-in and time-out is captured)
 - Participants will be asked periodic polling questions
- Following the webinar:
 - You will receive a CLE completion certificate via email within a week

Today's Presenters



Lori Anne Dolqueist

Partner



Tara Paul

Associate



Michael Stroud

Partner



Jenny Meeker

Partner



Allison Callaghan

Associate

Agenda

- Customer Protections
- Public Agency Considerations
- Court Closures & Other Litigation Challenges
- Employment Updates
- Insurance Considerations
- Legislative Updates



CUSTOMER PROTECTIONS

Voluntary Actions

- Many water utilities recognized that cutting off water service during the COVID-19 pandemic could have significant health impacts
- Suspended disconnections
- Reinstated service for disconnected customers

April 2, 2020 Executive Order N-42-40

- Water systems shall not discontinue residential service for non-payment
- Must restore any residential service to occupied residences that have been discontinued for nonpayment since March 4, 2020
- Water systems shall not discontinue service to any business in the critical infrastructure sectors that qualifies as a small business

CPUC March 17, 2020 Letter and Resolution M-4842

- Extended existing emergency customer protections in D.19-07-015 to the COVID-19 emergency
- Water utilities must work cooperatively with affected customers to resolve unpaid bills and minimize disconnections for non-payment
- Water utilities must waive reconnection or facilities fees for affected customers and suspend deposits for affected customers who must reconnect to the system for one year
- Applies to residential and small business customers

April 2, 2020 SWRCB Reporting Website

- <https://watershut-off.covid19.ca.gov>
- Allows water customers to submit complaints regarding shutoff or reconnection issues online
- Customers can report if water was shut off, water was not reconnected and if the water utility did not provide information about alternate payment options

April 8, 2020 SWRCB Meeting

- SWRCB guidance document coming soon
- Smaller systems may struggle without payments from customers

What is your role/background at your current organization?



PUBLIC AGENCY CONSIDERATIONS

Brown Act Suspensions

- Executive Orders N-25-20 and N-29-20
- Suspension of physical presence requirements
- Must continue to enable public participation
- Options:
 - Proceed with the standard model with adjustments in accordance with social distancing orders
 - Conduct board meetings “telephonically or otherwise electronically” (consult legal counsel on how to ensure public participation)
- Executive Order N-35-20

California Public Records Act (CPRA)

Considerations

- No changes by executive order
- CPRA does not include provisions to extend deadlines during emergency circumstances
- Public agencies should attempt to comply with CPRA to the greatest extent possible:
 - 10-day deadline for initial responses
 - Notify requestors of any delays or other obstacles to complying with CPRA requests due to the State of Emergency and local orders (consult legal counsel)



UNITED STATES
COURT HOUSE

COURT CLOSURES & OTHER LITIGATION CHALLENGES



UNITED STATES
COURT HOUSE

Court Closures

- Most State and Federal Courts are Impacted
 - Most courts are largely closed, particularly for civil matters
 - All jury trials are continued for at least 60 days
 - All hearings are on hold, with the exception of emergency matters, and no in-person appearances
 - State courts are expected to “ramp up” in June, but criminal matters will receive priority
 - Statute of limitations are tolled for civil causes of action
 - Time for bringing a civil cause of action is extended

Other Litigation Challenges

- With courts under significantly restricted operations, parties may experience delays with filing documents
- Depositions under “stay-at-home” orders present new challenges, and conducting via web-based video may be impractical
- Conducting written discovery may also be limited as staff working from home may not have access to documents
- Mediations and arbitrations may also need to be conducted via web-based video
- Attorneys and agencies should consider options if these circumstances continue for several months

Additional Resources

ALM's Roundup of California Courts' Services:

<https://noss.law/39wMqvN>

Law360's Roundup of U.S. Courts' Services:

<https://noss.law/2UT1sXr>

**When do you think the
Shelter-in-Place order will end?**

EMPLOYMENT UPDATES



Workplace Safety

What steps should we take to reduce our employees' risk of exposure to COVID-19 in the workplace?

Teleworking

- Are there legal risks associated with allowing employees to work remotely?
- What steps should we take to reduce those risks?

Families First Coronavirus Response Act

- Does the FFCRA apply to our organization?
- What are our obligations under the FFCRA?

Additional Resources

Nossaman's Employment eAlert:

noss.law/COVID-Employers

What has had the biggest COVID-19-related impact at your organization?

INSURANCE CONSIDERATIONS



Main Types of Insurance that May be Implicated by Risks Caused by COVID-19

- Property Insurance
- Commercial Liability Insurance
- Cyber Insurance

Property Insurance

- A type of First Party Insurance
- “Property insurance” is an agreement by which an insurer agrees to indemnify its insured in the event that designated property suffers a covered loss
- Property insurance may be written on an “open peril” (formerly “all risk”) basis, covering all losses not expressly excluded in the policy; or on a “named perils” (or “specified perils”) basis, covering physical loss from certain causes only (e.g., fire, windstorm, hail)
- Why does Property Insurance matter? Business Interruption Coverage

Property Insurance: “Direct Physical Loss”

- Requires “direct physical loss” to the property.
 - The phrase “direct physical loss” contemplates an actual change in the insured property “occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so”
- Insurers are denying claims relating to shutdown orders claiming that there is no “direct physical loss” to the covered property
- Around a dozen lawsuits filed nationwide seeking a judicial determination that the risk of COVID-19 and shutdown orders constitute a “direct physical loss”
- There is a lot of uncertainty in this area, but there is some authority nationwide for both positions

Property Insurance: Main Exclusions to Look For

ISO form CP 01 40 07 06 is titled "Exclusion for Loss Due To Virus Or Bacteria" and provides, in relevant part:

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

The exclusion goes on to specifically state that it applies, among other things, to "business income," i.e., business interruption.

ISO's July 6, 2006 circular [LI-CF-2006-175], prepared as part of its filing of the exclusion with state regulators, makes specific reference to such viral and bacterial contaminants as rotavirus, SARS, influenza (such as avian flu), legionella and anthrax.

Insurers can also be expected to argue that their standard pollution exclusions apply to bar coverage. Whether viruses or bacteria are pollutants is a controversial question to which no settled rule yet applies. Specific policy wordings sometimes provide relevant definitions.

Third Party Insurance

- Many policyholders face a risk of liability for failing to protect others from exposure to infection on their premises
- General liability policies cover liability for bodily injury and property damage, and will usually provide a legal defense against such claims
- Professionals may face claims based on failure to meet a duty of care that may be covered under Errors and Omissions insurance
- Some entities or their management team may face claims resulting from mismanagement of their response to the pandemic, which may be within the coverage of Directors and Officers policies

Commercial General Liability and Worker's Compensation

- Coverage for risk of liability for injury to employees and contractors
- With some exceptions, in California, Worker's Compensation is sole remedy for injury to employees
- However, contractors are not covered by Worker's Compensation Insurance and you are subject to a third party lawsuit if you do not have Worker's Compensation Insurance
- If a claim is made against you for an injury under these circumstances, then your Commercial General Liability policy may cover the loss including defense, but it would depend on the terms of your specific policy

Cyber Insurance

- Coverage for risk of data breach or cyber attack
- Most cyber insurance policies include a broad array of coverages including:
 - Network security liability
 - Privacy liability
 - Security response and forensic costs
 - Data recovery and restoration
 - Ransom event costs
 - Reputational harm
 - Network business interruption and associated expense
 - System failure
 - Contingent business interruption
 - Privacy regulatory defense

Cyber Insurance Exclusions

- Infrastructure exclusions
 - Policies typically exclude coverage for failure of power, utility, mechanical or telecommunications (including internet) infrastructure or services not under the insured's direct operational control
- Voluntary shutdown coverage limitations
 - Coverage may only apply to voluntary shutdowns to prevent the spread of malware or limit damage — and not to shutdowns intended to improve network access or functionality
- Limitations in computer system or network definitions
 - Policyholders should review key definitions and whether they affect coverage for owned, operated or leased systems and those operated by third parties

Does your organization have claims arising from COVID-19 that might be insured?

LEGISLATIVE UPDATES

CARES ACT

Relief and Economic Security Act

Health care response for individuals
impacted by the 2020 coronavirus pandemic

THE UNITED STATES

Representatives of the

Legislative Updates

Three areas of legislation to consider:

- 1) Coronavirus-specific enacted legislation (i.e., CARES Act)
- 2) Future legislation (i.e., 4th stimulus bill, WRDA, others)
- 3) Immediate next steps for water utilities

CARES Act

- CARES Act
 - Small business loans
 - Coronavirus Relief Fund
 - Federal Emergency Management Agency
- Loans for small businesses
 - Water utilities may qualify based on number of employees
 - Disaster Loan – cap of \$2 Million
 - 7(a) Loan – statutory cap of \$10 Million, but must use formula in CARES Act

Coronavirus Relief Fund

- Provides grants to States, Local, Tribal and Territorial Governments
- Payments may be made to Local Governmental Units
- Considerations –
 - Reduces the amount to the State
 - Local Government includes any governmental unit below the State-level and with population greater than 500,000

Federal Emergency Management Agency (FEMA) Funds

- Public Assistance (PA) Grant Funds –
 - PA program supports communities' recovery from major disasters by providing them with grant assistance for debris removal, life-saving emergency protective measures and restoring public infrastructure
 - Eligible applicants include State, Local, Tribal and Territorial governments and certain private nonprofit organizations
 - Uses include: Pandemic required purchases and acquisition, cleaning, emergency management operations, training, personal protective equipment and many others

Future Legislation

- Additional relief sought for individual taxpayers
- Replenishing the SBA loan funds
- Relief for State, Local and Tribal interests
 - Decreased State revenues, how to make up for those
 - Assistance to State and Locals, including health care systems and first responders
 - Infrastructure needs (i.e., longer-term sustained recovery)
 - Water infrastructure
 - Energy infrastructure

Future Legislation

- Unfinished business could advance
 - Water Resources Development Act (WRDA)
 - Surface Transportation Legislation
- Next round of appropriations funding
- Election-related legislation

Do you need government relations and lobbying help with securing federal or state funds?

Legislative Updates

- Effective government relations strategies, including coordinated Federal and State actions, can definitely impact outcomes for municipal entities
 - Race is on for limited federal funds for a growing national need
- While the facts and outcomes vary by project, client and many factors, the role of government relations is crucial to secure funding and support for projects and project funding

Next Strategic Steps for Water Utilities

- Identify current and ongoing expenditures related to the Coronavirus pandemic
 - Expenses for new equipment and training on the equipment (i.e., meter readers)
 - Any increased call-center or other technology-related expenses (i.e., increased software licenses, cell phones, laptops, etc.)
- Identify projected revenue shortfalls that may impact ongoing operations in the current or upcoming fiscal year (e.g., pipe replacement and other upgrades)

Next Strategic Steps for Water Utilities

- Prepare an emergency response plan to include ongoing service needs and costs associated with responding to the Coronavirus pandemic at least through the end of the 2020 calendar year
 - Identify needed training
 - What roles and needs are unaddressed
 - Expenses related to staff and equipment resources

Next Strategic Steps for Water Utilities

- Make sure your internal and external team is ready & assembled
 - Identify funding needs and funding sources, grant writer, government relations team
 - Effective engagement of Local, State and Federal elected officials and decision-makers.

Questions?



Nossaman Resources

Nossaman's Water Blog:

www.californiawaterviews.com

Nossaman's COVID-19 Response Team:

www.nossaman.com/covid-19-response-team

Today's Presenters



Lori Anne Dolqueist

Partner

ldolqueist@nossaman.com

[FULL BIO](#)



Tara Paul

Associate

tpaul@nossaman.com

[FULL BIO](#)



Michael Stroud

Partner

mstroud@nossaman.com

[FULL BIO](#)



Jenny Meeker

Partner

jmeeker@nossaman.com

[FULL BIO](#)



Allison Callaghan

Associate

acallaghan@nossaman.com

[FULL BIO](#)