



In Brief

A MONTHLY NEWSLETTER FROM
THE LEGAL SERVICES DIVISION OF
CALIFORNIA FARM BUREAU

NOVEMBER 2023

PUC REACHES DECISION ON NEMA



The Public Utilities Commission (PUC) unanimously adopted the flawed Net Energy Metering Aggregation (NEMA) Decision without substantive revisions on Thursday, November 16. As previously stated, the Decision eliminates onsite netting for NEMA arrangements and cuts export credits to the Avoided Cost Calculator (ACC) value which is significantly lower than retail rates. Under the Decision and based on current guidance, there will be a 90-day sunset period, which in conjunction with the prior NEM Decision in December 2022, would allow new NEMA customers from April 14, 2023, to February 14, 2024, to still be under the NEM 2.0 tariff with the following caveats:

- First, for customers applying to interconnect to NEMA after the NEM 2.0 sunset date of April 14, 2023, the legacy period is reduced to nine years to align with customers of the net billing tariff.
- Second, for customers applying to NEMA after the NEM 2.0 sunset date of April 14, 2023, NEMA eligibility is restricted to customers who already had two or more meters as of the date this decision is adopted which is December 15, 2022.

After February 14, 2024, all new customers will be on the NEMA Net Billing Tariff or NBT.

Farm Bureau remains committed to trying to rectify this decision and there are ongoing discussions about next steps.

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PUC APPROVES PG&E PHASE 1 DECISION

The Public Utilities Commission (PUC) on Thursday, November 16, approved the Proposed Decision put forth by Commissioner John Reynolds for Pacific Gas and Electric Company's (PG&E) General Rate Case Phase 1 proceeding. The decision cut the amount that PG&E had requested by \$1.8 billion from \$15.4 billion to \$13.5 billion, or an 11% increase from the authorized 2022 revenue requirement. This is compared to the 26% PG&E had requested. For the typical residential customer, their combined monthly electric and natural gas bill will increase by \$32.62 or 12.8 percent, compared to PG&E's request of \$38.73 or 17.9 percent increase. The decision approved 1,230 miles of electric line undergrounding, as well as 778 miles of covered conductor, totaling 2,008 hardened miles.

As Farm Bureau advocated throughout the proceeding, we are hopeful this will strike the appropriate balance between safety and reliability along with customer affordability and is certainly a great reduction from PG&E's initial request but is not insignificant and limits must continue to be placed on PG&E ratepayer costs.

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NINTH CIRCUIT WIN ON PROP. 65 AND GLYPHOSATE



On November 7, 2023, the Ninth Circuit filed its published decision invalidating the required Prop. 65 warnings on glyphosate due to violations of the First Amendment. The majority's ruling relies in large part on the information from CAFB's amicus brief about the disparate scientific views of the risks posed by the chemical.

The Ninth Circuit's decision reflects the position in the amicus brief submitted by CAFB, along with California Cotton Ginner & Growers Association, Western Agricultural Processors Association, California Fresh Fruit Association, and California Citrus Mutual, in 2021 in the Ninth Circuit supporting the district court's decision in *National Association of Wheat Growers v. Bonta*, which found that California's Proposition 65 warning label requirement for glyphosate violates the First Amendment due to conflicting and controversial evidence to show that the chemical causes cancer. Under the First Amendment, the government can only compel speech that is "purely factual and uncontroversial." CAFB's amicus brief included an in-depth review of the science and decisions by other countries as well as the U.S. EPA,

which found that glyphosate is not a likely human carcinogen, as well as the importance of glyphosate for agriculture and the resulting harm if products must include a Prop. 65 warning.

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CAFB FILED A LAWSUIT OVER STATE WATER BOARD'S REVISIONS TO AG ORDER 4.0

On October 9, 2023, CAFB, Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Plant Health Association filed a writ of mandate in Sacramento Superior Court challenging the State Water Resources Control Board's decision revising the Central Coast Regional Water Board's Ag Order 4.0 permit. Specifically, the writ of mandate challenges the State Board's interpretation of the required elements of an economic considerations analysis as well as the ability to use time schedules to extend compliance dates with total maximum daily loads (TMDLs). On October 27, 2023, various environmental groups and environmental justice groups filed a writ of mandate also challenging the State Board's revisions to Ag Order 4.0. The environmental groups allege that the State Board's revisions violate the Nonpoint Source Policy, the Antidegradation Policy, and Water Code 13149.2 for failing to include findings regarding impacts on disadvantaged or tribal communities. Given that both writs of mandate are challenging the same order and in the same court, the two cases will likely be coordinated.

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CAFB FILED A STATE WATER BOARD PETITION SEEKING REVIEW OF THE IRRIGATED LANDS WDR FOR LOS ANGELES AND VENTURA COUNTIES

On October 30, 2023, CAFB and the Farm Bureau of Ventura County, along with various other agricultural groups, filed a petition with the State Water Resources Control Board challenging the Los Angeles Regional Water Quality Control Board's adoption of new water quality requirements for irrigated lands. The ag groups have requested that the petition be put into abeyance while the groups attempt to resolve the issues with the L.A. Regional Board.

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COMMENTS ON PROPOSED WATER BOARD SCOTT AND SHASTA RIVER VALLEY "EMERGENCY" MINIMUM INSTREAM FLOW REGULATIONS

CAFB Legal worked along with the Siskiyou County Farm Bureau and other local agricultural interests to prepare and submit written public comments on revised draft emergency regulations for the Scott and Shasta River (Klamath Basin) watersheds. These proposed "emergency regulations" would extend extraordinary drought emergency powers claimed by the State Water Resources Control Board, based on the current status of the salmon populations in the area, despite the end of the hydrologic drought

after heavy rains last spring. These proposed regulations respond, in part, to a petition before the Water Board by the Karuk Tribe and others seeking permanent minimum flow requirements for the fish. The proposed emergency regulation (a revision of the similar emergency regulations in place during the drought) set flow standards shown by UC Davis researchers to be *physically unattainable* during significant portions of any year, even with 100% curtailments of surface diversions and groundwater pumping. The flows also include late summer mainstem river canyon flows that provide little or no actual benefit to fish, due to lethal water temperatures and no fish presence at these same times of year. CAFB's and the Siskiyou County Farm Bureau's public comments seek greater flexibility and reasonable balancing of beneficial uses including irrigation through alternative compliance measures and, also, to allow for important wet-period groundwater recharge.

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SGMA PROBATION INFORMATION FOR LANDOWNER AND PUMPERS



CAFB Legal prepared, posted to CAFB's website, and distributed through CAFB's November 2023 Monthly Membership Newsletter, and via social media, a summary of key information for affected landowners, pumpers, and agricultural operators in six (6) San Joaquin Valley Groundwater Subbasins. The website information can be accessed [here](#). After initial "inadequate" determinations on submitted groundwater sustainability plans (GSPs) from the Department of Water Resources (DWR), Groundwater Sustainability Agencies (GSAs) in these subbasins are working to revise their GSP to correct identified deficiencies, in preparation for eventual "probationary hearings" before the State Water Resources Control Board (Water Board). "Probation" can result in the imposition of direct reporting and fees to the Water Board. If deficiencies are not corrected in probation, subbasins can lead to a "state interim" plan that would, in turn, govern groundwater use in the basin until local entities in the subbasin are able to address deficiencies and regain control.

The six affected subbasins are the Tulare Lake, Kaweah, Kings, Kern, Chowchilla, and Delta-Mendota GSAs. A draft staff report on the Tulare Lake Subbasin is out for public comment as of this writing, for which CAFB will prepare written comments. Two public workshops for this subbasin for this Subbasin were held in November 2023 (one in-person and another virtual). The information on CAFB's website describes the probationary process for these six affected subbasins, stressing the importance of landowner involvement. A determination from DWR on the "adequacy" of a seventh Valley subbasin—the Madera Subbasin—is pending as of this writing—with additional draft, and staff reports detailing identified plan "deficiencies" in the coming months. CAFB will closely follow and support our County

Farm Bureaus and members in this probationary process, including through written comments, in-person or virtual appearances, and informational outreach like this new website background and context.

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GROUNDWATER RECHARGE/FLOODMAR INFORMATION AND RESOURCES FOR LANDOWNERS, PUMPERS, AND AGRICULTURAL OPERATORS



CAFB Legal has prepared and posted to CAFB's website an expedited groundwater recharge 'Starter Kit' for landowners, growers, and groundwater pumpers. This website information can be accessed [here](#). In March of this year, Governor Newsom outlined a set of streamlined flood emergency procedures to allow diversions for groundwater recharge in times of imminent flood risk under Executive Order N-4-23. These flood recharge provisions were later codified as new Water Code section 1242.1 this summer, making them a permanent part of the California Water Code. Current efforts by the State of California are part of a target included in an October 2023 Water Supply Strategy Update from Governor Newsom to increase annual average groundwater recharge statewide by at least 500,000-acre feet a year. The information posted on CAFB's website describes important requirements and landowner responsibilities under the new law and provides links and potentially useful resources for landowners interested in conducting groundwater recharge FloodMAR ("flood managed aquifer recharge") activities on their lands more generally.

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