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Next Meeting: September 17, 2021

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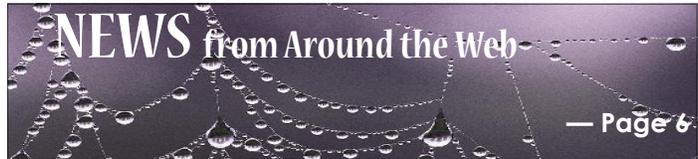
Presentations: To be determined

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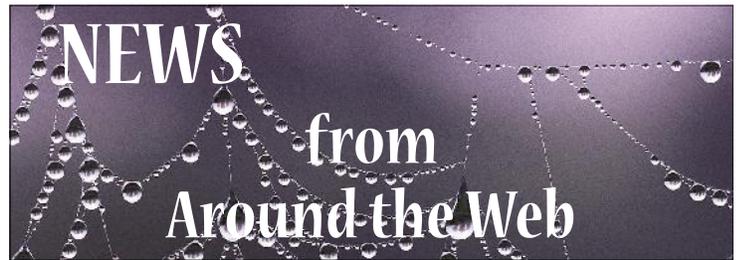
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U.S. Heatwave 'Virtually Impossible' Without Climate Change, Scientists Say

By Don Jergler

Reprinted from www.insurancejournal.com

An international group of 27 climate scientists have concluded that the recent heat wave in the Pacific Northwest was "virtually impossible without human-caused climate change."

National Weather Service reports show that in late June Seattle, Wash., reached all-time high temperature of 108 degrees F, while Portland, Ore. hit 116 F, also an all-time high.

The heat landed far outside the range of historically recorded temperatures, according to the scientists in a report released by World Weather Attribution. The scientists also note that the heatwave occurred a full month before the climatologically warmest part of the year, "making them particularly exceptional."

"In the most realistic statistical analysis the event is estimated to be about a one-in-1,000 year event in today's climate," the report states.

The scientists warn that as global warming continues, such events will become far less rare.

"Our results provide a strong warning: our rapidly warming climate is bringing us into uncharted territory that has significant consequences for health, well-being, and livelihoods," the report states. "Adaptation and mitigation are urgently needed to prepare societies for a very different future. Adaptation measures need to be much more ambitious and take account of the rising risk of heatwaves around the world, including surprises such as this unexpected extreme."

Swiss Re

Swiss Re has published new research on practical measures needed to mitigate climate risks focused on the importance of carbon removal.

Swiss Re argues in its research that carbon removal/capture and storage will be a crucial part of the solution to reach the Paris Accord goals of zero greenhouse gas emissions by 2050 as well as President Joe Biden's recent pledge to slash emissions by 2030.

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The world will need to remove up to a quarter of the CO2 now emitted globally – equal to 10 billion tons of CO2 per year – by 2050. This would require increasing carbon removal capacity by 60% every year over the next three decades.

The main barrier to carbon removal is lack of business case. In the absence of carbon pricing in many parts of the world, society disposes of carbon into the atmosphere at will.

The report states that insurers can help in three ways.

They can improve the “bankability of removal projects” by providing standard engineering and insurance, as institutional investors insurers can provide financing for removal projects and infrastructure, insurers can be early buyers of carbon removal certificates to balance their own footprint.

NOAA

The National Oceanic and Atmospheric Administration says record high-tide flooding washed over U.S. coasts in the past year, and rising sea levels are expected to send the deluges into streets, homes and businesses even more frequently over the next decade.

NOAA in an annual report covered in a Bloomberg article in Insurance Journal said the surges, which are often referred to as “sunny day” floods, are increasingly becoming a reality as sea levels continue to rise.

That means the damaging flooding that used to occur primarily during storms now happens during regular events such a full-moon tide or with a change in prevailing winds.

“NOAA's tide gauges show that 80% of locations where we collect data along the Southeast Atlantic and Gulf coasts are seeing an acceleration in the number of flood days,” said Nicole LeBoeuf, director of the National Ocean Service.

According to NOAA, flood records were set in Texas, Florida, South Carolina, and Georgia, while Galveston and Corpus Christi, Texas, along with Bay Waveland, Miss., had a record 20 days with high-tide flooding from May 2020 to April 2021. Twenty years ago these locations would typically only flood two or three days a year, according to the department.

Moody's

Moody's has launched a tool it says will generate environmental, social, and governance scores for millions of public and private small-and medium-sized enterprises.



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The ESG Score Predictor provides financial institutions with quantitative data for portfolio and risk management, and helps companies monitor ESG risk across their global supply chains, according to the firm.

ESG reporting continues to become more popular. American International Group Inc. released its first ESG report, which AIG President and CEO Peter Zaffino said is part of the company's "commitment to transparent ESG leadership is a central part of our global corporate citizenship agenda."

Moody's said that assessing a company's exposure to ESG risks requires comparable and standardized metrics, which are limited in company disclosures that continue to affect data quality and company coverage, especially in the SME space.

"The ESG Score Predictor leverages state-of-the-art advanced analytics to provide 56 ESG scores and sub-scores for any given company using location, sector, and size," Moody's said in an announcement. "Customers can access approximately 140 million company ESG scores on Moody's Orbis database, Procurement Catalyst and Credit Catalyst platforms, via an application programming interface (API), or leverage the ESG Score Predictor model with their in-house data to score their portfolios. ❖

GM Recall: Side Airbags Can Explode in Chevy, GMC Pickups

Reprinted from www.claimspages.com

General Motors is recalling more than 400,000 pickup trucks in the U.S. because the side airbags can explode without warning and spew parts into the cabin.

The recall covers certain 2015 and 2016 Chevrolet and GMC Sierra 1500, 2500, and 3500 trucks.

Documents posted Friday by U.S. safety regulators say the airbag inflator can rupture or the end cap can fly off on both sides of the trucks.

GM says it has no reports of injuries. The company says a manufacturing defect allowed moisture into the inflator during manufacturing, causing corrosion.

Dealers will replace both side airbag modules. GM says it has a limited number of replacement parts available. ❖



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What's the Verdict? How are virtual trials working, and are they here to stay?

Reprinted from www.theclm.org

"You're on mute, your honor." If Black's Law Dictionary held a "Phrase of the Year" contest for the last 12 months, that would be our nomination. Like most attorneys with active trial practices, when COVID-19 hit our region, we had a number of cases postured for trial. Unlike most attorneys, fortune and circumstance led us to several "virtual verdicts"—cases tried from voir dire to verdict completely virtually.

After trying one of the first virtual jury trials in the nation, we presented and spoke with local and national bar groups, claims professionals, and groups of judges about our experiences. In doing so, we have a unique perspective on the virtual trial: What it looks like, its pros and cons, and whether it will survive the end of the pandemic.

The Virtual Trial—How Did it Happen?

One of the first virtual jury trials in the country was conducted by Judge Thomas Zilly in the Federal District Court for the Western District of Washington in September 2020. The case had unique factors favoring a virtual trial, including an elderly plaintiff who might not have been able to survive the end of the pandemic for a trial. The case also had many out-of-state experts and witnesses who probably would have testified virtually anyway.

Since then, the Western District of Washington has been a leader in conducting virtual Zoom trials both by bench and by jury. As of July 2021, the Western District has held 26 fully virtual trials, with more than half of them tried with a jury. Some of the reasons cited in favor of virtual trials include the cost and time savings of allowing jurors to sit at home rather than travel to a city (especially for distant counties that are part of the federal district), as well as convenience for court and counsel. All of it was necessitated by COVID-19, of course, but the arguments are advanced for proceeding in this fashion in the future.

State courts in Washington also joined in the experiment. King County, which is home to Seattle and Bellevue, was a leader in setting protocols for virtual jury trials. In December 2020, we participated in one of the first fully virtual jury trials. Every aspect of trial was conducted via videoconference, including jury selection, presentation of evidence and exhibits, closing and deliberations, and entry of verdict. Jurors attended via videoconference from their respective homes. Since then, we have conducted four fully virtual trials under similar circumstances.



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Virtual trials have been the subject of much debate, and considerable motions practice. This article is too short to go into the details on the topic of legal challenges to virtual trials, but Federal District Judge Marsha Pechman, in *Goldstine v. FedEx Freight, Inc.*, 2021 U.S. Dist. LEXIS 46478 (W.D. Wa. Mar. 11, 2021), has issued a ruling clarifying the constitutional issues surrounding (and allowing) fully virtual trials. State trial court judges issued similar rulings in favor of holding a virtual trial.

What's Different?

When we speak about virtual trials, the most common question we get is, "Who does it favor—plaintiff or defense?" It is also our favorite question to ask audiences because everyone disagrees, and it always creates a discussion about trial tactics and strategy. If you are looking for our answer, you might be disappointed, since our answer is usually—drumroll please—"it depends."

In our experience, voir dire is the part of the trial affected most by the virtual format. Of course, we are biased; we believe voir dire is the most important part of trial. In King County, potential jurors were asked to complete a lengthy questionnaire given to counsel in an Excel format the night before voir dire. Potential jurors were broken into groups of 15 to 25. Each panel was then examined separately. This is a huge change from normal practice in which all potential jurors would be examined at once in the courtroom.

In a virtual format, the attorneys essentially repeat their voir dire for each panel—sometimes up to five or six panels—until there are enough qualified jurors from which to select the jury. Jury selection did not take more time than the "normal" method, but it is a decidedly different process. Smart attorneys reacted to each panel by changing their presentation—anticipating the other's presentation or abandoning a dull line of questions. Jurors seemed less willing to react to each other's responses, but were no less willing to be candid and open in responses.

Another major difference is presentation of exhibits. All attorneys are becoming proficient at introducing exhibits electronically and virtually in depositions, but it is a very different thing when it comes to a virtual trial. Gone are the days of excellent (and vastly enlarged) demonstrative exhibits, such as blow-ups of testimony and medical records. Instead, we now have pre-marked electronic copies that can be referenced and shown on the screen, and on command (after admission by the judge, of course). This strips much of the theater away from exhibits. Hitting "screen share" is not as dramatic as waiving the report in front of the witness or slam-

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ming a heavy stack of records on the table. The upside is that virtual jurors can review exhibits whenever they want, and every juror has electronic access to the exhibits (at least in federal court).

Addressing the Negatives

As for the negatives, there are several—and this list is not exhaustive. Being inclusive to all demographics is a major concern. Some of our objections to virtual trials are that they may disadvantage, and even preclude, those who are less likely to have access to the internet and a web camera.

Yet, this topic is being addressed by the courts. We have heard proposals for loaning iPads to jurors or setting up remote juror rooms at the courthouse or a library. All of this might be a solution in the future. Time will tell if courts can get it right. From our conversations with both federal and state judges, we know that this is one issue that is on the forefront of many jurists' minds.

Another negative is the loss of the grandeur, gravitas, and "significance" of attending a trial in an actual courthouse, with the solemn and reverent responsibility that goes with that process. Common sense suggests jurors and witnesses might act differently in the marbled halls of a courthouse than when sitting on their couch holding a laptop.



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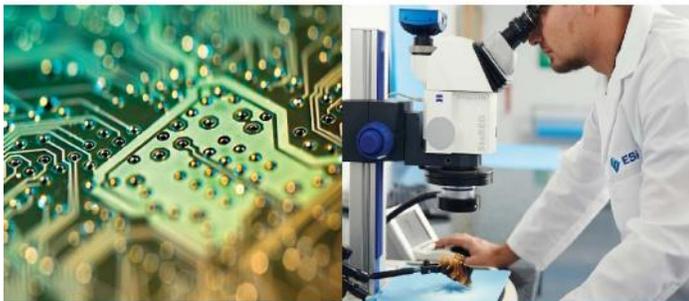
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On the other hand, some judges believe that virtual proceedings will be able to deliver justice to those who might otherwise be preempted from a trial due to location, age, finances, or other circumstances. In our minds, there is no question that a virtual proceeding could level the playing field by decreasing the cost of bringing witnesses and parties to a courtroom—especially if the courtroom is far away.

Positive Perceptions

On the positive side, jurors seem to love virtual trials. Many jurors commented that the virtual format helped them manage the difficulty of taking time off for jury duty. We know many jurors “alt-tab’ed” from the virtual trial to work emails as soon as the judge sent them to their virtual jurors’ room. Others used breaks to check in on children who themselves were attending a virtual classroom.

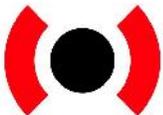
Initially, we were concerned that jurors would drift off or watch Netflix on a second screen (the former is not unheard of, even in live trials). We were pleasantly surprised that this did not occur in our virtual trials. The credit belongs to the judges, who required jurors to have their cameras on and took the added responsibility of monitoring jurors for inattention or napping. The best virtual judges also made sure that no one else was in the room with a juror during a presentation. This helped narrow the gap in formality between a normal and virtual trial.

There are too many other variables to cover all the pros and cons of fully virtual jury trials, but anybody who has tried or watched a trial can easily make a list. Can you tell if someone is telling the truth or lying on screen? Can you do so better or worse than if they are in person, but farther away? Remember, anybody speaking during a virtual trial will “fill up” the screen for the jurors, as they are supposed to be watching in speaker mode, not gallery mode.

From a true trial lawyer’s perspective, virtual trials do not encompass the full theatrical opportunity that an in-person trial affords. Hand gestures are all but gone, and there is no more pacing the courtroom or using the space of a courtroom in a strategic manner for cross-examination. Is this necessarily a bad thing? Trials have evolved constantly over the years, but one thing has stayed the same: True trial attorneys have found ways to use the procedures and circumstances to tell their clients’ stories. A move to virtual trials doesn’t change that.

What Happens Next?

You would not be alone if you thought that ending COVID-19 protocols would see the end of the virtual trial. We believe otherwise. As previously discussed, there are real benefits to jurors. If using a virtual trial

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increases juror participation, then many jurisdictions will consider it.

Additionally, jurisdictions that have conducted virtual trials have spent resources in the form of time and money to develop the capability. Those jurisdictions may want to reap the benefits of those investments. Clients and claims handlers may enjoy the benefit of attending trials without having to sit in a courtroom (and rely on spotty courthouse Wi-Fi to catch up on emails).

The biggest factor behind virtual trials may have nothing to do with litigation. We now live in a virtual world. Increasingly, everyone is more accustomed to remote work, virtual meetings, and videoconferencing. In the litigation world, virtual depositions, virtual mediations, and virtual hearings have become commonplace. Law can be slow to react to social change; to some extent that is with good reason. But law cannot escape social change forever.

That raises the question: Under what circumstances should courts allow or require virtual trials once the pandemic has ended? Our view has evolved.

First, courts should allow virtual trials where the court has the capacity and where the parties stipulate to the procedure. We envision a spectrum of virtual trials—on one end, only voir dire is held by videoconference; on the other end, the entire trial is held virtually.

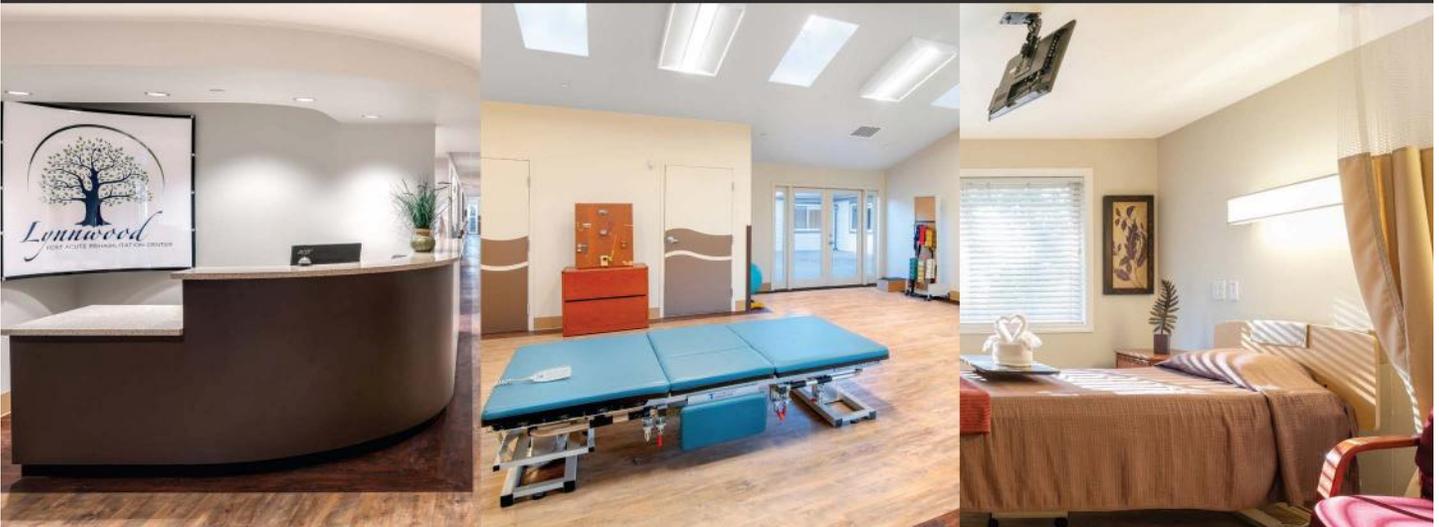
Second, we see a role for virtual trials in helping rid overburdened courts by expediting lower-stakes lawsuits. Cases with damages under a certain threshold could be required to be held virtually. If any party disagrees with the result and thinks that they would do better in person, then they could request a second live trial. To encourage acceptance of a virtual verdict, parties who request a live trial but fail to meaningfully improve their positions would face exposure to attorneys' fees. This proposal would help move cases to trial but also preserve litigants' perceived right to have their day in court (in person).

One thing is for certain: Some form of virtual trial practice is here to stay. Courts and jurors have embraced the concept, and despite questions regarding fairness, equity, and full demographic participation in virtual trial process, the efficiency factor is undeniable and the need for virtual hearings and trials to clear the backlog of cases seems inevitable. There is also the prospect of some hybrid proceedings—perhaps virtual jury selection but in-person trial, or some combination of both. With time, good trial attorneys will adapt (and judges will learn to remember to unmute themselves). ❖



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Saving damaged items from becoming total losses The biggest challenge when restoring electronics and art is the misconception of what can be saved after an incident

By Steve Hallo
Reprinted from www.propertycasualty360.com

Whether it is a fire, flood or another event that caused property damage, artwork is often overlooked or an afterthought, according to Tim Swett, president and owner of Art Recovery Technologies (ART) of Tampa and Orlando in Florida, who says the biggest challenge facing art restoration services is a lack of awareness.

“When I’m talking to someone, the common response is ‘we don’t see much artwork,’” Swett says. “That’s funny to me because I see artwork everywhere. It might be a painting, work on paper, something original, a limited-edition print, glass art, a sculpture or taxidermy. A lot of people collect pretty extensively.”

A reoccurring discussion he has with people is what they do when they find artwork on the walls. Many simply throw it away and include it in the claim.

“It could just be something a family member made. How do you put a value on that? It might not be museum quality, but it is meaningful to the person who owns it,” Swett explains. “The contractors do a great job making it a beautiful house again, but the blank walls continue the loss. We can restore a customer’s sense of home.”

When it comes to claims involving art, fire and smoke are typically at hand despite water claims being more common.

“A lot of times, water doesn’t affect the art. Where we do get involved is when a property has sat for a while after a water issue, and it becomes a mold and mildew loss,” he says.

Although a piece of work might be considered a loss, the ability to clean and restore a piece of art ranges from dry-cleaning to bleaching processes, depending on the type of damage and piece of work to full-frame restoration. Even torn canvas can be saved, according to Swett, who says: “If it is an old canvas, we can put a new piece on the back and inpainting if necessary. It is pretty fulfilling to watch the artist I hire put those skills to use.”

He does note the inpainting process uses an isolation layer, so it is reversible.



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More pertinent to insurance professionals, restoration jobs start with detailed itemizing of the objects, and the costs to clean and restore.

“We typically have a quote back within 24 hours of a walk-through, so very quickly, an adjuster will know the costs, and if they should go through with restoring versus replacing an item,” Swett says.

Similar to ART, sibling company ERS of Suncoast Florida can help adjusters quickly sort through what is restorable and what should be replaced when it comes to damaged electronics. An adjuster can have an estimate within 48 hours.

“They are able to cut checks and get the contents portion of a claim off their desk faster,” says Bryan Cash, part-owner of ERS and TEX of Suncoast Florida.

He adds that while most of the company’s work concerns claims from fire and smoke damage, the water and mold area is perhaps the biggest missed opportunity for adjusters when it comes to restoration services.

“Our biggest competition is mainly dumpsters. Either there are misconceptions about electronics and water or soot, or they just don’t know what can be done,” Cash says.

Another issue impacting the potential for electronic restoration is “tunnel vision” on the part of dry-out

companies called in to handle a water claim.

“They are just there to do the dry out; they don’t do the build back. That is why it is important for adjusters and carriers to ask the insured, ‘are there electronics or textiles affected, and do we need to send an expert out,’” he explains. “It is a missed opportunity there.”

Unlike electronics and art, textiles restoration is a more established sector, according to Cash, who adds: “A lot more people are educated on the necessity of textile restoration.”

He notes there is no one size fits all, do everything washing machine out there. This rings particularly true when dealing with items such as rugs, which can be expensive and more cost-effective to clean.

“Different pieces need to be handled differently. There are different methods and processes depending on the material and dyes used,” he says. “Anything that can be treated in bulk laundry, we will go that route. If it calls for a specific treatment, whether dry cleaning or hand cleaning, we’ll do that.” ❖

Washington Governor Declares Drought Emergency

By Rachel La Corte
Reprinted from www.insurancejournal.com

Washington Gov. Jay Inslee declared a statewide drought emergency because of hot, dry conditions that have plagued the region and water supply.

Citing recent record temperature that killed at least 91 people in the state, increased wildfire activity and drought, Inslee called it “the summer of climate change.”

“This is not political hyperbole,” Inslee said. “It is a scientific consensus that is jarring the life of every Washingtonian in some way.”

A drought emergency declaration is issued when water supply is projected to be below 75% of average, and poses a hardship to water users and the environment. The declaration allows expedited emergency water right permitting and allows the state to aid state agriculture, protect public water supplies and boost stream flows to safeguard fish.

The cities of Seattle, Tacoma and Everett areas are not included in the drought declaration, with the governor’s office saying that those areas have enough water storage to get through the summer. The Department of Ecology said that drinking water

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supplies are holding up, but that the Department of Health is monitoring closely.

Laura Watson, director of the state Department of Ecology, said that the drought came as a surprise to many of them because of robust snowpack in the Cascade Mountains.

"That led us to believe the water supplies would be adequate," she said but said that the second driest spring since 1895 plus June's record-shattering heat wave changed all that. "This is a grim reminder that water supplies do face an increasingly uncertain future because of climate change."

Last week, Inslee declared a state of emergency throughout Washington relating to the growing risk of wildfires, including a statewide prohibition on most outdoor and agricultural burning through Sept. 30.

This summer's fire season is "likely to be the worst of the last five years," said Commissioner of Public Lands Hilary Franz. She implored the public to abide by the burn bans.

She said that statewide, there have already been more than 900 fires with an estimated 219 square miles burned, just shy of the total land burned in all of 2019.

"If our new normal brings months without a drop of rain and one extreme heat wave after another, there's no technology or amount of resources that will be able to match the on-the-ground reality our firefighters are facing," she said.

Scientists have long warned that the weather will get wilder as the world warms. Climate change has made the West much warmer and drier in the past 30 years. But special calculations are needed to determine how much global warming is to blame, if at all, for a single extreme weather event.

Nearly 60% of the U.S. West is considered in exceptional or extreme drought, the two highest categories, according to the University of Nebraska's Drought Monitor. That's the highest percentage in the 20 years the drought monitor has been keeping track. Less than 1% of the West is not in drought or considered abnormally dry, also a record.

More than 95% of Washington is either abnormally dry or in official drought with 52.7% of the state being in severe, extreme or exceptional drought, according to the U.S. Drought monitor.

Rain and snow in Washington from April to June was third-lowest in 127 years of recordkeeping with only 3.7 inches, according to the National Oceanic and Atmospheric Administration. ❖

